

Memorandum 83-40

Subject: Study L-810 - Probate Law and Procedure (Independent Administration of Estates)

Mr. Charles Collier of the State Bar Estate Planning, Trust and Probate Law Section has suggested that the California Independent Administration of Estates Act could be improved by eliminating (1) the requirement of court authorization for sales or exchanges of real property and granting of options to purchase real property, and (2) the provision that a person given advice of proposed action may not only object, but may also wait until after the action is taken to seek court review. Mr. Collier's suggestions would be accomplished by the attached staff draft of a Tentative Recommendation Relating to Independent Administration of Estates. In place of required court authorization of such transactions, the attached staff draft requires that the executor or administrator give advice of the proposed action to affected persons. Any person given advice of a proposed action may object and thus require that the transaction proceed only with court supervision. If a person given advice of proposed action does not object, the person may not obtain later court review.

Respectfully submitted,

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STAFF DRAFT
TENTATIVE RECOMMENDATION
relating to
INDEPENDENT ADMINISTRATION OF ESTATES

Background

The California Independent Administration of Estates Act¹ was enacted in 1974 to permit the court to authorize the administrator or executor to administer a decedent's estate with a minimum of court supervision. The enactment was a response to public criticism of the probate process as requiring too much court involvement, too much attorneys' time, and being too complex and costly.² Under the Act, the executor or administrator may petition the court for authority to administer the estate without seeking court authorization or approval of actions taken except for (1) actions for which the Act requires court approval,³ and (2) actions for which the executor or administrator must give prior notice of the proposed action to affected persons.⁴

The Act requires court authorization for the executor or administrator to take any of the following actions: sales or exchanges of real property, granting options to purchase real property, allowing executor's or administrator's commissions, allowing attorney's fees, settling accountings, making preliminary and final distributions, and discharging the executor or administrator.⁵ The reason for keeping court supervision of these matters was that it was thought that these involved the greatest risk of malfeasance by the executor or administrator.⁶

1. Prob. Code §§ 591-591.7.
2. Note, Probate Reform: California's Declaration of Independent Administration, 50 S. Cal. L. Rev. 155, 155 (1976).
3. See Prob. Code § 591.2.
4. See Prob. Code § 591.3.
5. Prob. Code § 591.2.
6. Note, supra note 2, at 174.

The Act requires that advice of proposed action be given to affected persons for the following actions: selling or exchanging personal property (with certain exceptions), leasing real property for more than a year, entering into any contract (other than a lease of real property) not to be performed within two years, selling, incorporating, or operating for longer than six months an unincorporated business of the decedent, paying or increasing a family allowance, investing funds of the estate (with certain exceptions), and completing a contract of the decedent to convey real or personal property, borrowing money, executing a mortgage or deed of trust or giving other security, and determining specified claims to real or personal property.⁷ With respect to these actions, the advice of proposed action gives the affected person the opportunity to object: The person may apply for an order restraining the executor or administrator from taking the proposed action without court supervision, and the court must grant the order without a hearing.⁸ Alternatively, the affected person may wait until the proposed action is complete and then have the court review the action taken.⁹

Except for actions for which court authorization is required or for which the executor or administrator must give advice of proposed action, the executor or administrator who has been authorized to proceed under the Independent Administration of Estates Act has broad powers to deal with the estate without court supervision.¹⁰

Real Property Transactions

The purpose of court confirmation of real property sales is to ensure that there is good reason for the sale, that the property has been exposed to the market, that the best price has been obtained for the property, and that the sale was legally made and fairly conducted.¹¹

7. Prob. Code § 591.3.

8. Prob. Code § 591.5.

9. See Prob. Code § 591.4.

10. See Prob. Code § 591.6.

11. Note, supra note 2, at 176-77; see Prob. Code § 785. The original draft of the Independent Administration of Estates Act did not require court confirmation of real estate transactions; instead, this was in the category of actions of which advice of proposed action was required. Note, supra note 2, at 176 n.149. The State Bar representatives who drafted the act resisted mandatory court authorization of real property transactions, but this feature was ultimately put in the bill by the State Legislature. Id. at 174 n.141, 176 n.149.

Court confirmation may benefit some estates where there is no need for a proposed sale, insufficient advertising for the property, inadequate appraisal, or other procedural deficiencies: The court will decline to approve the proposed sale until statutory requirements have been met.¹² However, the costs of the confirmation process are imposed on every estate when there is a sale, exchange, or granting of an option to purchase real property. These costs include attorneys' fees incurred in connection with the hearing,¹³ and loss of use of the sale proceeds during the delay caused by confirmation.¹⁴ Confirmation also causes costs from increased demand on judicial time and court resources.

