

Second Supplement to Memorandum 90-105

Subject: Study L-1036 - Probate Attorney Fees

Background

The counsel to the Senate Judiciary Committee has suggested that Assembly Bill 831 (probate attorney fees) be revised to eliminate the material relating to trustees fees and to eliminate any other unnecessary material from the bill. This will permit the committee to readily examine the provisions relating to probate attorney fees.

Unless there is some compelling reason to require a different decision, the staff believes that it is essential that the bill be simplified by revising it to read in substance as set out in Exhibit 1 attached. We are sending this revision out now even though the committee counsel has not yet reviewed the revision so that interested persons will have an opportunity to review it. We urge the Commission to approve this revision at the July meeting.

Delaying Operative Date Until July 1, 1991

One reason that Assembly Bill 831 is so long is that it is drafted to become operative on January 1, 1991. The result is that it is necessary to include duplicate provisions, some of which amend or add provisions to the existing Probate Code which will be repealed on July 1, 1991 (to cover the period from January 1, 1991, to June 30, 1991), and other provisions which enact the same amendments or additions to the new Probate Code (to apply after June 30, 1991).

If Assembly Bill 831 is revised to become operative on July 1, 1991, its bulk can be reduced considerably (from 34 pages to about 9 pages) without losing anything except the earlier operative date. Moreover, as a matter of policy, in view of the delay in enacting Assembly Bill 831, the delayed operative date would be desirable to permit lawyers and judges to become familiar with the new law and to give the Judicial Council time to develop the necessary forms. Accordingly, the staff believes that it is essential that the operative date of the bill be delayed until July 1, 1991.

Trustee's Fees

Assembly Bill 759 (new Probate Code) already contains all of the recommended provisions in Assembly Bill 831 concerning trustee's fees (except for the provision found in the first section of AB 831). Accordingly, we can delete the duplicated provisions from Assembly Bill 831 and retain in Assembly Bill 831 only the provision relating to trustees fees which is now found in the first section of the bill.

Personal Representative's Fees

Assembly Bill 759 (new Probate Code) already contains all of the recommended provisions in Assembly Bill 831 relating to compensation of personal representatives. Accordingly, we can delete the duplicated provisions from Assembly Bill 831.

Probate Attorney Fees

The new Probate Code (Assembly Bill 759) was drafted on the assumption that the Commission's recommendation on attorney fees would be enacted, and it already includes many of the provisions that are included in Assembly Bill 831 and which can be deleted if the July 1, 1991, operative date is approved.

Assembly Bill 831 must contain the new chapter on probate attorney fees (pages 12-16) of Exhibit 1. Two other sections of the new Probate Code require amendment to reflect the change in the operative date of Assembly Bill 831 from January 1 to July 1 (see Section 10406 on page 35 of Exhibit 1 and Section 10850 on page 36 of Exhibit 1). In addition, so that the members of the Senate Judiciary Committee will have before them two other key provisions of the Commission's recommendation, the staff recommended amendment would would make technical revisions in two other sections of the new Probate Code (see Section 10585.5 on pages 35 and 36 of Exhibit 1) and Section 10900 (on pages 36 and 37 of Exhibit 1).

What Happens if AB 831 is Not Enacted

As pointed out in Memorandum 90-105, the staff is seeking to have Senate Bill 1775 amended so that the new Probate Code will go into

effect even though Assembly Bill 831 is not enacted. The amendment to Senate Bill 1775 would add to that bill a provision that prior law governing probate attorney fees will govern if Assembly Bill 831 is not enacted. Attached as Exhibit 2 are amendments to Senate Bill 1775 to accomplish this result (the relevant portion is marked). We have provided the counsel to Senator Lockyer with a copy of the amendments, and he is now reviewing them. The amendments do not provide a complete statement of the law governing probate attorney fees. If Assembly Bill 831 is not enacted, the Commission should recommend an urgency bill next session to insert detailed provisions based on existing law in place of the concise statement concerning probate attorney fees that would be added by the amendment to Senate Bill 1775. In any event, an urgency bill will be necessary next session to revise the new Probate Code to pick up the revisions made in the existing Probate Code (but not in the new Probate Code) by bills enacted this session sponsored by groups other than the Commission.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

2nd Supp 90-105 Exhibit 1

AMENDED IN SENATE JUNE 19, 1990
AMENDED IN SENATE APRIL 18, 1990
AMENDED IN SENATE JANUARY 11, 1990
AMENDED IN ASSEMBLY JUNE 1, 1989
AMENDED IN ASSEMBLY MAY 1, 1989

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

ASSEMBLY BILL

No. 831

Introduced by Assembly Member Harris

February 22, 1989

An act to amend Section 2051 of the Financial Code, and to ~~amend and repeal Sections 7623, 7662, 7666, 8404, 8547, 0651, 10406, 10501, 10900, 10954, 11000, 11008, 12205, 15640, 15642, 15680, and 17200 of, to add and repeal Sections 10404.5, 10565, 10585.5, 15645, and 15686 to of, to add and repeal Chapter 2.5 (commencing with Section 9680) to Part 5 of Division 7 of, and to add and repeal Part 7 (commencing with Section 10800) to Division 7 of, and to repeal Part 15 (commencing with Section 900) of Division 2 of, the Probate Code, relating to probate law.~~

amend Sections 10406, 10585.5, 10850, and 10900, and to add Chapter 2.5

the Probate Code, as added by Chapter 79 of the Statutes of 1990, relating

LEGISLATIVE COUNSEL'S DIGEST

AB 831, as amended, Harris. Probate: estates and trusts.

(1) Existing law regarding the administration of estates provides for the order of payment of obligations of the estate by the public administrator, the powers and duties of the personal representative, the compensation of the personal representative, the hiring of attorneys and other assistants to aid the personal representative in the administration of the estate, and court supervision of the personal representative.

This bill would revise the law with regard to those



provisions. The bill, contingent upon the enactment of a new Probate Code by AB 759, would add similar provisions to that new Probate Code on its operative date relative to the hiring of attorneys and other assistants to aid the personal representative in the administration of the estate.

(2) Under existing law, if a bank is sold, the selling and purchasing banks are required to enter into an agreement that contain the terms and conditions of the sale. That agreement may provide for the transfer of all trusts to the purchasing bank.

This bill would provide that if a trust is transferred under the agreement, the transfer is good cause for removal of the trustee.

(3) Under existing law, a trustee may resign only in specified instances, including with the consent of beneficiaries.

The bill would provide that if a beneficiary has a conservator, the conservator may consent to the trustee's resignation on behalf of the conservatee without obtaining court approval.

(4) Existing law provides for the removal of a trustee in accordance with the trust instrument, by the court on its own motion, or on the petition of a cotrustee or beneficiary, for specified grounds.

This bill would also provide for removal of a trustee on petition of a settlor, and would add excessive compensation to the grounds for the removal of a trustee.

(5) The bill would provide that in proceedings to remove a trustee of an irrevocable trust and transfer administration to a trust company, the court may award the petitioners costs and attorney's fees, to be paid by the trustee or the trust, as determined by the court, if all the adult beneficiaries of the trust had previously requested the trustee to transfer administration of the trust to a trust company.

(6) Under existing law, if a trust has no trustee or if a vacancy is required to be filled, the vacancy shall be filled as provided in the trust instrument, or the court may appoint a trustee.

This bill would provide that a vacancy not filled as provided in the trust instrument may be filled by a trust company that

has agreed to accept the trust on agreement of all adult beneficiaries, as specified.

(7) The bill would provide that a trustee may not charge an increased trustee's fee unless the trustee first gives at least 60 days' written notice to each affected beneficiary.

(8) The bill would also provide for judicial review of a trustee's compensation.

(9) *Specified provisions of the bill would be repealed on July 1, 1991.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2051 of the Financial Code is
2 amended to read:

3 2051. (a) The selling and purchasing banks shall
4 enter into an agreement of purchase and sale which shall
5 contain all the terms and conditions of the sale and
6 contain proper provision for the payment of all liabilities
7 of the selling bank, or of the business, branch, or branch
8 business sold, and proper provision for the assumption by
9 the purchasing bank of all fiduciary and trust obligations
10 of the selling bank, or business, branch, or branch
11 business sold. The agreement may provide for the
12 transfer of all deposits of the selling bank or of the
13 business, branch, or branch business sold to the
14 purchasing bank, subject to the right of every depositor
15 of the selling bank or of the business, branch, or branch
16 business so sold to withdraw the deposit in full on demand
17 after such transfer, irrespective of the terms under which
18 it was deposited with the selling bank, and may provide
19 for the transfer of all court and private trusts so sold to the
20 purchasing bank.

