

Memorandum 91-12

Subject: Study L-1028 - Independent Administration of Estates Act
(Allowing Certain Distributions Without Court Approval)

Attached is a staff draft of a *Tentative Recommendation relating to Preliminary Distribution Under the Independent Administration of Estates Act*. The draft is drawn from a suggestion by attorney Richard Hawkins of Grass Valley. A copy of his letter is attached as Exhibit 1.

Mr. Hawkins suggests the requirement of court authorization for preliminary distribution under the Independent Administration of Estates Act be relaxed in some cases. If the time for claims has expired and there will be enough left in the estate to pay claims, taxes, and expenses of administration, he would allow the personal representative to do the following without court authorization:

(1) Distribute household contents, furniture, clothing, and jewelry, and cash up to \$10,000 per recipient, to specific devisees.

(2) Distribute net income of the estate annually to residuary beneficiaries to avoid income taxation.

Mr. Hawkins says he has discussed these suggestions with many practitioners, and all seem to favor them.

Notice of Proposed Action

Mr. Hawkins proposes to permit the foregoing not only without court approval, but also without notice of proposed action. The attached draft requires notice of proposed action. This seems not unduly burdensome, and will protect against improvident or erroneous distribution by permitting affected persons to object, and thus to require the personal representative to obtain court approval before making distribution. Prob. Code §§ 10587, 10589. Notice of proposed action seems particularly desirable if the personal representative will be a distributee.

Staff Recommendation

The staff recommends the Commission approve the attached staff draft for distribution as a *Tentative Recommendation for comment*.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel



LAW OFFICES OF
RICHARD M. HAWKINS
A PROFESSIONAL CORPORATION

CALIFORNIA LAW REVISION COMMISSION

DEC 21 1990

RECEIVED

December 19, 1990

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Probate Code Changes

Gentlemen:

I have been practicing Estate Planning and Probate Law for over 15 years and have recently obtained my certification as a specialist by the State Bar in Probate Estate Planning and Trust Law. During this time period I have noticed several changes in the Probate Code but there is one simple practical suggested change I have that has never, as far as I know, been discussed, let alone implemented.

The change I recommend would be to allow the personal representative of the Estate under the Independent Administration of Estate's Act without giving Advise of Proposed Action, to make preliminary distributions of personal property bequests (household contents, furniture, clothing, jewelry) and specific cash bequests up to \$10,000.00 per recipient without obtaining court approval for such preliminary distributions so long as such preliminary distributions are made after the creditors claim period has elapsed and the personal representative has determined there are adequate assets remaining in the Estate for payment of all claims, taxes, and expenses. Additionally, it would assist the administration of estates if the personal representative could also distribute on an annual basis, again after the creditors claim period has elapsed, the net income of the Estate to the residuary beneficiaries so that the estate can pass out such income and have it taxable for income tax purposes to the residuary beneficiaries rather than taxable to the Estate. This in general will result in a total income tax savings. I have discussed this issue with many practitioners and all practitioners seemed to be in favor of such changes for it would greatly assist the administration of estates. This would allow the personal representative to make these distributions, obtain distributee's receipts, and then if all the residuary

beneficiaries would otherwise waive an accounting, would make it unnecessary to request waivers of accounting from the persons or entities receiving these relatively small cash bequests and properties for their distributee's receipt would be on file at the time of the Petition for Final Distribution.

Very truly yours,

RICHARD M. HAWKINS

RMH:mb

cc: Assemblyman Chris Chandler

M16-1219a

STATE OF CALIFORNIA

California Law Revision Commission

Staff Draft

TENTATIVE RECOMMENDATION

relating to

PRELIMINARY DISTRIBUTION UNDER THE
INDEPENDENT ADMINISTRATION OF ESTATES ACT

February 1991

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN June 30, 1991.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Letter of Transmittal

The recommended legislation would permit the personal representative to make preliminary distribution of certain kinds of estate property under the Independent Administration of Estates Act without court approval but after giving notice of proposed action, if the time for claims has expired and there will be enough remaining in the estate to protect creditors and interested persons.

This recommendation is made pursuant to Resolution Chapter 37 of the Statutes of 1980.