Effect of Advice of Proposed Action

When the executor or administrator gives advice of proposed action to affected persons, the advice has no binding effect: The person given the advice has no duty to object, and having failed to object may still have the court later review the action taken.¹⁵ The Act should encourage those given advice of proposed action to object promptly so that court review may be had before the fact, or the executor or administrator may decide not to proceed with the proposed action.¹⁶ This could be accomplished by requiring persons given advice of proposed action to object promptly or be bound by the action taken.

Recommendations

The Commission recommends that the Independent Administration of Estates Act be revised as follows:

(1) Take sales and exchanges of real property and granting options to purchase real property out of the category of actions that require

12. Id. at 177-80.

13. A court appearance with respect to estate property is an "extraordinary" service. See Prob. Code § 902. Attorneys for executors and administrators are allowed extra compensation for extraordinary services. Prob. Code § 910.

14. Note, supra note 2, at 191.

15. Prob. Code § 591.4; 7 B. Witkin, Summary of California Law Wills and Probate § 443G, at 227 (Supp. 1982).

16. There is a general policy in the law of aiding the vigilant and penalizing those who sleep on their rights. See Civil Code § 3527; 7 B. Witkin, Summary of California Law Equity § 14, at 5239-40 (8th ed. 1974).

court approval, and put them instead in the category of actions requiring that advice of proposed action be given to affected persons.

(2) Require persons given advice of proposed action to object in the manner provided in the act, and preclude such persons from seeking court review after the action is complete.¹⁷

17. The court would have authority to review actions of the executor or administrator after the fact on its own motion or on motion of a party not given advice of proposed action.

RECOMMENDED LEGISLATION

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

An act to amend Sections 591.2, 591.3, 591.4, and 591.5 of the Probate Code, relating to administration of estates.

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

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Probate Code § 591.2 (amended). When court supervision required

SECTION 1. Section 591.2 of the Probate Code is amended to read:

591.2. Upon obtaining authority to administer the estate under this article, the executor or administrator shall proceed to administer the estate in the same manner as provided in this code with respect to executors or administrators who have not been granted such authority.

However, he shall not be required to obtain judicial authorization, approval, confirmation, or instructions, which shall be known and referred to in this article as "court supervision", with respect to any actions during the course of the administration of the estate, except that he shall be required to obtain court supervision, in the manner provided in this code, for any of the following actions:

~~(a) Sale or exchange of real property whether sold individually or as a unit with personal property.~~

~~(b) (a) Allowance of executor's and administrator's commissions and attorney's fees.~~

~~(c) (b) Settlement of accountings.~~

~~(d) (c) Preliminary and final distributions and discharge.~~

~~(e) Granting options to purchase real property.~~

Nevertheless, the executor or administrator may obtain court supervision as provided in this code of any action taken by him or her during the administration of the estate. All publications of notice required by this code shall continue to be given except, when no hearing is required because the executor or administrator does not seek court supervision of an action or proposed action, no publication of the notice of hearing shall be required.

Comment. Section 591.2 is amended to delete the requirement of court supervision in the case of sale or exchange of real property and granting options to purchase real property.

Probate Code § 591.3 (amended). Advice of proposed action

SEC. 2. Section 591.3 of the Probate Code is amended to read:

591.3. Prior to the consummation of any of the actions described in this section without court supervision, the executor or administrator to whom authority has been granted to act without court supervision shall advise the persons affected by the proposed action of his intention to take such action. The advice, known and referred to in this article as "advice of proposed action," shall be given to the devisees and legatees whose interest in the estate is affected by the proposed action; to the heirs of the decedent in intestate estates; to the State of California if any portion of the estate is to escheat to it; and to persons who have filed a request for special notice pursuant to Section 1202.

The actions requiring such advice are all of the following:

(a) Selling or exchanging real property.

(b) Granting options to purchase real property.

~~(a)~~ (c) Selling or exchanging personal property, except for securities sold upon an established stock or bond exchange and other assets referred to in Sections 770 and 771.5 when sold for cash.

~~(b)~~ (d) Leasing real property for a term in excess of one year.

~~(c)~~ (e) Entering into any contract, other than a lease of real property, not to be performed within two years.