21 (b) If a trust is transferred under this section, the
22 transfer is good cause for removal of the trustee under the
23 Trust Law, Division 9 (commencing with Section 15000)
24 of the Probate Code.

~~25 SEC. 2. Part 15 (commencing with Section 900) of
26 Division 2 of the Probate Code is repealed.~~



1 SEC. 3. Section 7623 of the Probate Code is amended
2 to read:

3 7623. (a) As used in this section, "additional
4 compensation" means the difference between the
5 reasonable compensation of the public administrator in
6 administering the estate and the compensation awarded
7 the public administrator under Chapter 1 (commencing
8 with Section 10800) of Part 7.

9 (b) The public administrator may be awarded
10 additional compensation if any of the following
11 conditions are satisfied:

12 (1) A person having priority for appointment as
13 personal representative has been given notice under
14 Section 8110 of the public administrator's petition for
15 appointment, and the person has not petitioned for
16 appointment in preference to the public administrator.

17 (2) The public administrator has been appointed after
18 the resignation or removal of a personal representative.

19 SEC. 4. Section 7662 of the Probate Code is amended
20 to read:

21 7662. The public administrator acting under
22 authority of this article shall pay out the money of the
23 estate, in the order prescribed in Section 11420, for
24 expenses of administration, charges against the estate,
25 and claims presented to the public administrator before
26 distribution of the decedent's property pursuant to
27 Section 7663. A creditor whose claim is paid under this
28 subdivision is not liable for contribution to a creditor
29 whose claim is presented after the payment.

30 SEC. 5. Section 7666 of the Probate Code is amended
31 to read:

32 7666. (a) Except as provided in Section 7623 and in
33 subdivision (b), the compensation payable to the public
34 administrator, for the filing of an application pursuant to
35 this article and for performance of any duty or service
36 connected therewith, is that set out in Part 7
37 (commencing with Section 10800).

38 (b) The public administrator is entitled to a minimum
39 compensation of three hundred fifty dollars (\$350).

40 SEC. 6. Section 8404 of the Probate Code is amended

1 to read:

2 8404. (a) Before letters are issued, the personal
3 representative (other than a trust company or a public
4 administrator) shall file an acknowledgment of receipt of
5 a statement of duties and liabilities of the office of
6 personal representative. The statement shall be in the
7 form prescribed by the Judicial Council.

8 (b) The court may by local rule require the
9 acknowledgment of receipt to include the personal
10 representative's social security number and driver's
11 license number, if any, provided that the court ensures
12 their confidentiality.

13 (c) The statement of duties and liabilities prescribed
14 by the Judicial Council does not supersede the law on
15 which the statement is based.

16 SEC. 7. Section 8547 of the Probate Code is amended
17 to read:

18 8547. (a) Subject to the limitations of this section, the
19 court shall fix the compensation of the special
20 administrator.

21 (b) The compensation of the special administrator
22 shall not be allowed until the close of administration,
23 unless the general personal representative joins in the
24 petition for allowance of the special administrator's
25 compensation or the court in its discretion so allows.
26 Compensation for extraordinary services of a special
27 administrator may be allowed on settlement of the final
28 account of the special administrator. The total
29 compensation paid to the special administrator and
30 general personal representative shall not, together,
31 exceed the sums provided in Part 7 (commencing with
32 Section 10890) for compensation for the ordinary and
33 extraordinary services of a personal representative. If the
34 same person does not act as both special administrator
35 and general personal representative, the compensation
36 shall be divided in such proportions as the court
37 determines to be just or as may be agreed to by the
38 special administrator and general personal
39 representative.

40 SEC. 8. Section 9651 of the Probate Code is amended

1 to read:

2 9651. (a) A personal representative who in good faith
3 takes into possession real or personal property, and
4 reasonably believes that the property is part of the estate
5 of the decedent, is not:

6 (1) Criminally liable for so doing.

7 (2) Civilly liable to any person for so doing.

8 (b) The personal representative shall make
9 reasonable efforts to determine the true nature of, and
10 title to, the property so taken into possession.

11 (c) During his or her possession, the personal
12 representative is entitled to receive all rents, issues, and
13 profits of the property. If the property is later
14 determined not to be part of the estate of the decedent,
15 the personal representative shall deliver the property, or
16 cause it to be delivered, to the person legally entitled to
17 it, together with all rents, issues, and profits of the
18 property received by the personal representative, less
19 any expenses incurred in protecting and maintaining the
20 property and in collecting rents, issues, and profits. The
21 personal representative may request court approval
22 before delivering the property pursuant to this
23 subdivision.

24 (d) The court may allow the personal representative
25 reasonable compensation for services rendered in
26 connection with the duties specified in this section as to
27 property later determined not to be part of the estate of
28 the decedent, if the court makes one of the following
29 findings:

30 (1) The services were of benefit to the estate. If the
31 court makes this finding, the compensation and the
32 expenses and costs of litigation, including attorney's fees
33 of the attorney hired by the personal representative to
34 handle the matter, are a proper expense of
35 administration.

36 (2) The services were essential to preserve, protect,
37 and maintain the property. If the court makes this
38 finding, the court shall award compensation and the
39 expenses and costs of litigation, including attorney's fees
40 of the attorney hired by the personal representative to

1 handle the matter, as an expense deductible from the
2 rents, issues, and profits received by the personal
3 representative, or, if these are insufficient, as a lien
4 against the property.

5 SEC. 9. Chapter 2.5 (commencing with Section 9680)
6 is added to Part 5 of Division 7 of the Probate Code, to
7 read:

8
9 CHAPTER 2.5. HIRING AND PAYING ATTORNEYS,
10 ADVISERS, AND OTHERS

11
12 9680. (a) Except as restricted or otherwise provided
13 by the will or by court order and subject to subdivision
14 (b) and to Section 10804, the personal representative,
15 acting reasonably for the benefit of the estate and in the
16 best interest of interested persons, may hire persons to
17 advise or assist the personal representative in the
18 administration of the estate, including attorneys,
19 accountants, auditors, technical advisers, investment
20 advisers, or other experts or agents, even if they are
21 associated or affiliated with the personal representative.

22 (b) A provision in the will directing the personal
23 representative to hire a particular person to advise or
24 assist the personal representative in the administration of
25 the estate is not binding on the personal representative,
26 and the personal representative may, but is not required
27 to, hire that person.

28 9681. (a) The compensation of persons hired under
29 Section 9680, including the attorney for the personal
30 representative, shall be determined by agreement
31 between the personal representative and the person
32 hired, and, except as provided in Section 9684 and in
33 Chapter 3 (commencing with Section 11000) of Part 8, is
34 not subject to approval or review by the court.

35 (b) Subject to Section 9682, if the decedent's will
36 makes provision for the compensation of a person hired
37 under Section 9680, including the attorney for the
38 personal representative, the compensation provided by
39 the will shall be the full and only compensation for the
40 services of that person.

- 1 9682. (a) The personal representative or a person
2 hired under Section 9680, including the attorney for the
3 personal representative, may petition the court to be
4 relieved from a provision of the decedent's will that
5 provides for the compensation of a person hired under
6 Section 9680 or for relief from some other restriction or
7 other limiting provision of the will on the hiring of
8 persons by the personal representative.
- 9 (b) Notice of the hearing on the petition shall be given
10 as provided in Section 1220 to all of the following persons:
- 11 (1) Each person listed in Section 1220.
12 (2) Each known heir whose interest in the estate
13 would be affected by the petition.
14 (3) Each known devisee whose interest in the estate
15 would be affected by the petition.
16 (4) The Attorney General, at the office of the Attorney
17 General in Sacramento, if any portion of the estate is to
18 escheat to the state and its interest in the estate would be
19 affected by the petition.
- 20 (c) If the court determines that it is to the advantage
21 of the estate and in the best interest of the interested
22 persons, the court may make an order:
- 23 (1) Granting relief from the restriction or other
24 limiting provision of the will upon the terms and
25 conditions the court specifies in the order.
26 (2) Authorizing compensation for the person hired
27 under Section 9680 in an amount greater than provided
28 in the will.
- 29 9683. (a) Except as otherwise provided in this
30 section, the personal representative may pay persons
31 hired under Section 9680 out of funds of the estate as a
32 proper expense of administration.
- 33 (b) If a person, including an attorney, is hired to assist
34 the personal representative in the performance of the
35 services of the personal representative for which the
36 personal representative is compensated under Part 7
37 (commencing with Section 10800), the person hired shall
38 be paid out of the personal representative's own funds
39 and not out of the funds of the estate, except that, at the
40 request of the personal representative, the court may

1 order payment out of the estate directly to the person
2 assisting the personal representative in the performance
3 of these services, the payment to be charged against and
4 deducted from the compensation that otherwise would
5 be paid to the personal representative.

