

Memorandum 87-26

Subject: Study L-1028 - Amendments to AB 708 (Independent Administration)

The following amendments to AB 708 (as amended on March 30) relate to the independent administration portion of the bill. A copy of the bill as amended on March 30 is attached to Memorandum 87-22

Some of the amendments set out below reflect decisions made at the March meeting. Other amendments are technical or clarifying. Some of the amendments require revision of the Comment to the section being amended. The revised Comment is set out below following the amendment.

AMENDMENT

SUBSTITUTE FOR SECTION 10501

On page 164, strike out lines 26 to 40, inclusive, and on page 165, strike out lines 13 to 39, inclusive, and insert:

10501. (a) Notwithstanding any other provision of this part, whether the personal representative has been granted full authority or limited authority, a personal representative who has obtained authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

- (1) Allowance of the personal representative's commissions.
- (2) Allowance of attorney's fees.
- (3) Settlement of accountings.
- (4) Preliminary and final distributions and discharge.
- (5) Sale of property of the estate to the personal representative or to the attorney for the personal representative.
- (6) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative.

(7) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.

(8) Allow, pay, or compromise a claim of the personal representative, or the attorney for the personal representative, against the estate.

(9) Compromise or settle a claim, action, or proceeding by the estate against the personal representative or against the attorney for the personal representative.

(10) Extend, renew, or modify the terms of a debt or other obligation of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate.

(b) Notwithstanding any other provision of this part, a personal representative who has obtained only limited authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(1) Sale of real property.

(2) Exchange of real property.

(3) Grant of an option to purchase real property

(4) Borrow money with the loan secured by an encumbrance upon real property.

(c) Paragraphs (5) to (10), inclusive, of subdivision (a) do not apply to a transaction between the personal representative as such and the personal representative as an individual where all of the following requirements are satisfied:

(1) Either (A) the personal representative is the sole beneficiary of the estate or (B) all the known heirs or devisees have consented to the transaction.

(2) The period for filing creditor's claims has expired.

(3) No request for special notice is on file or all persons who filed a request for special notice have consented to the transaction.

(4) The claim of each creditor who filed a claim has been paid, settled, or withdrawn, or the creditor has consented to the transaction.

Note. The Commission approved the substance of new subdivision (c) at the March meeting and, as requested by the Commission at the March meeting, the staff has redrafted Section 10501 along the lines suggested by Mr. Collier.

Revised Comment. Extensive revisions will be required in various Comments in the Independent Administration Recommendation to reflect the renumbering of the provisions of Section 10501. The staff will review the printed recommendation with care and prepare a report that makes the needed changes in the affected Comments that contain references to provisions of Section 10501.

The Comment to Section 10501 should be revised to read as follows:

Comment. Paragraphs (1)-(4) of subdivision (a) of Section 10501 restate without substantive change clauses (1)-(3) of the second sentence of subdivision (a) of former Section 591.2.

Paragraphs (5)-(10) of subdivision (a) are new. Prior law did not expressly provide that the independent administration procedure could not be used for the types of actions listed in those paragraphs. The types of actions listed in those paragraphs are ones where there often will be a conflict of interest.

Paragraphs (5)-(7) of subdivision (a) make clear that the personal representative cannot use the independent administration procedure to sell property of the estate to the personal representative or the personal representative's attorney, to exchange estate property with the personal representative or the personal representative's attorney for other property, or to grant to the personal representative or the personal representative's attorney an option to purchase property of the estate. Special supervised administration provisions govern these transactions. See, e.g., Sections 9880-9885. A purchase by or exchange with the personal representative or the personal representative's attorney's may be accomplished only to the extent allowed under these special provisions and is subject to their limitations and requirements. Under these provisions, the purchase is permitted only if all known heirs or devisees give written consent to the purchase and the court approves the purchase. See Sections 9881 and 9883. The personal representative or personal representative's attorney may purchase property of the estate pursuant to a contract made during the lifetime of the decedent only if the statutory supervised administration requirements are satisfied. See Section 9884. The personal representative or personal representative's attorney may exercise an option to purchase property of the estate given in the will of the decedent only if the statutory supervised administration requirements are satisfied. See Section

9885. Independent administration procedure may be used for the actions described in paragraphs (5)-(7) between the personal representative as such and the personal representative as an individual if the requirements of subdivision (c) of Section 10501 are satisfied.