~~(d)~~ (f) Continuing for a period of more than six months from the date of appointment of the executor or administrator of an unincorporated business or venture in which the decedent was engaged or which was wholly or partly owned by the decedent at the time of his or her death, or the sale or incorporation of such business.

~~(e)~~ (g) The first payment, the first payment for a period commencing 12 months after the death of the decedent, and any increase in the payments of, a family allowance.

~~(f)~~ (h) Investing funds of the estate, except depositing funds in banks and investing in insured savings and loan association accounts, in units of a common trust fund described in Section 585.1, in direct obligations of the United States maturing not later than one year from the date of investment or reinvestment, and in mutual funds which are comprised of (1) those obligations, or (2) repurchase agreements with

respect to any obligation, regardless of maturity, in which the fund is authorized to invest.

~~(g)~~ (i) Completing a contract entered into by the decedent to convey real or personal property.

~~(h)~~ (j) Borrowing money or executing a mortgage or deed of trust or giving other security.

~~(i)~~ (k) Determining third-party claims to real and personal property if the decedent died in possession of, or holding title to, such property, or determining decedent's claim to real or personal property title to or possession of which is held by another.

Comment. Section 591.3 is amended to require advice of proposed action in the case of sales or exchanges of real property and granting options to purchase real property in view of the amendment to Section 591.2 so that court authorization or approval of those actions is no longer required in every case.

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Probate Code § 591.4 (amended). Notice of advice of proposed action

SEC. 3. Section 591.4 of the Probate Code is amended to read:

591.4. The advice of proposed action shall be delivered personally or sent by first-class mail, or sent by airmail to any person residing outside the jurisdiction of the United States, to each person described in Section 591.3 at his last known address. The advice of proposed action shall state the name and mailing address of the executor or administrator and the action proposed to be taken, with a reasonable specific description of such action, and the date on or after which the proposed action is to be taken. Such date shall not be less than 15 days after the personal delivery, or mailing, of the advice. The failure of the executor or administrator to comply with the provisions of this section shall not affect the validity of the action so taken or the title to any property conveyed or transferred to bona fide purchasers and to third persons dealing in good faith with him who changed their position in reliance on the action, conveyance or transfer without actual notice of the failure of the executor or administrator to comply with such provisions. ~~The receipt of such advice shall not prejudice the right of any person interested in the estate to have the court later review the action taken.~~ No person dealing with the executor or administrator shall have any duty to inquire or investigate whether or not the executor or administrator has complied with the provisions of this section.

Comment. Section 591.4 is amended to make the following changes:

(1) The requirement of "actual" notice to transferees and others is added to the fourth sentence to conform Section 591.4 to Section 591.5.

(2) The last sentence which permitted persons given advice of proposed action to have later court review of the action taken is deleted. Section 591.5 is amended to require objections to be made as provided in that section and to preclude a person given advice of proposed action from obtaining later court review.

(3) The new last sentence (no duty to inquire or investigate) is added, consistent with the last sentence of Section 591.5.

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Probate Code § 591.5 (amended). Objection to proposed action

SEC. 4. Section 591.5 of the Probate Code is amended to read:

591.5. Any person described in Section 591.3 who objects to the taking of any proposed action described in Section 591.3 without court supervision, may apply to the court having jurisdiction over the proceeding for an order restraining the executor or administrator from taking the proposed action without court supervision, which order the court shall grant without requiring notice to the executor or administrator and without cause being shown therefor. Such order may be served by the person so objecting upon the executor or administrator in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. All persons described in Section 591.3 who have been given advice of proposed action as provided in Section 591.4 may object only in the manner provided in this section, and may not have the court later review the action taken. If the executor or administrator has notice of the issuance of the restraining order he shall, if he desires to consummate such action, submit it to the court for approval following the provisions of this code dealing with the court supervision of such action and may consummate such action under such order as may be entered by the court. The failure of the executor or administrator to comply with such restraining order and the consummation of the action by the executor or administrator in violation of such order shall not affect the validity of the action so taken, or the title to any property conveyed or transferred to bona fide purchasers and to third persons dealing in good faith with him who changed their position in reliance on the action, conveyance or transfer without actual notice of the failure of the executor or administrator to comply with such order. No person dealing with the executor or administrator shall have any duty to inquire or investigate whether or not a

restraining order has been issued.

Comment. Section 591.5 is amended to require that those who have been given advice of proposed action object in the manner provided in this section, and may not have the court later review the action taken. However, the court may review actions of the executor or administrator on its own motion or on motion of an interested person who was not given advice of proposed action.