6 (c) Nothing in subdivision (b) limits the authority of
7 the personal representative to pay out of funds of the
8 estate for services of tax counsel, tax auditors,
9 accountants, or other tax experts hired for the providing
10 of services in the computation, reporting, or making of
11 tax returns, or in negotiations which may be necessary for
12 the final determination and payment of taxes.

13 9684. (a) Subject to Section 10599 and to subdivision
14 (f) of this section, on petition of the personal
15 representative or an interested person, the court shall
16 review the following as requested in the petition:

17 (1) The propriety of employment by the personal
18 representative of any person under Section 9680 who has
19 been or is to be paid out of funds of the estate.

20 (2) The reasonableness of the agreed compensation
21 under subdivision (a) of Section 9681 of any person who
22 has been or is to be paid out of funds of the estate.

23 (b) Notice of the hearing on the petition shall be given
24 as provided in Section 1220 to all of the following persons:

25 (1) The person whose employment or compensation is
26 in question.

27 (2) Each person listed in Section 1220.

28 (3) Each known heir whose interests in the estate is
29 affected by the petition.

30 (4) Each known devisee whose interests in the estate
31 is affected by the petition.

32 (5) The Attorney General, by mail at the office of the
33 Attorney General in Sacramento, if any portion of the
34 estate is to escheat to the state and its interest in the
35 estate is affected by the petition.

36 (c) On hearing the petition, the court shall approve
37 the agreed compensation unless the court determines
38 that the agreed compensation is unreasonable in light of
39 the work to be performed for the estate. If the work has
40 already been performed and the court has not previously

1 reviewed the agreed compensation, the court shall
2 determine whether the agreed compensation is
3 unreasonable in light of the work actually performed for
4 the estate. In making the determination as to the
5 reasonableness of the compensation in the case of the
6 attorney for the personal representative, the court shall
7 be guided by Rule 4-200 of the Rules of Professional
8 Conduct of the State Bar of California (fees for legal
9 services). If the court determines that the agreed
10 compensation is unreasonable, the court shall fix a
11 reasonable amount as compensation.

12 (d) If the court determines that the attorney for the
13 personal representative has received excessive
14 compensation, the court shall order the attorney to make
15 an appropriate refund. If the court determines that a
16 person other than the attorney for the personal
17 representative has received excessive compensation, an
18 order for the refund of the excessive compensation may
19 be obtained only in a proceeding under Section 9684.5.

20 (e) Except as provided in subdivision (f), nothing in
21 this section limits the right to contest the account of the
22 personal representative under Chapter 3 (commencing
23 with Section 11000) of Part 8.

24 (f) The petitioner and all persons to whom notice of
25 the hearing on the petition was given pursuant to
26 subdivision (b) are bound by the determination of the
27 court under this section.

28 9684.5. (a) Any interested person may commence a
29 proceeding under this section to obtain an order that a
30 person determined by the court to have received
31 excessive compensation make an appropriate refund.
32 The proceeding under this section may be combined
33 with the proceeding brought to determine whether the
34 compensation is excessive. There shall be no additional
35 filing fee if the petition under this section is combined
36 with the other proceeding.

37 (b) A proceeding under this section shall be
38 commenced by filing a petition requesting that an order
39 be made under this section and referring to the other
40 proceeding brought to determine whether the

1 compensation is excessive.

2 (c) Not less than 30 days before the hearing, the
3 petitioner shall do both of the following:

4 (1) Cause notice of the hearing and a copy of the
5 petition to be mailed to the personal representative and
6 to any other petitioner in the other proceeding to
7 determine whether the compensation is excessive.

8 (2) Cause a summons and a copy of the petition to be
9 served on the person whose compensation is claimed to
10 be excessive. The summons shall be in the form and shall
11 be served in the manner prescribed in Title 5
12 (commencing with Section 410.10) of Part 2 of the Code
13 of Civil Procedure.

14 (d) If the court determines that the person who
15 received excessive compensation should make an
16 appropriate refund, the court shall so order. The order is
17 a judgment that may be enforced against the person
18 ordered to make the refund.

19 (e) An order that the attorney for the personal
20 representative make an appropriate refund may be made
21 without compliance with the requirements of this
22 section.

23 9685. Nothing in this chapter limits the right of an
24 attorney to decline to be the attorney for the personal
25 representative or the right of an attorney to withdraw as
26 the attorney for the personal representative, and, in such
27 case, the attorney is entitled to reasonable compensation
28 for the legal services actually provided.

29 9686. (a) This chapter does not apply in any
30 proceeding for administration of a decedent's estate
31 commenced before January 1, 1991.

32 (b) Notwithstanding its amendment or repeal by this
33 act, the applicable law in effect before January 1, 1991,
34 governing the subject matter of this chapter continues to
35 apply in any proceeding for administration of a
36 decedent's estate commenced before January 1, 1991.

SEC. 2.

37 ~~SEC. 2.5.~~ Chapter 2.5 (commencing with Section
38 9680) is added to Part 5 of Division 7 of the Probate Code
39 proposed by Assembly Bill 750 of the 1990-91 Regular
40 Session, to read:

as added by Chapter 79 of the Statutes of 1990

1

2

CHAPTER 2.5. HIRING AND PAYING ATTORNEYS,
ADVISERS, AND OTHERS

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5 9680. (a) Except as restricted or otherwise provided
6 by the will or by court order and subject to subdivision
7 (b) and to Section 10804, the personal representative,
8 acting reasonably for the benefit of the estate and in the
9 best interest of interested persons, may hire persons to
10 advise or assist the personal representative in the
11 administration of the estate, including attorneys,
12 accountants, auditors, technical advisers, investment
13 advisers, or other experts or agents, even if they are
14 associated or affiliated with the personal representative.

15 (b) A provision in the will directing the personal
16 representative to hire a particular person to advise or
17 assist the personal representative in the administration of
18 the estate is not binding on the personal representative,
19 and the personal representative may, but is not required
20 to, hire that person.

21 9681. (a) The compensation of persons hired under
22 Section 9680, including the attorney for the personal
23 representative, shall be determined by agreement
24 between the personal representative and the person
25 hired, and, except as provided in Section 9684 and in
26 Chapter 3 (commencing with Section 11000) of Part 8, is
27 not subject to approval or review by the court.

28 (b) Subject to Section 9682, if the decedent's will
29 makes provision for the compensation of a person hired
30 under Section 9680, including the attorney for the
31 personal representative, the compensation provided by
32 the will shall be the full and only compensation for the
33 services of that person.

34 9682. (a) The personal representative or a person
35 hired under Section 9680, including the attorney for the
36 personal representative, may petition the court to be
37 relieved from a provision of the decedent's will that
38 provides for the compensation of a person hired under
39 Section 9680 or for relief from some other restriction or
40 other limiting provision of the will on the hiring of

1 persons by the personal representative.

2 (b) Notice of the hearing on the petition shall be given
3 as provided in Section 1220 to all of the following persons:

4 (1) Each person listed in Section 1220.

5 (2) Each known heir whose interest in the estate
6 would be affected by the petition.

7 (3) Each known devisee whose interest in the estate
8 would be affected by the petition.

9 (4) The Attorney General, at the office of the Attorney
10 General in Sacramento, if any portion of the estate is to
11 escheat to the state and its interest in the estate would be
12 affected by the petition.

13 (c) If the court determines that it is to the advantage
14 of the estate and in the best interest of the interested
15 persons, the court may make an order:

16 (1) Granting relief from the restriction or other
17 limiting provision of the will upon the terms and
18 conditions the court specifies in the order.

19 (2) Authorizing compensation for the person hired
20 under Section 9680 in an amount greater than provided
21 in the will.

22 9683. (a) Except as otherwise provided in this
23 section, the personal representative may pay persons
24 hired under Section 9680 out of funds of the estate as a
25 proper expense of administration.

26 (b) If a person, including an attorney, is hired to assist
27 the personal representative in the performance of the
28 services of the personal representative for which the
29 personal representative is compensated under Part 7
30 (commencing with Section 10800), the person hired shall
31 be paid out of the personal representative's own funds
32 and not out of the funds of the estate, except that, at the
33 request of the personal representative, the court may
34 order payment out of the estate directly to the person
35 assisting the personal representative in the performance
36 of these services, the payment to be charged against and
37 deducted from the compensation that otherwise would
38 be paid to the personal representative.

39 (c) Nothing in subdivision (b) limits the authority of
40 the personal representative to pay out of funds of the

1 estate for services of tax counsel, tax auditors,
2 accountants, or other tax experts hired for the providing
3 of services in the computation, reporting, or making of
4 tax returns, or in negotiations which may be necessary for
5 the final determination and payment of taxes.

6 9684. (a) Subject to Section 10590 and to subdivision
7 (f) of this section, on petition of the personal
8 representative or an interested person, the court shall
9 review the following as requested in the petition:

10 (1) The propriety of employment by the personal
11 representative of any person under Section 9680 who has
12 been or is to be paid out of funds of the estate.

13 (2) The reasonableness of the agreed compensation
14 under subdivision (a) of Section 9681 of any person who
15 has been or is to be paid out of funds of the estate.

16 (b) Notice of the hearing on the petition shall be given
17 as provided in Section 1220 to all of the following persons:

18 (1) The person whose employment or compensation is
19 in question.

20 (2) Each person listed in Section 1220.

21 (3) Each known heir whose interest in the estate
22 would be affected by the petition.

23 (4) Each known devisee whose interests in the estate
24 would be affected by the petition.

25 (5) The Attorney General, at the office of the Attorney
26 General in Sacramento, if any portion of the estate is to
27 escheat to the state and its interest in the estate would be
28 affected by the petition.

29 (c) On hearing the petition, the court shall approve
30 the agreed compensation unless the court determines
31 that the agreed compensation is unreasonable in light of
32 the work to be performed for the estate. If the work has
33 already been performed and the court has not previously
34 reviewed the agreed compensation, the court shall
35 determine whether the agreed compensation is
36 unreasonable in light of the work actually performed for
37 the estate. In making the determination as to the
38 reasonableness of the compensation in the case of the
39 attorney for the personal representative, the court shall
40 be guided by Rule 4-200 of the Rules of Professional

1 Conduct of the State Bar of California (fees for legal
2 services). If the court determines that the agreed
3 compensation is unreasonable, the court shall fix a
4 reasonable amount as compensation.

5 (d) If the court determines that the attorney for the
6 personal representative has received excessive
7 compensation, the court shall order the attorney to make
8 an appropriate refund. If the court determines that a
9 person other than the attorney for the personal
10 representative has received excessive compensation, an
11 order for the refund of the excessive compensation may
12 be obtained only in a proceeding under Section 9684.5.

13 (e) Except as provided in subdivision (f), nothing in
14 this section limits the right to contest the account of the
15 personal representative under Chapter 3 (commencing
16 with Section 11000) of Part 8.

17 (f) The petitioner and all persons to whom notice of
18 the hearing on the petition was given pursuant to
19 subdivision (b) are bound by the determination of the
20 court under this section.

21 9684.5. (a) Any interested person may commence a
22 proceeding under this section to obtain an order that a
23 person determined by the court to have received
24 excessive compensation make an appropriate refund.
25 The proceeding under this section may be combined
26 with the proceeding brought to determine whether the
27 compensation is excessive. There shall be no additional
28 filing fee if the petition under this section is combined
29 with the other proceeding.

30 (b) A proceeding under this section shall be
31 commenced by filing a petition requesting that an order
32 be made under this section and referring to the other
33 proceeding brought to determine whether the
34 compensation is excessive.

35 (c) Not less than 30 days before the hearing, the
36 petitioner shall do both of the following:

37 (1) Cause notice of the hearing and a copy of the
38 petition to be mailed to the personal representative and
39 to any other petitioner in the other proceeding to
40 determine whether the compensation is excessive.

1 (2) Cause a summons and a copy of the petition to be
2 served on the person whose compensation is claimed to
3 be excessive. The summons shall be in the form and shall
4 be served in the manner prescribed in Title 5
5 (commencing with Section 410.10) of Part 2 of the Code
6 of Civil Procedure.

7 (d) If the court determines that the person who
8 received excessive compensation should make an
9 appropriate refund, the court shall so order. The order is
10 a judgment that may be enforced against the person
11 ordered to make the refund.

12 (e) An order that the attorney for the personal
13 representative make an appropriate refund may be made
14 without compliance with the requirements of this
15 section.

16 9685. Nothing in this chapter limits the right of an
17 attorney to decline to be the attorney for the personal
18 representative or the right of an attorney to withdraw as
19 the attorney for the personal representative, and, in such
20 case, the attorney is entitled to reasonable compensation
21 for the legal services actually provided.

22 9686. (a) This chapter does not apply in any
23 proceeding for administration of a decedent's estate
24 commenced before ~~January 1, 1991.~~

July

25 (b) Notwithstanding its repeal, the applicable law in
26 effect before ~~January 1, 1991,~~ governing the subject
27 matter of this chapter continues to apply in any
28 proceeding for administration of a decedent's estate
29 commenced before ~~January 1, 1991.~~

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~~30 9687. This chapter shall not become operative unless
31 Assembly Bill 759 of the 1989-90 Regular Session is
32 enacted and establishes a new Probate Code in which
33 case this chapter shall become operative on the same date
34 that the Probate Code added by Assembly Bill 759
35 becomes operative.~~

36 SEC. 10. Section 10404.5 is added to the Probate Code,
37 to read:

38 10404.5. Notwithstanding any provision of the
39 decedent's will, the personal representative is authorized
40 to exercise under the provisions of this part the power

1 granted by Section 10565, whether or not the personal
2 representative has been granted authority to administer
3 the estate under this part.

4 SEC. 11. Section 10406 of the Probate Code is
5 amended to read:

6 10406. (a) Subject to subdivision (c), this part applies
7 in all of the following cases:

8 (1) Where authority to administer the estate is
9 granted under this part.

10 (2) Where authority to administer the estate was
11 granted under former Sections 591.1 to 591.9, inclusive, of
12 the Probate Code on a petition filed after January 1, 1985.

13 (3) Where authority was granted prior to January 1,
14 1985, to administer the estate under the Independent
15 Administration of Estates Act and one of the following
16 requirements is satisfied:

17 (A) A petition was filed under former Section 591.1 of
18 the Probate Code after January 1, 1985, requesting that
19 the personal representative be authorized to administer
20 the estate under the Independent Administration of
21 Estates Act in effect at the time the petition was filed, and
22 the petition was granted.

23 (B) A petition is filed under this part requesting that
24 the personal representative be authorized to administer
25 the estate under this part, and the petition is granted.

26 (b) Except as provided in paragraph (3) of subdivision
27 (a), a personal representative who was granted authority
28 prior to January 1, 1985, to administer the estate under
29 the Independent Administration of Estates Act shall
30 continue to administer the estate under the provisions of
31 the Independent Administration of Estates Act that were
32 applicable at the time the petition was granted.

33 (c) If the personal representative was granted
34 independent administration authority prior to July 1,
35 1988, the personal representative may use that existing
36 authority on and after July 1, 1988, to borrow money on
37 a loan secured by an encumbrance upon real property,
38 whether or not that existing authority includes the
39 authority to sell real property.

40 (d) Sections 10404.5, 10565, and 10585.5 as enacted by

1 the act that added this subdivision, and Section 10501 as
2 amended by the act that added this subdivision, do not
3 apply to any proceeding for administration of a
4 decedent's estate commenced before January 1, 1991.
5 Section 10501, as that section existed prior to its
6 amendment by the act that added this subdivision,
7 continues to apply in any proceeding for administration
8 of a decedent's estate commenced before January 1, 1991,
9 notwithstanding its amendment by the act that added
10 this subdivision.

11 SEC. 12. Section 10501 of the Probate Code is
12 amended to read:

13 10501. (a) Notwithstanding any other provision of
14 this part, whether the personal representative has been
15 granted full authority or limited authority, a personal
16 representative who has obtained authority to administer
17 the estate under this part is required to obtain court
18 supervision, in the manner provided in this code, for any
19 of the following actions:

20 (1) Allowance of the personal representative's
21 compensation.

22 (2) Settlement of accounts.

23 (3) Preliminary and final distributions and discharge.

24 (4) Sale of property of the estate to the personal
25 representative or to the attorney for the personal
26 representative.

27 (5) Exchange of property of the estate for property of
28 the personal representative or for property of the
29 attorney for the personal representative.

30 (6) Grant of an option to purchase property of the
31 estate to the personal representative or to the attorney
32 for the personal representative.

33 (7) Allowance, payment, or compromise of a claim of
34 the personal representative, or the attorney for the
35 personal representative, against the estate.

36 (8) Compromise or settlement of a claim, action, or
37 proceeding by the estate against the personal
38 representative or against the attorney for the personal
39 representative.

40 (9) Extension, renewal, or modification of the terms of

1 a debt or other obligation of the personal representative,
2 or the attorney for the personal representative, owing to
3 or in favor of the decedent or the estate.

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

- 9 (1) Sale of real property.
- 10 (2) Exchange of real property.
- 11 (3) Grant of an option to purchase real property.
- 12 (4) Borrowing money with the loan secured by an
13 encumbrance upon real property.

14 (c) Paragraphs (4) to (9), inclusive, of subdivision (a)
15 do not apply to a transaction between the personal
16 representative as such and the personal representative as
17 an individual where all of the following requirements are
18 satisfied:

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

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

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

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

29 (d) Subdivision (a) does not apply to the hiring and
30 paying of persons, including the attorney for the personal
31 representative, hired under Section 9620 to advise or
32 assist the personal representative in the administration of
33 the estate.

34 SEC. 13. Section 10565 is added to the Probate Code,
35 to read:

36 10565. (a) Subject to Section 10804, the personal
37 representative has the power to hire persons to advise or
38 assist in the administration of the estate, including
39 attorneys, accountants, auditors, technical advisers,
40 investment advisers, or other experts or agents, even if

1 they are associated or affiliated with the personal
2 representative.

3 (b) The personal representative has the power to
4 agree to and pay the compensation of the persons
5 described in subdivision (a) out of funds of the estate
6 unless the person is hired to assist the personal
7 representative in the performance of services of the
8 personal representative for which the personal
9 representative is compensated under Part 7
10 (commencing with Section 10800).

11 SEC. 14. Section 10585.5 is added to the Probate Code.
12 to read:

13 10585.5. (a) If, pursuant to subdivision (b) of Section
14 10580, the personal representative gives notice of
15 proposed action with respect to the exercise of the
16 powers granted by Section 10565 (hiring and paying
17 attorneys, advisers, and others to advise or assist in the
18 administration of the estate:

19 (1) The notice of proposed action shall include, in
20 addition to the information required by Section 10585, an
21 estimate of the total amount of compensation to be paid
22 to the person hired.

23 (2) If the person hired is an attorney, each person
24 given notice of proposed action shall also be provided
25 with a copy of the written fee contract made pursuant to
26 Section 6148 of the Business and Professions Code.

27 (3) If the person hired is not an attorney, each person
28 given notice of proposed action shall also be provided
29 with a copy of the written contract, if any, governing the
30 hiring and compensation.

31 (b) If it appears that the total amount of compensation
32 to be paid to the person hired will exceed the amount of
33 the last previous estimate given in a notice of proposed
34 action, the personal representative may give another
35 notice of proposed action stating a new estimate of the
36 total amount of compensation to be paid to the person.

37 (c) Section 10590 does not apply to the extent that the
38 compensation paid or to be paid exceeds the amount of
39 the estimate contained in the notice of proposed action
40 most recently given.

1 SEC. 15. Part 7 (commencing with Section 10800) is
2 added to Division 7 of the Probate Code, to read:
3

4 PART 7. COMPENSATION OF PERSONAL
5 REPRESENTATIVE
6

7 CHAPTER 1. AMOUNT OF COMPENSATION
8

9 10800. (a) Subject to the provisions of this part, for
10 ordinary services the personal representative shall
11 receive compensation based on the value of the estate
12 accounted for by the personal representative, as follows:
13

14 (1) Four percent on the first fifteen thousand dollars
15 (\$15,000).

16 (2) Three percent on the next eighty-five thousand
17 dollars (\$85,000).

18 (3) Two percent on the next nine hundred thousand
19 dollars (\$900,000).

20 (4) One percent on the next nine million dollars
21 (\$9,000,000).

22 (5) One-half of one percent on the next fifteen million
23 dollars (\$15,000,000).

24 (6) For all above twenty-five million dollars
25 (\$25,000,000), a reasonable amount to be determined by
26 the court.

27 (b) For the purposes of this section, the value of the
28 estate accounted for by the personal representative is the
29 total amount of the appraisal of property in the inventory,
30 plus gains over the appraisal value on sales, plus receipts,
31 less losses from the appraisal value on sales, without
32 reference to encumbrances or other obligations on estate
33 property.

34 10801. Subject to the provisions of this part, in
35 addition to the compensation provided by Section 10800,
36 the court may allow additional compensation for
37 extraordinary services by the personal representative in
38 an amount the court determines is just and reasonable.

39 10802. (a) Except as otherwise provided in this
40 section if the decedent's will makes provision for the
compensation of the personal representative, the

1 compensation provided by the will shall be the full and
2 only compensation for the services of the personal
3 representative.

4 (b) The personal representative may petition the
5 court to be relieved from a provision of the will that
6 provides for the compensation of the personal
7 representative.

8 (c) Notice of the hearing on the petition shall be given
9 as provided in Section 1220 to all of the following persons:

10 (1) Each person listed in Section 1220.

11 (2) Each known heir whose interest in the estate
12 would be affected by the petition.

13 (3) Each known devisee whose interest in the estate
14 would be affected by the petition.

15 (4) The Attorney General, at the office of the Attorney
16 General in Sacramento, if any portion of the estate is to
17 escheat to the state and its interest in the estate would be
18 affected by the petition.

19 (d) If the court determines that it is to the advantage
20 of the estate and in the best interest of the persons
21 interested in the estate, the court may make an order
22 authorizing compensation for the personal
23 representative in an amount greater than provided in the
24 will.

25 10803. An agreement between the personal
26 representative and an heir or devisee for higher
27 compensation than that provided by this part is void.

28 10804. Unless expressly authorized by the decedent's
29 will, a personal representative who is an attorney may
30 receive the personal representative's compensation but
31 not compensation for services as the estate attorney.

32 10805. If there are two or more personal
33 representatives, the personal representative's
34 compensation shall be apportioned among the personal
35 representatives by the court according to the services
36 actually rendered by each personal representative or as
37 agreed to by the personal representatives.

1 CHAPTER 2. ALLOWANCE OF COMPENSATION BY
2 COURT
3

4 10830. (a) At any time after four months from the
5 issuance of letters, the personal representative may file a
6 petition requesting an allowance on the compensation of
7 the personal representative.

8 (b) Notice of the hearing on the petition shall be given
9 as provided in Section 1220 to all of the following:

10 (1) Each person listed in Section 1220.

11 (2) Each known heir whose interest in the estate
12 would be affected by the payment of the compensation.

13 (3) Each known devisee whose interest in the estate
14 would be affected by the payment of the compensation.

15 (4) The Attorney General, at the office of the Attorney
16 General in Sacramento, if any portion of the estate is to
17 escheat to the state and its interest in the estate would be
18 affected by the petition.

19 (c) On the hearing, the court may make an order
20 allowing the portion of the compensation of the personal
21 representative, on account of services rendered up to
22 that time, that the court determines is proper. The order
23 shall authorize the personal representative to charge
24 against the estate the amount allowed.

25 10831. (a) At the time of the filing of the final
26 account and petition for an order for final distribution,
27 the personal representative may petition the court for an
28 order fixing and allowing the personal representative's
29 compensation for all services rendered in the estate
30 proceeding.

31 (b) The request for compensation may be included in
32 the final account or the petition for final distribution or
33 may be made in a separate petition.

34 (c) Notice of the hearing on the petition shall be given
35 as provided in Section 1220 to all of the following:

36 (1) Each person listed in Section 1220.

37 (2) Each known heir whose interest in the estate
38 would be affected by the payment of the compensation.

39 (3) Each known devisee whose interest in the estate
40 would be affected by the payment of the compensation.

1 (4) The Attorney General, at the office of the Attorney
2 General in Sacramento, if any portion of the estate is to
3 escheat to the state and its interest in the estate would be
4 affected by the petition.

5 (d) On the hearing, the court shall make an order
6 fixing and allowing the compensation for all services
7 rendered in the estate proceeding by the personal
8 representative. The order shall authorize the personal
9 representative to charge against the estate the amount
10 allowed, less any amount previously charged against the
11 estate pursuant to Section 10830.

12 10832. Notwithstanding Sections 10830 and 10831, the
13 court may allow compensation to the personal
14 representative for extraordinary services before final
15 distribution when any of the following requirements is
16 satisfied:

17 (a) It appears likely that administration of the estate
18 will continue, whether due to litigation or otherwise, for
19 an unusually long time.

20 (b) Present payment will benefit the estate or the
21 beneficiaries of the estate.

22 (c) Other good cause is shown.

23

24 CHAPTER 3. APPLICATION OF PART

25

26 10850. (a) This part does not apply in any proceeding
27 for administration of a decedent's estate commenced
28 before January 1, 1991.

29 (b) Notwithstanding its amendment or repeal by this
30 act, the applicable law in effect before January 1, 1991,
31 governing the subject matter of this part continues to
32 apply in any proceeding for administration of a
33 decedent's estate commenced before January 1, 1991.

34 SEC. 16. Section 10900 of the Probate Code is
35 amended to read:

36 10900. (a) An account shall include both a financial
37 statement as provided in subdivision (b) and a report of
38 administration as provided in subdivision (c).

39 (b) The financial statement shall include a summary
40 statement, together with supporting schedules, of:

- 1 (1) Property in all inventories.
- 2 (2) Receipts, excluding property listed in an
- 3 inventory.
- 4 (3) Gains on sales.
- 5 (4) Other acquisitions of property.
- 6 (5) Disbursements.
- 7 (6) Losses on sales.
- 8 (7) Other dispositions of property.
- 9 (8) Property remaining on hand.

10 (c) The report of administration shall state the
11 liabilities of the estate, including creditor claims, the
12 hiring and payment of any persons under Section 9680
13 who have been or are to be paid out of funds of the estate,
14 and all other matters necessary to show the condition of
15 the estate.

16 (d) The statement of liabilities in the report of
17 administration shall include the following information:

18 (1) Whether notice to creditors was given under
19 Section 9050.

20 (2) Creditor claims filed, including the date of filing
21 the claim, the name of the claimant, the amount of the
22 claim, and the action taken on the claim.

23 (3) Creditor claims not paid, satisfied, or adequately
24 provided for. As to each such claim, the statement shall
25 indicate whether the claim is due and the date due, the
26 date any notice of rejection was given, and whether the
27 creditor has brought an action on the claim. The
28 statement shall identify any real or personal property
29 that is security for the claim, whether by mortgage, deed
30 of trust, lien, or other encumbrance.

31 SEC. 17. Section 10954 of the Probate Code is
32 amended to read:

33 10954. (a) Notwithstanding any other provision of
34 this part, the personal representative is not required to
35 file an account if any of the following conditions is
36 satisfied as to each person entitled to distribution from
37 the estate:

38 (1) The person has executed and filed a written
39 waiver of account or a written acknowledgment that the
40 person's interest has been satisfied.

1 (2) Adequate provision has been made for satisfaction
2 in full of the person's interest. This paragraph does not
3 apply to a residuary devisee or a devisee whose interest
4 in the estate is subject to abatement, payment of
5 expenses, or accrual of interest or income.

6 (b) A waiver or acknowledgment under subdivision
7 (a) shall be executed as follows:

8 (1) If the person entitled to distribution is an adult and
9 competent, by that person.

10 (2) If the person entitled to distribution is a minor, by
11 a person authorized to receive money or property
12 belonging to the minor. If the waiver or acknowledgment
13 is executed by a guardian of the estate of the minor, the
14 waiver or acknowledgment may be executed without the
15 need to obtain approval of the court in which the
16 guardianship proceeding is pending.

17 (3) If the person entitled to distribution is a
18 conservatee, by the conservator of the estate of the
19 conservatee. The waiver or acknowledgment may be
20 executed without the need to obtain approval of the
21 court in which the conservatorship proceeding is
22 pending.

23 (4) If the person entitled to distribution is a trust, by
24 the trustee, but only if the named trustee's written
25 acceptance of the trust is filed with the court. In the case
26 of a trust that is subject to the continuing jurisdiction of
27 the court pursuant to Chapter 4 (commencing with
28 Section 17300) of Part 5 of Division 9, the waiver or
29 acknowledgment may be executed without the need to
30 obtain approval of the court.

31 (5) If the person entitled to distribution is an estate, by
32 the personal representative of the estate. The waiver or
33 acknowledgment may be executed without the need to
34 obtain approval of the court in which the estate is being
35 administered.

36 (6) If the person entitled to distribution is
37 incapacitated, unborn, unascertained, or is a person
38 whose identity or address is unknown, or is a designated
39 class of persons who are not ascertained or are not in
40 being, and there is a guardian ad litem appointed to

1 represent the person entitled to distribution, by the
2 guardian ad litem.

3 (7) If the person entitled to distribution has
4 designated an attorney in fact who has the power under
5 the power of attorney to execute the waiver or
6 acknowledgment, by either of the following:

7 (A) The person entitled to distribution if an adult and
8 competent.

9 (B) The attorney in fact.

10 (c) Notwithstanding subdivision (a):

11 (1) The personal representative shall file a final report
12 of administration at the time the final account would
13 otherwise have been required. The final report shall
14 include the amount of compensation paid or payable to
15 the personal representative and shall set forth the basis
16 for determining the amount.

17 (2) A creditor whose interest has not been satisfied
18 may petition under Section 10950 for an account.

19 SEC. 18. Section 11000 of the Probate Code is
20 amended to read:

21 11000. (a) The personal representative shall give
22 notice of the hearing as provided in Section 1220 to all of
23 the following persons:

24 (1) The person listed in Section 1220.

25 (2) Each known heir whose interest in the estate
26 would be affected by the account.

27 (3) Each known devisee whose interest in the estate
28 would be affected by the account.

29 (4) The Attorney General, at the office of the Attorney
30 General in Sacramento, if any portion of the estate is to
31 escheat to the state and its interest would be affected by
32 the account.

33 (5) If the estate is insolvent, each creditor who has
34 filed a claim that is allowed or approved but is unpaid in
35 whole or in part.

36 (b) If the petition for approval of the account requests
37 allowance of all or a portion of the compensation of the
38 personal representative, the notice of hearing shall so
39 state.

40 (c) If the account is a final account and is filed

1 together with a petition for an order for final distribution
2 of the estate, the notice of hearing shall so state.

3 SEC. 19. Section 11003 of the Probate Code is
4 amended to read:

5 11003. (a) If the court determines that the contest
6 was without reasonable cause and in bad faith, the court
7 may award against the contestant the compensation and
8 costs of the personal representative and other expenses
9 and costs of litigation, including attorney's fees, incurred
10 to defend the account. The amount awarded is a charge
11 against any interest of the contestant in the estate and the
12 contestant is personally liable for any amount that
13 remains unsatisfied.

14 (b) If the court determines that the opposition to the
15 contest was without reasonable cause and in bad faith, the
16 court may award the contestant the costs of the
17 contest and other expenses and costs of litigation,
18 including attorney's fees, incurred to contest the account.
19 The amount awarded is a charge against the
20 compensation or other interest of the personal
21 representative in the estate and the personal
22 representative is liable personally and on the bond, if any,
23 for any amount that remains unsatisfied.

24 SEC. 20. Section 12205 of the Probate Code is
25 amended to read:

26 12205. (a) The court may reduce the compensation
27 of the personal representative or the attorney for the
28 personal representative by an amount the court
29 determines to be appropriate if the court makes all of the
30 following determinations:

31 (1) The time taken for administration of the estate
32 exceeds the time required by this chapter or prescribed
33 by the court.

34 (2) The time taken was within the control of the
35 personal representative or attorney whose compensation
36 is being reduced.

37 (3) The delay was not in the best interest of the estate
38 or interested persons.

39 (b) An order under this section reducing
40 compensation may be made regardless whether:

1 (1) The compensation otherwise allowable under Part
2 7 (commencing with Section 10800) would be reasonable
3 compensation for the services rendered by the personal
4 representative.

5 (2) The compensation otherwise paid or to be paid to
6 the attorney for the personal representative would be
7 considered reasonable compensation for the services
8 rendered by the attorney.

9 (c) An order under this section may be made on any
10 of the following hearings:

11 (1) The hearing for final distribution.

12 (2) The hearing for an allowance on the compensation
13 of the personal representative.

14 (3) The hearing under Section 9654 to review the
15 compensation of the attorney for the personal
16 representative.

17 (d) In making a determination under this section, the
18 court shall take into account any action taken under
19 Section 12202 as a result of a previous delay.

20 (e) If the court determines that the attorney for the
21 personal representative has received compensation in
22 excess of the reduced amount allowed under this section,
23 the court shall order the attorney to make an appropriate
24 refund.

25 SEC. 21. Section 15640 of the Probate Code is
26 amended to read:

27 15640. A trustee who has accepted the trust may
28 resign only by one of the following methods:

29 (a) As provided in the trust instrument.

30 (b) In the case of a revocable trust, with the consent
31 of the person holding the power to revoke the trust.

32 (c) In the case of a trust that is not revocable, with the
33 consent of all adult beneficiaries who are receiving or are
34 entitled to receive income under the trust or to receive
35 a distribution of principal if the trust were terminated at
36 the time consent is sought. If a beneficiary has a
37 conservator, the conservator may consent to the trustee's
38 resignation on behalf of the conservatee, without
39 obtaining court approval. Without limiting the power of
40 the beneficiary to consent to the trustee's resignation, if

1 the beneficiary has designated an attorney in fact who has
2 the power under the power of attorney to consent to the
3 trustee's resignation, the attorney in fact may consent to
4 the resignation.

5 (d) Pursuant to a court order obtained on petition by
6 the trustee under Section 17200. The court shall accept
7 the trustee's resignation and may make any orders
8 necessary for the preservation of the trust property,
9 including the appointment of a receiver or a temporary
10 trustee.

11 SEC. 22. Section 15642 of the Probate Code is
12 amended to read:

13 15642. (a) A trustee may be removed in accordance
14 with the trust instrument by the court on its own motion,
15 or on petition of a settlor, cotrustee, or beneficiary under
16 Section 17200.

17 (b) The grounds for removal of a trustee by the court
18 include the following:

19 (1) Where the trustee has committed a breach of the
20 trust.

21 (2) Where the trustee is insolvent or otherwise unfit to
22 administer the trust.

23 (3) Where hostility or lack of cooperation among
24 cotrustees impairs the administration of the trust.

25 (4) Where the trustee fails or declines to act.

26 (5) Where the trustee's compensation is excessive
27 under the circumstances.

28 (6) For other good cause.

29 (c) If it appears to the court that trust property or the
30 interests of a beneficiary may suffer loss or injury pending
31 a decision on a petition for removal of a trustee and any
32 appellate review, the court may, on its own motion or on
33 petition of a cotrustee or beneficiary, compel the trustee
34 whose removal is sought to surrender trust property to a
35 cotrustee or to a receiver or temporary trustee. The court
36 may also suspend the powers of the trustee to the extent
37 the court deems necessary.

38 SEC. 23. Section 15645 is added to the Probate Code,
39 to read:

40 15645. If the trustee of a trust that is not revocable has

1 refused to transfer administration of the trust to a
2 successor trust company on request of the beneficiaries
3 described in subdivision (c) of Section 15640 and the
4 court in subsequent proceedings under Section 17200
5 makes an order removing the existing trustee and
6 appointing a trust company as successor trustee, the court
7 may, in its discretion, award costs and reasonable
8 attorney's fees incurred by the petitioner in the
9 proceeding to be paid by the trustee or from the trust as
10 ordered by the court.

11 SEC. 24. Section 15660 of the Probate Code is
12 amended to read:

13 15660. (a) If the trust has no trustee or if the trust
14 instrument requires a vacancy in the office of a cotrustee
15 to be filled, the vacancy shall be filled as provided in this
16 section.

17 (b) If the trust instrument provides a practical method
18 of appointing a trustee or names the person to fill the
19 vacancy, the vacancy shall be filled as provided in the
20 trust instrument.

21 (c) If the vacancy in the office of trustee is not filled
22 as provided in subdivision (b), the vacancy may be filled
23 by a trust company that has agreed to accept the trust on
24 agreement of all adult beneficiaries who are receiving or
25 are entitled to receive income under the trust or to
26 receive a distribution of principal if the trust were
27 terminated at the time the agreement is made. If a
28 beneficiary has a conservator, the conservator may agree
29 to the successor trustee on behalf of the conservatee
30 without obtaining court approval. Without limiting the
31 power of the beneficiary to agree to the successor trustee,
32 if the beneficiary has designated an attorney in fact who
33 has the power under the power of attorney to agree to
34 the successor trustee, the attorney in fact may agree to
35 the successor trustee.

36 (d) If the vacancy in the office of trustee is not filled
37 as provided in subdivision (b) or (c), on petition of a
38 cotrustee or beneficiary, the court may, in its discretion,
39 appoint a trustee to fill the vacancy. If the trust provides
40 for more than one trustee, the court may, in its discretion,

1 appoint the original number or any lesser number of
2 trustees. In selecting a trustee, the court shall give
3 consideration to the wishes of the beneficiaries who are
4 14 years of age or older.

5 SEC. 25. Section 15686 is added to the Probate Code,
6 to read:

7 15686. (a) As used in this section, "trustee's fee"
8 includes, but is not limited to, the trustee's periodic base
9 fee, rate of percentage compensation, minimum fee,
10 hourly rate, and transaction charge, but does not include
11 fees for extraordinary services.

12 (b) A trustee may not charge an increased trustee's
13 fee for administration of a particular trust unless the
14 trustee first gives at least 60 days' written notice of that
15 increased fee to each beneficiary of the trust whose
16 interest may be affected by the increased fee.

17 (c) If a beneficiary files a petition under Section 17200
18 for review of the increased trustee's fee or for removal of
19 the trustee and serves a copy of the petition on the
20 trustee before the expiration of the 60-day period, the
21 increased trustee's fee does not take effect as to that trust
22 until otherwise ordered by the court or the petition is
23 dismissed.

24 SEC. 26. Section 17200 of the Probate Code is
25 amended to read:

26 17200. (a) Except as provided in Section 15800, a
27 trustee or beneficiary of a trust may petition the court
28 under this chapter concerning the internal affairs of the
29 trust or to determine the existence of the trust.

30 (b) Proceedings concerning the internal affairs of a
31 trust include, but are not limited to, proceedings for any
32 of the following purposes:

33 (1) Determining questions of construction of a trust
34 instrument.

35 (2) Determining the existence or nonexistence of any
36 immunity, power, privilege, duty, or right.

37 (3) Determining the validity of a trust provision.

38 (4) Ascertaining beneficiaries and determining to
39 whom property shall pass or be delivered upon final or
40 partial termination of the trust, to the extent the

- 1 determination is not made by the trust instrument.
- 2 (5) Settling the accounts and passing upon the acts of
- 3 the trustee, including the exercise of discretionary
- 4 powers.
- 5 (6) Instructing the trustee.
- 6 (7) Compelling the trustee to report information
- 7 about the trust or account to the beneficiary, if (A) the
- 8 trustee has failed to submit a requested report or account
- 9 within 60 days after written request of the beneficiary
- 10 and (B) no report or account has been made within six
- 11 months preceding the request.
- 12 (8) Granting powers to the trustee.
- 13 (9) Fixing or allowing payment of the trustee's
- 14 compensation or reviewing the reasonableness of the
- 15 trustee's compensation.
- 16 (10) Appointing or removing a trustee.
- 17 (11) Accepting the resignation of a trustee.
- 18 (12) Compelling redress of a breach of the trust by any
- 19 available remedy.
- 20 (13) Approving or directing the modification or
- 21 termination of the trust.
- 22 (14) Approving or directing the combination or
- 23 division of trusts.
- 24 (15) Amending or conforming the trust instrument in
- 25 the manner required to qualify a decedent's estate for the
- 26 charitable estate tax deduction under federal law,
- 27 including the addition of mandatory governing
- 28 instrument requirements for a charitable remainder trust
- 29 as required by final regulations and rulings of the United
- 30 States Internal Revenue Service, in any case in which all
- 31 parties interested in the trust have submitted written
- 32 agreement to the proposed changes or written disclaimer
- 33 of interest.
- 34 (16) Authorizing or directing transfer of a trust or
- 35 trust property to or from another jurisdiction.
- 36 (17) Directing transfer of a testamentary trust subject
- 37 to continuing court jurisdiction from one county to
- 38 another.
- 39 (18) Approving removal of a testamentary trust from
- 40 continuing court jurisdiction.

1 (19) Reforming or excusing compliance with the
2 governing instrument of an organization pursuant to
3 Section 16105.

4 SEC. 27. (a) The following sections of the Probate
5 Code, as amended by this act, do not apply in any
6 proceeding for administration of a decedent's estate
7 commenced before January 1, 1991:

8 (1) Section 7623.

9 (2) Section 7662.

10 (3) Section 7666.

11 (4) Section 8547.

12 (5) Section 9651.

13 (6) Section 10900.

14 (7) Section 10954.

15 (8) Section 11000.

16 (9) Section 11003.

17 ~~(9)~~

18 (10) Section 12205.

19 (b) The sections listed in subdivision (a), as those
20 sections existed prior to their amendment by this act,
21 continue to apply in any proceeding for administration of
22 a decedent's estate commenced before January 1, 1991,
23 notwithstanding their amendment by this act.

24 (c) Sections 900, 901, 902, 903, 904, 910, and 911 of the
25 Probate Code continue to apply in any proceeding for
26 administration of a decedent's estate commenced before
27 January 1, 1991, notwithstanding their repeal by this act.

28 SEC. 28. Section 9.5 of this act shall become operative
29 on July 1, 1991, and on that date the remaining sections
30 of this act, other than Section 1, Section 27, and this
31 section, are repealed.

new material follows

○

SEC. 3. Section 10406 of the Probate Code, as added by Chapter 79 of the Statutes of 1990, is amended to read:

10406. (a) Subject to subdivision (b), this part applies in any case where authority to administer the estate is granted under this part or where independent administration authority was granted under prior law.

(b) If the personal representative was granted independent administration authority prior to July 1, 1988, the personal representative may use that existing authority on and after July 1, 1988, to borrow money on a loan secured by an encumbrance upon real property, whether or not that existing authority includes the authority to sell real property.

(c) Sections 10404.5, 10501, 10565, and 10585.5 ~~of the former Probate Code (repealed by the act enacting this code), as these sections existed on January 1, 1991,~~ do not apply in any proceeding for administration of a decedent's estate commenced before January July 1, 1991. Notwithstanding its repeal, Section 10501 of the former Probate Code (repealed by the act enacting this code), as that section existed on December 31, 1990, continues to apply in any proceeding for administration of a decedent's estate commenced before January July 1, 1991.

SEC. 4. Section 10585.5 of the Probate Code, as added by Chapter 79 of the Statutes of 1990, is amended to read:

10585.5. (a) If, pursuant to subdivision (b) of Section 10580, the personal representative gives notice of proposed action with respect to the exercise of any of the powers granted by Section 10565 (hiring and paying attorneys, advisers, and others to advise or assist in the administration of the estate):

(1) The notice of proposed action shall include, in addition to the information required by Section 10585, an estimate of the total amount of compensation to be paid to the person hired.

(2) If the person hired is an attorney, each person given notice of proposed action shall also be provided with a copy of the written fee contract made pursuant to Section 6148 of the Business and Professions Code.

(3) If the person hired is not an attorney, each person given notice of proposed action shall also be provided with a copy of the written contract, if any, governing the hiring and compensation.

(b) If it appears that the total amount of compensation to be paid to the person hired will exceed the amount of the last previous estimate given in a notice of proposed action, the personal representative may give another notice of proposed action stating a new estimate of the total amount of compensation to be paid to the person.

(c) Section 10590 does not apply to the extent that the compensation paid or to be paid exceeds the amount of the estimate contained in the notice of proposed action most recently given.

SEC. 5. Section 10850 of the Probate Code, as added by Chapter 79 of the Statutes of 1990, is amended to read:

10850. (a) This part does not apply in any proceeding for administration of a decedent's estate commenced before January July 1, 1991.

(b) Notwithstanding its repeal, the applicable law in effect before January July 1, 1991, governing the subject matter of this part continues to apply in any proceeding for administration of a decedent's estate commenced before January July 1, 1991.

SEC. 6. Section 10900 of the Probate Code, as added by Chapter 79 of the Statutes of 1990, is amended to read:

10900. (a) An account shall include both a financial statement as provided in subdivision (b) and a report of administration as provided in subdivision (c).

(b) The financial statement shall include a summary statement, together with supporting schedules, of:

- (1) Property in all inventories.
- (2) Receipts, excluding property listed in an inventory.
- (3) Gains on sales.
- (4) Other acquisitions of property.
- (5) Disbursements.
- (6) Losses on sales.
- (7) Other dispositions of property.

(8) Property remaining on hand.

(c) The report of administration shall state the liabilities of the estate, including creditor claims, the hiring and payment of and compensation paid or payable to any persons hired under Section 9680 who have been or are to be paid out of funds of the estate, and all other matters necessary to show the condition of the estate.

(d) The statement of liabilities in the report of administration shall include the following information:

(1) Whether notice to creditors was given under Section 9050.

(2) Creditor claims filed, including the date of filing the claim, the name of the claimant, the amount of the claim, and the action taken on the claim.

(3) Creditor claims not paid, satisfied, or adequately provided for. As to each such claim, the statement shall indicate whether the claim is due and the date due, the date any notice of rejection was given, and whether the creditor has brought an action on the claim. The statement shall identify any real or personal property that is security for the claim, whether by mortgage, deed of trust, lien, or other encumbrance.

SEC. 7. This act shall become operative on July 1, 1991.

Amendment 17

On page 14, line 24, strike out "SEC. 17." and insert:
SEC. 15.

Amendment 18

On page 15, line 12, strike out "SEC. 18." and insert:
SEC. 16.

Amendment 19

On page 15, line 23, strike out "SEC. 19." and insert:
SEC. 17.

Amendment 20

On page 16, line 13, strike out "SEC. 20." and insert:
SEC. 18.

Amendment 21

On page 16, line 28, strike out "SEC. 21." and insert:
SEC. 19.

Amendment 22

On page 17, between lines 8 and 9, insert:

SEC. 20. Chapter 2.5 (commencing with Section 9680) is added to Part 5 of Division 7 of the Probate Code, as added by Chapter 79 of the Statutes of 1990, to read:

CHAPTER 2.5. COMPENSATION OF ESTATE ATTORNEY

9680. (a) The compensation of the attorney for the personal representative shall be determined in the same manner as was provided in Sections 900 to 911, inclusive, of the Probate Code repealed by Section 13 of Chapter 79 of the Statutes of 1990.

(b) Any rules adopted by the Judicial Council to implement this section shall apply notwithstanding any other provision of this code.



Amendment 23

On page 17, line 9, strike out "SEC. 22." and insert:
SEC. 21.

Amendment 24

On page 17, line 39, strike out "SEC. 23." and insert:
SEC. 22.

Amendment 25

On page 18, line 14, strike out "SEC. 24." and insert:
SEC. 23.

Amendment 26

On page 18, line 20, strike out "SEC. 25." and insert:
SEC. 24.

Amendment 27

On page 19, line 11, strike out "SEC. 26." and insert:
SEC. 25.

Amendment 28

On page 20, line 20, strike out "SEC. 27." and insert:
SEC. 26.

Amendment 29

On page 20, line 38, strike out "SEC. 28." and insert:
SEC. 27.

Amendment 30

On page 21, line 4, strike out "SEC. 29." and insert:
SEC. 28.

Amendment 31

On page 21, between lines 10 and 11, insert:

SEC. 29. Section 37 of Chapter 79 of the Statutes of 1990 is amended to read:



~~SEC. 37. This act shall become operative only if Assembly Bill 831 of the 1989-90 Regular Session is chaptered and takes effect on or before January 1, 1991, in which case this bill shall become operative on July 1, 1991.~~

SEC. 30. Chapter 2.5 (commencing with Section 9680), as added by Section 20 of this Act, to Part 5 of Division 7 of the Probate Code enacted by Chapter 79 of the Statutes of 1990, shall become operative only if Assembly Bill 831 of the 1989-90 Regular Session is not enacted, and if Assembly Bill 831 of the 1989-90 Regular Session is enacted, Chapter 2.5 (commencing with Section 9680), as added by Section 20 of this Act, to Part 5 of Division 7 of the Probate Code enacted by Chapter 79 of the Statutes of 1990, shall be repealed on the date that Chapter 79 of the Statutes of 1990 becomes operative.

Amendment 32

On page 21, line 11, strike out "SEC. 30." and insert:
SEC. 31.