RECOMMENDATION

If the court authorizes a probate estate to be administered under the Independent Administration of Estates Act,¹ the personal representative may take many actions without court approval. Some actions that may be taken without court approval require the personal representative to give notice of the proposed action to affected persons.² Other actions may be taken without court approval and without a notice of proposed action.³ Still other actions may be taken only with court approval.⁴ The purpose of this three-tiered scheme is to allow the personal representative to perform routine duties with a minimum of paperwork, to require affected persons to be notified of proposed actions that may have a significant impact on the estate, and to require court approval for crucial steps and in potential conflict of interest situations.

1. Prob. Code §§ 10400-10592. Sections 10450-10452 permit the court to authorize the personal representative to administer the estate under the Independent Administration of Estates Act.

2. Prob. Code §§ 10510-10519, 10580-10581. Actions that require notice of proposed action include a sale or exchange of real property of the estate, sale or incorporation of a business, abandonment of tangible personal property, borrowing money, encumbering estate property, and determining a third-party claim. Prob. Code §§ 10510-10519.

3. Prob. Code §§ 10550-10564. Actions that may be taken without court approval and without giving notice of proposed action include payment or rejection of claims against the estate, initiating and defending litigation, paying taxes and expenses of administration, exercising security subscription or conversion rights, and repairing or improving estate property. *Id.*

4. Court approval is required for allowance of the personal representative's compensation, allowance of attorney's fees, settlement of accounts, preliminary and final distributions and discharge, and transactions in which the personal representative or estate attorney has an interest. Prob. Code § 10501.

Among the actions that may be taken only with court approval are preliminary distributions of estate property.⁵ This allows the court to ensure that the rights of beneficiaries and other interested persons are protected and that there will be enough remaining in the estate after distribution to pay estate creditors.⁶

But the personal representative may want to make such a limited preliminary distribution that a petition, notice, hearing, and an authorizing court order would involve too much time and expense in relation to the importance of the transaction: The personal representative may want to distribute to specific devisees under the decedent's will items of modest value -- such as household furniture and furnishings, clothing, jewelry, and personal effects -- and moderate amounts of cash. The personal representative may want to distribute interest or income earned on estate property during administration, to reduce or eliminate income taxation on the estate.

The Independent Administration of Estates Act should permit these kinds of preliminary distributions of estate property without the need for a court proceeding. Affected persons⁷ would be protected by requiring the personal representative to give them notice of the proposed action. Persons given notice can object and thereby prevent the personal representative from taking the action without court approval.⁸

The Commission recommends a provision be added to the Independent Administration of Estates Act to permit the personal representative to make preliminary distribution to specific devisees under the decedent's

5. Prob. Code § 10501. See also Prob. Code § 11623 (petition for order for preliminary distribution).

6. See Prob. Code § 11621.

7. Notice of proposed action is given to each known devisee and heir whose interest in the estate would be affected by the proposed action, to each person who has filed a request for special notice, and to the Attorney General of California if any part of the estate is to escheat to the state and its interest would be affected by the proposed action. Prob. Code § 10581.

8. Prob. Code §§ 10587, 10589.

will of household furniture and furnishings, clothing, jewelry, personal effects, and cash in an amount not to exceed \$10,000, and to make preliminary distribution of interest and income on estate property to persons entitled to it,⁹ if both of the following requirements are satisfied:

(1) The time for creditors to file claims has expired.¹⁰

(2) Distribution may be made without loss to creditors or injury to the estate or any interested person.¹¹

9. Persons entitled to receive interest and income on estate property are determined under Probate Code Sections 12000-12007.

10. A creditor must file a claim with the estate before expiration of the later of the following times: (1) Four months after letters are first issued to a general personal representative, or (2) 30 days after notice of administration is given to the creditor, if notice is given either within four months after letters are first issued to a general personal representative or within 30 days after the personal representative first has knowledge of the creditor. Prob. Code §§ 9100, 9051.

11. Cf. Prob. Code § 11621 (supervised administration).

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following addition:

Prob. Code § 10520 (added). Preliminary distribution of specified personal property

10520. If the time for filing claims has expired and it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person, the personal representative has the power to make preliminary distribution of interest and income accruing to the estate to the persons entitled under Chapter 8 (commencing with Section 12000) of Part 10, and to make preliminary distribution to specific devisees of the following personal property:

- (a) Household furniture and furnishings.
- (b) Clothing, jewelry, and personal effects.
- (c) Cash, not to exceed \$10,000 to any one specific devisee.

Comment. Section 10520 is new. The section permits the personal representative to take the specified action after giving notice of proposed action, but without court approval. Sections 10500, 10510. A person given notice of proposed action who fails to object waives the right to have the court later review the proposed action. Section 10590.