Paragraph (8) of subdivision (a) makes clear that the personal representative may not use the independent administration procedure for a claim against the estate by the personal representative or the attorney for the personal representative. The personal representative must submit the claim for allowance or rejection by the judge pursuant to Section 9252. Independent administration procedure may be used for an action described in paragraph (8) between the personal representative as such and the personal representative as an individual if the requirements of subdivision (c) of Section 10501 are satisfied.

Paragraphs (9) and (10) preclude the use of independent administration to compromise or settle a claim, action, or proceeding of the estate against the personal representative or the personal representative's attorney or to modify the terms of a debt or similar obligation of the personal representative or the personal representative's attorney to the estate. A special provision governs these transactions. See Sections 9830 and 9834. Independent administration procedure may be used for the actions described in paragraphs (9) and (10) between the personal representative as such and the personal representative as an individual if the requirements of subdivision (c) of Section 10501 are satisfied.

Paragraphs (1)-(3) of subdivision (b) restate without substantive change clause (4) of the second sentence of subdivision (a) of former Section 591.2. Paragraph (4) of subdivision (b) is new and requires court supervision if the personal representative has limited authority and proposes to borrow money with the loan secured by an encumbrance upon real property of the estate. Under former law, the personal representative with limited authority could use independent administration authority to borrow money with the loan secured by an encumbrance upon real property. The new limitation on borrowing money does not affect the powers of a personal representative who was granted independent administration authority prior to July 1, 1988. See Section 10406(c). In connection with subdivision (b), see Sections 1040e, 10450(b)(2), and 10452(c) (limited authority). See also Section 10502 (decendent's will may restrict powers exercisable under independent administration authority).

Subdivision (c) is a new provision which permits the use of the independent administration procedure for a transaction between the personal representative as such and the personal representative as an individual under the circumstances described in the subdivision. Subdivision (c) does not permit use of the independent administration procedure where the transaction involves the personal representative's attorney; such a transaction is subject to the applicable court supervision provisions referred to above.

Note. The following conforming revisions should be made in the supervised administration provision (Section 9834):

On page 111, line 33, after "personal representative" insert:
or the personal representative's attorney

On page 111, line 37, strike out "owing to, or running" and insert:
or the personal representative's attorney owing to, or

The Comment to Section 9834 will be revised to reflect that it applies not only to the personal representative but also to the personal representative's attorney.

AMENDMENT

SECTION 10533

On page 169, line 37, after "States" insert:
, or of the State of California,

On page 170, line 32, after "States" insert:
, or of the State of California,

Note. The Commission adopted a similar amendments at the March meeting to permit investment in direct obligations of the State of California maturing within one year without the requirement of prior court approval. This conforms the independent administration provisions by permitting the same investments without notice of proposed action.

Revised Comment. In the Comment to Section 10533, the reference to Section 9730 should be revised to read:

Section 9730 (investment in direct obligations of United States or the State of California, money market mutual fund, investment vehicle authorized for the collective investment of trust funds, units of common trust fund).

Also, all references in other provisions that refer to Section 9730 or 10533 should be checked to determine if they need to be revised to reflect the addition of authority to invest, without prior court approval or notice of proposed action, in direct obligations of the State of California maturing within one year.

AMENDMENT

SECTION 10537 - Subdivision (b)(4)

On page 173, line 15, after "issuer" insert:
or its successor

Note. The Commission adopted this amendment at its March meeting.

AMENDMENT

SECTION 10590 - subdivision (b)

On page 182, lines 12 and 13, strike out "any interested person" and insert:
a person described in Section 10581

Note. The Commission adopted this amendment at its March meeting. The printed recommendation will include this revision.

AMENDMENT

On page 186, strike out lines 24 and 25 and insert:

Dated: _____

(SIGN HERE)

Note. The Commission adopted this amendment at its March meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary