

Memorandum 85-12

Subject: Study L-1010 - Probate Code (Executors and Administrators; Appointment; Letters; Termination of Authority; Oath and Bonds--staff draft)

Attached to this memorandum is a draft of the new Probate Code provisions relating to appointment of personal representatives. As with other new Probate Code drafts, we have generally followed existing law, with some reorganization and numerous technical and clarifying changes. Most of these changes are not discussed in this memorandum, but of these, the ones worthy of note are mentioned in the section Comments. The draft follows this outline:

Part 2. Opening Estate Administration

Chapter 1.	Commencement of Proceedings.	
Chapter 2.	Notice	
Chapter 3.	Probate of Will	
Chapter 4.	Appointment of Personal Representative	
Article 1.	General Provisions	\$ 7310
Article 2.	Executors	\$ 7320
Article 3.	Administrators With the Will	
	Annexed	\$ 7330
Article 4.	Administrators	\$ 7340
Article 5.	Bond	\$ 7360
Article 6.	Removal From Office	\$ 7380
Article 7.	Changes in Administration	\$ 7390
Article 8.	Nonresident Personal Representative	\$ 7410
Article 9.	Special Administrators	\$ 7430

We have done some simplification of terminology in the draft. Existing references to executors, administrators with the will annexed, administrators, and special administrators have been replaced by a single reference to "personal representative," unless a special reference to one particular type is called for. References to granting of letters, granting of administration, admission as executor, and other varieties of terminology intended to refer to court appointment of a personal representative have been standardized to refer to "appointment of a personal representative." References to the "trust" of the personal representative have been replaced by references to the office of

the personal representative. Removal from office is the standardized phrase for such variants as revocation or annulment of letters.

This memorandum raises the more significant issues the staff sees in the attached draft.

§ 7311. Qualifications

Existing law disqualifies from appointment as an executor or administrator a person convicted of an "infamous crime" or a person adjudged incompetent by reason of "drunkenness, improvidence, or want of understanding or integrity." Section 401. These standards appear to create more problems than they give guidance. Commissioner Stodden has written that, "I'm not sure there is a real definition of this term ["infamous crime"]. I personally have had real trouble with this." The State Bar and Los Angeles County Bar have also indicated that the grounds for qualification should be clarified.

The staff draft replaces the existing standards with the simple provision for disqualification if the person "is adjudged by the court incompetent to execute the duties of the office." This is the general standard for guidance of the court, but it avoids detail that could be either too restrictive or ambiguous, and gives the court flexibility to act in the most appropriate manner under the circumstances of the particular case.

7312. Nominee of person entitled to appointment

Under existing law, a person entitled to appointment as administrator of the decedent's estate may nominate a person to act as administrator. Section 423. A person who takes more than half of the decedent's estate under a will may nominate an appointee where there is no executor to act, but only if the devisee is a resident of the United States. Section 409. And, the law does not expressly authorize a named executor to nominate a person to act in his or her place.

We have replaced these with Section 7312, to make a general provision on nomination by a person entitled to appointment as personal representative.

§ 7315. Restraining personal representative pending probate of will

The existing provision that the court may restrain a personal representative pending probate of a lost or destroyed will is generalized by Section 7315. Perry Evans, draftsman of the 1931 Probate Code,

comments: "When there is an application to prove a lost or destroyed will, the court is authorized by this section to restrain an executor or administrator previously appointed from any acts or proceedings which would be injurious to those claiming under the lost or destroyed will. Why should not this power be extended to the probate court in the case of an application to prove any will, whether lost, destroyed, or physically extant?" Evans, Comments on the Probate Code of California, 19 Cal. L. Rev. 602, 616 (1931).

§ 7341. Priority for appointment

Section 7341 sets out the basic order of priority for appointment of an administrator. The order follows the general outlines of the intestate succession law. The person entitled to inherit the estate is logically the person who should be entitled to conduct the administration. The staff has added grandparents and children of a predeceased spouse to the order of priority to reflect addition of these persons to the intestate succession scheme. This is done pursuant to a suggestion of the State Bar and Los Angeles County Bar.

§ 7347. Equal priority

Commissioner Stodden has written that the court should be allowed "to appoint an independent third party when two people of equal rank are arguing over appointment of one or the other." The staff has added such language to Section 7347.

§ 7366. Cost of bond

Until 1974 the allowable costs of the probate bond were 10 dollars for a bond under \$2,000 and 1/2% of a bond over \$2,000. This was revised to 20 dollars for a bond under \$4,000 and 1/2% of a bond over \$4,000 in 1974. The 20 dollars was raised to 50 in 1981.

The State Bar queries whether these dollar limits are appropriate. The staff understands that the bond premium charged by sureties differs around the state, but that it generally does not equal or exceed the statutory allowable cost because of competition. This point is also made by the Los Angeles County Bar, which notes that surety bond premiums are set by the marketplace and are materially below the limits of the code section.

Perhaps the allowable costs should be reduced. The staff has no position on this matter.

§ 7367. Law governing bond

The State Bar comments include a note to the effect that the procedure for releasing one surety company and having another surety company substituted in its place could be clarified. The Los Angeles County Bar agrees. There are now general provisions that govern such procedural matters relating to bonds and undertakings, found in Code of Civil Procedure Section 995.010 and following. The staff believes it would be useful to cross-refer to these provisions here, and has done so in Section 7367.

§ 7382. Grounds for removal

The grounds for removal of a personal representative under existing law include that the personal representative "has permanently removed from the state." The State Bar and Los Angeles County Bar point out that this provision is now obsolete, dating from a time when an administrator was required to be a resident of the state. This is no longer the law, and in fact there is a procedure whereby a personal representative who moves out of state files an address statement with the court and remains subject to the jurisdiction of the court. See draft Sections 7410-7416. Accordingly, the draft of Section 7382 omits removal from the state as a ground for removal of the personal representative.

The State Bar and Los Angeles County Bar also point out that the existing statute does not list all grounds for removal of a personal representative, since a court may remove the personal representative for having an adverse interest or engaging in hostile acts, where removal is necessary for the protection of the estate. For completeness, we have included in the draft as subdivision (d) a statutory catchall along these lines.

§ 7390. Vacancy in office

We have added a requirement of 15 days notice of resignation by a personal representative, drawn from the Uniform Probate Code. This will alert affected persons so that steps can be taken to have a successor appointed, if necessary.

§ 7412. Statement of address

Existing Section 405.2 (redrafted as Section 7412) requires a nonresident personal representative to file with the court a statement of address and of any change of address for purposes of service of process in actions by third persons against the estate. Commissioner Stodden writes that the provision needs to be given some teeth: "It is more honored in the breach and causes no end of headaches."

Existing law provides that failure of a nonresident personal representative to comply with the filing requirement is grounds for removal from office. See Section 7416. Does the Commission wish to add further sanctions?

§ 7430. Grounds for appointment

The listing of specific grounds for appointment found in existing law and preserved in Section 7430 is somewhat troublesome. There may be specific cases where appointment of a special administrator would be helpful but the circumstances do not precisely fit any of the listed situations. Jeffrey Dennis-Strathmeyer has pointed out to us that where a petition for probate has been filed and is set for hearing in the ordinary course, but a need arises for quick action to preserve the estate, the existing statute provides no remedy. The Uniform Probate Code covers the situation where a general administrator is appointed but a special administrator is necessary because the general administrator cannot or should not act because of a conflict of interest.

The staff believes the listing of statutory grounds is unnecessary in light of the general standard that appointment is "necessary for preservation of the estate," and would delete the listing of specific grounds. The existing statutory grounds would be mentioned in the Comment as illustrative.

§ 7434. Special powers, duties, and obligations

The general duty of a special administrator is to take possession of the estate of the decedent. Mr. Dennis-Strathmeyer has pointed out that taking possession of the estate may be an unnecessary burden when a special administrator is needed only to perform a very limited and specific act, such as notice of cancellation of a lease renewal. The staff has added to Section 7434(a) language to permit the court to appoint a special administrator for a more limited purpose.

§ 7435. General powers, duties, and obligations

Existing law provides that a special administrator has the powers of a general administrator pending a will contest. Commissioner Stodden questions whether this is appropriate where the administrator is not an independent party. The staff believes this is a good point, and suggests that the grant of general powers be permissive rather than mandatory.

The grounds for granting general powers to the special administrator do not include that there will be an undue delay in issuance of general letters of administration, as Commissioner Stodden points out. The staff believes that this point illustrates the same problem we encountered in appointment of a special administrator; the statute seeks to list various grounds for granting special powers, but fails to make the list sufficiently inclusive. The staff would eliminate the listing and devise a general standard relating to the length of time the special administrator is likely to serve.

The State Bar notes that apparently the special administrator is not eligible to exercise powers under the Independent Administration of Estates Act. The State Bar queries whether the court should have discretion to grant independent powers to a special administrator who is acting under general powers. The Los Angeles County Bar agrees that perhaps the court should have the discretion to grant a special administrator with general powers the ability to exercise powers under the Independent Administration of Estates Act. If the Commission agrees, the staff will incorporate such a provision.

§ 7437. Fees and commissions

Existing law does not specify when the fees and allowances of a special administrator may be allowed. Commissioner Stodden suggests, "Perhaps something should be added that those fees are deferred until the final accounting in the estate (which I have been told is a state-wide practice--it certainly is in Los Angeles County)."

Existing law provides that an attorney may seek extraordinary fees six months after the special administrator is appointed (unless the final account is settled earlier). The State Bar and Los Angeles County Bar note that this conflicts with the general rule that an attorney can petition within four months after appointment of the personal representative. The special administrator provision should be conformed with

the general provision--the discrepancy was created in 1968 when the general provision was lowered from six months to four but no conforming change was made in the special administrator provision. In fact, there appears to be no reason why the special administrator provision cannot incorporate the general provision completely, and the staff has so drafted it.

§ 301. Oath and bond of trust company

The Los Angeles County Bar suggests that the blanket exemption of corporations or associations authorized to conduct the business of a trust company from the provision of bond or security be reviewed. They point out that the Financial Code provisions require only \$500,000 security, even though many estates are of far greater size. They suggest that the statute be revised to allow the court the discretion to require bond in situations where the court determines it may be advisable.

The Commission has previously rejected a similar suggestion in connection with corporate trustees.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

34747

CHAPTER 4. APPOINTMENT OF PERSONAL REPRESENTATIVE

Article 1. General Provisions§ 7310. Appointment necessary

7310. (a) A person has no power to administer the estate until the person is appointed personal representative and the appointment becomes effective. Appointment of a personal representative becomes effective when the person appointed is issued letters.

(b) This section applies whether or not the person is named executor in the decedent's will, except that such a person may, before the appointment is made or becomes effective, pay funeral expenses and take necessary measures for the preservation of the estate.

Comment. Section 7310 continues the substance of former Section 400. Letters may not be issued until the person appointed takes the oath of office and gives any required bond. See Sections 7312 (oath) and Article 5 (commencing with Section 7360) (bond).

34748

§ 7311. Qualifications

7311. (a) Notwithstanding any other provision of this chapter, a person is not qualified for appointment as personal representative in any of the following circumstances:

- (1) The person is under the age of majority.
- (2) The person is adjudged by the court incompetent to execute the duties of the office.
- (3) The person is not a resident of the United States.
- (4) The person is a surviving partner of the decedent and an interested person objects to the appointment.

(b) Paragraphs (3) and (4) of subdivision (a) do not apply to a person named as executor in the decedent's will.

Comment. Paragraphs (1) and (2) of subdivision (a) of Section 7311 continue the substance of former Sections 401 and 420, except that the bases of the court determination of incompetence are not confined to "drunkenness, improvidence, or want of understanding or integrity," and conviction of an infamous crime is not an independent ground of disqualification. Paragraph (3) and subdivision (b) continue the substance of a

portion of former Section 420. Paragraph (4) and subdivision (b) continue the substance of former Section 421. For contest of appointment, see Section 7214.

CROSS-REFERENCES

Definitions

Interested person § 48
Personal representative § 59

31057

§ 7312. Nominee of person entitled to appointment

7312. The court may appoint as personal representative a person nominated by request of a person otherwise entitled to appointment as personal representative, or by request of the guardian or conservator of the estate of such a person. The request shall be made in writing and filed in court.

Comment. Section 7312 generalizes provisions found in former Sections 409 and 423. The nominee must be competent. Section 7311 (qualifications).

39396

§ 7313. Oath

7313. (a) Before letters are issued, the personal representative shall take and subscribe an oath to perform, according to law, the duties of the office. The oath may be taken and dated on or after the time the petition for appointment as personal representative is filed, and may be filed with the court clerk at any time after the petition is granted.

(b) The oath constitutes an acceptance of the office and shall be attached to or endorsed upon the letters.

Comment. Section 7313 continues the substance of former Section 540. The requirement of an oath may be satisfied by a written affirmation. Code Civ. Proc. § 2015.6.

31447

§ 7314. Form of letters

7314. Letters shall be signed by the clerk, under the seal of court, and shall include:

(a) The county from which the letters are issued.

(b) The name of the person appointed as personal representative, and whether the personal representative is an executor, administrator, administrator with the will annexed, or special administrator.

(c) Whether the personal representative is authorized to act under [The Independent Administration of Estates Act].

Comment. Section 7314 supersedes former Sections 500, 501, and 502. The Judicial Council may prescribe the form of letters. Section 7141.

31059

§ 7315. Restraining personal representative

7315. (a) On petition of any interested person, the court may restrain a personal representative from performing acts of administration, disbursement, or distribution, or exercising any powers or discharging any duties of the office, or make any other order to secure proper performance of the duty, if it appears to the court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the petitioner. Persons with whom the personal representative may transact business may be made parties.

(b) The matter shall be set for hearing within 10 days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and attorney of record, if any, and to any other parties named in the petition.

Comment. Section 7315 continues and broadens former Sections 352 and 550. It is drawn from Section 3-607 of the Uniform Probate Code. Section 7315 includes but is not limited to the situations where the personal representative is appointed before or pending probate of a will, or pursuant to a previous will, or where there is litigation over the bond of the personal representative and it is alleged that the estate is being wasted.

CROSS-REFERENCES

Definitions

Interested person § 48
Personal representative § 59

35099

Article 2. Executors

§ 7320. Right to appointment as personal representative

7320. The person named as executor in the decedent's will has the right to appointment as personal representative.

Comment. Section 7320 is an express statement of the concept that the named executor has first priority for appointment as personal representative. Cf. former Section 407. Section 7320 does not apply if the person named is not qualified for appointment (Section 7311 (qualifications)) or has waived the right to appointment.

35063

§ 7321. Executor not specifically named

7321. If a person is not named as executor in a will but it appears by the terms of the will that the testator intended to commit the execution of the will and the administration of the estate to the person, the person is entitled to appointment as personal representative in the same manner as if named as executor.

Comment. Section 7321 continues the substance of former Section 402.

35064

§ 7322. Power to designate executor

7322. (a) The testator may by will confer upon a person the power to designate an executor or coexecutor or successor executor or coexecutor. The will may provide that the persons so designated may serve without bond.

(b) A designation shall be in writing and filed with the court. Unless the will provides otherwise, if there are two or more holders of the power to designate, the designation shall be unanimous, unless one of the designators is unable or unwilling to act, in which case the remaining designator or designators may exercise the power.

(c) Except as provided in this section, an executor does not have authority to name a coexecutor or a successor executor or coexecutor.

Comment. Section 7322 continues the substance of former Section 403. Cf. Section 10 (singular and plural). An executor named pursuant to this section must be appointed by the court. See Section 7310 (appointment necessary).

35072

§ 7323. Successor corporation as executor

7323. If the executor named in the will is a corporation or association that has sold its business and assets to, or has consolidated or merged with, or is in any manner provided by law succeeded by, another corporation or association authorized and qualified to act as executor,

the court may, and to the extent required by the Bank Act shall, appoint the successor corporation or association as executor.

Comment. Section 7323 is the same in substance as former Section 404. A corporation or association is authorized and qualified to act as an executor if it is authorized to conduct the business of a trust company in this state. Section 300; Fin. Code § 1580. The Bank Act is Division 1 (commencing with Section 99) of the Financial Code.

35073

§ 7325. Minor named as executor

7325. If a person named as executor is a minor:

(a) If there is another person named as executor, the other person may be appointed and administer the estate until the majority of the minor, who may then be appointed as coexecutor.

(b) If there is no other person named as executor, another person may be appointed personal representative, but the court may, in its discretion, revoke the appointment on the majority of the minor, who may then be appointed as executor.

Comment. Section 7325 continues the substance of the portion of former Section 405 that related to a minor named as executor.

36261

§ 7326. When fewer than all executors appointed

7326. If the court does not appoint all the persons named in the will as executors, those appointed have the same authority to act in every respect as effectually as all would have if appointed.

Comment. Section 7326 continues the substance of former Section 408.

Note. This provision will be reviewed in connection with powers and duties of personal representatives.

35074

Article 3. Administrators With the Will Annexed

§ 7330. Appointment

7330. An administrator with the will annexed shall be appointed as personal representative if no executor is named in the will or if the sole executor or all the executors named in the will are for any reason unwilling or unable to act.

Comment. Section 7330 continues the substance of former Section 406. A person named as an executor may be unwilling or unable to act because the person is dead or incompetent, renounces or fails to petition for appointment, fails to appear and qualify, or dies after appointment and before the completion of the administration.

No executor of a deceased executor is, as such, authorized to administer the estate of the first testator. Section 7392 (vacancy where no personal representatives remain). However, the deceased executor may have the power to designate an executor. See Section 7322 (power to designate executor). And the executor of the deceased executor may qualify independently for appointment as an administrator with the will annexed pursuant to this section.

36271

§ 7331. Priority for appointment

7331. (a) Except as provided in subdivision (b), persons are entitled to appointment as administrator with the will annexed in the same order of priority as for appointment of an administrator.

(b) A person who takes under the will has priority over a person who does not, and a person who takes more than 50 percent of the value of the estate under the will has priority over other persons who take under the will. Such a person need not be entitled to succeed to all or part of the estate under the law of succession in order to have priority.

Comment. Section 7331 continues the substance of the second sentence and supersedes the third sentence of former Section 409. For appointment of the nominee of a person entitled to priority, see Section 7312.

34723

§ 7332. Authority of administrator with will annexed

7332. (a) Subject to subdivision (b), an administrator with the will annexed has the same authority over the decedent's estate as an executor named in the will would have, and the acts of the administrator with the will annexed are as effectual for all purposes as the acts of an executor would be.

(b) If the will confers a discretionary power or authority upon an executor that is not conferred by law, the power or authority shall not be deemed to be conferred upon an administrator with the will annexed.

Comment. Section 7332 continues the substance of the first sentence of former Section 409.

Article 4. Administrators

§ 7340. Appointment of administrator

7340. If the decedent dies intestate, the court shall appoint one or more administrators as personal representative.

Comment. Section 7340 continues the substance of the introductory portion of former Section 422(a).

32284

§ 7341. Priority for appointment

7341. Subject to the provisions of this article, the following persons are entitled to appointment as administrator in the following order of priority:

- (a) Surviving spouse.
- (b) Children.
- (c) Grandchildren.
- (d) Brothers and sisters.
- (e) Grandparents.
- (f) Children of a predeceased spouse.
- (g) Next of kin.
- (h) Relatives of a predeceased spouse.
- (i) Conservator or guardian of the estate of the decedent acting in that capacity at the date of death.
- (j) Public administrator.
- (k) Creditors.
- (l) Any other person.

Comment. Section 7341 continues the substance of subdivision (a) of former Section 422, with the addition of subdivisions (e) and (f) to reflect changes in the law governing intestate succession. See Section 6402. The general order of priority prescribed in Section 7341 is subject to limitation in the succeeding sections of this article. See, e.g., Sections 7342 (priority of relatives), 7343 (estranged spouse). A person appointed must be legally competent. Section 7311 (qualifications).

404/355

§ 7342. Priority of relatives

7342. A relative of the decedent or a predeceased spouse has priority under Section 7341 only if either of the following conditions is satisfied:

(a) The relative is entitled to succeed to all or part of the estate.

(b) The relative is a parent, grandparent, child, or grandchild of the decedent and either takes under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to succeed to all or part of the estate of the decedent.

Comment. Section 7342 is the same in substance as subdivision (b) of former Section 422.

404/359

§ 7343. Estranged spouse

7343. If the surviving spouse is a party to an action in any court for separate maintenance, annulment, or dissolution of the marriage of the decedent and the surviving spouse, and was living apart from the decedent on the date of the decedent's death, the surviving spouse has the following priority for appointment as administrator:

(a) If the surviving spouse has waived the right to file a petition under Section [650] for an order determining that all or part of the estate is property passing to the surviving spouse, the surviving spouse has the priority prescribed in Section 7341.

(b) If the surviving spouse has not waived the right to file a petition under Section [650] for an order determining that all or part of the estate is property passing to the surviving spouse, the surviving spouse has priority next after brothers and sisters.

Comment. Section 7343 continues the substance of subdivision (a)(6) and the second paragraph of subdivision (a)(1) of former Section 422.

404/360

§ 7344. Minors and incompetent persons

7344. If a person otherwise entitled to appointment as administrator is a minor or person for whom a conservator has been appointed, the court in its discretion may appoint the guardian or conservator of the estate of the person or another person entitled to appointment.

Comment. Section 7344 continues the substance of former Section 426.

§ 7345. Priority of nomineee

7345. (a) If a person making request for appointment of a nomineee is the surviving spouse, child, grandchild, parent, brother or sister, or grandparent of the decedent, the nomineee has priority next after those in the class of the person making the request.

(b) If a person making a request for appointment of a nomineee is other than a person described in subdivision (a), the court in its discretion may appoint either the nomineee or a person of a class lower in priority to that of the person making the request, but other persons of the class of the person making the request have priority over the nomineee.

Comment. Section 7345 continues the substance of former Section 423 and a portion of subdivision (a)(1) of former Section 422. See also Section 7312 (nominee of person entitled to appointment). "Grandparent" has been added to subdivision (b) consistent with Section 7341(e). The nomineee is not entitled to appointment unless legally competent. Section 7311 (qualifications).

404/369

§ 7346. Priority of creditor

7346. If a creditor is claiming appointment as administrator, the court in its discretion, at the request of another creditor, may appoint another person.

Comment. Section 7346 continues the substance of the last portion of former Section 425. Any person appointed pursuant to this section must be legally competent. Section 7311 (qualifications).

404/370

§ 7347. Equal priority

7347. If several persons have equal priority for appointment as administrator, the court may appoint one or more of them, or if such persons are unable to agree, may appoint an independent person.

Comment. Section 7347 continues the substance of the first portion of former Section 425, with the addition of authority to appoint an independent person where there is a conflict between persons of equal priority.

Article 5. Bond

§ 7360. Bond required

7360. (a) Except as otherwise provided by statute, every person appointed as personal representative shall, before letters are issued, give a bond approved by the court. If two or more persons are appointed, the court may require either a separate bond from each or a joint and several bond.

(b) The bond shall be to the State of California and shall be conditioned that the person shall faithfully execute the duties of the office according to law.

(c) Failure to give the required bond, or failure to give a new, additional, or supplemental bond, or to substitute a sufficient surety, pursuant to court order, is cause for removal from office.

Comment. Subdivisions (a) and (b) of Section 7360 continue the substance of former Section 410, the first sentence of subdivision (a) of former Section 541, and former Section 544. Subdivision (c) continues the effect of a portion of former Section 549; it is a special application of Code of Civil Procedure Section 996.010. For statutory exceptions to the bond requirement, see Sections 301 (bond of trust company) and 7361 (waiver of bond).

CROSS-REFERENCES

Definitions

Court § 30

Personal representative § 59

Code Civ. Proc. § 166(a)(5) (judge in chambers may approve bonds)

404/376

§ 7361. Waiver of bond

7361. (a) The will may waive the requirement of a bond.

(b) If a verified petition for appointment of a personal representative alleges that all devisees or all heirs if there is no will have waived in writing the requirement of a bond and the written waivers are attached to the petition, the court shall direct that no bond be given, unless the will requires a bond.

(c) Notwithstanding the waiver of a bond by a will or by all the heirs or devisees, the court on its own motion or on petition of any interested person may for good cause require that a bond be given, either before or after issuance of letters. If a devisee under the will

or an heir if there is no will requests a bond, the request is in itself good cause to require a bond in an amount not less than the amount the court determines is sufficient to secure the expectancy of the devisee or heir.

Comment. Subdivision (a) of Section 7361 continues the substance of portions of former Section 462(c) and former Section 541(a). Subdivision (b) continues the substance of subdivision (b) of former Section 541. Subdivision (c) continues the substance of former Section 543. For provisions on reduction or increase of the amount of the bond, see Code Civ. Proc. §§ 996.010-996.030 (insufficient and excessive bonds).

404/377

§ 7362. Amount of bond

7362. (a) The court in its discretion may fix the amount of the bond, but the amount shall be not less than the value of the personal property and the value of the probable annual gross income of all of the property belonging to the estate or, if the bond is given by personal sureties, not less than twice that amount.

(b) Before confirming a sale of real property the court shall require such additional bond as may be necessary to satisfy the minimum requirements of this section, treating the expected proceeds of the sale as personal property.

Comment. Subdivision (a) of Section 7362 continues the substance of the last sentence of former Section 541(a). Subdivision (b) continues the substance of former Section 542.

Note. Coordination of subdivision (b) with sale procedures under Independent Administration is under review.

404/399

§ 7363. Reduction of bond by deposit of assets

7363. (a) In any proceeding to determine the amount of the bond of the personal representative (whether at the time of appointment or subsequently), if the estate includes money, securities, or personal property which has been or will be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state, or money which has been or will be invested in an account in an insured savings and loan association, upon condition that the money, securities, or other property, including any earnings thereon, will not be withdrawn except on authorization of the court, the court, in its

discretion, with or without notice, may so order and may do either of the following:

(1) Exclude such money, securities, and other property in determining the amount of the required bond or reduce the amount of the bond to be required in respect of such money, securities, or other property to such an amount as the court determines is reasonable.

(2) If a bond has already been given or the amount fixed, reduce the amount to such an amount as the court determines is reasonable.

(b) The petitioner for appointment as personal representative may do any one or more of the following:

(1) Deliver to a bank in this state or a trust company authorized to transact a trust business in this state, money, securities, or personal property in such person's possession.

(2) Deliver to an insured savings and loan association money in such person's possession.

(3) Allow a bank in this state or a trust company authorized to transact a trust business in this state to retain such money, securities, and personal property already in its possession.

(4) Allow an insured savings and loan association to retain any such money already invested with it.

(c) In the cases described in subdivision (b), the petitioner shall obtain and file with the court a written receipt including the agreement of the bank, trust company, or insured savings and loan association that the money, securities, or other property, including any earnings thereon, shall not be allowed to be withdrawn except upon authorization of the court.

(d) In receiving and retaining money, securities, or other property under subdivisions (b) and (c), the bank, trust company, or insured savings and loan association shall be protected to the same extent as though it had received the money, securities, or other property from a person to whom letters had been issued.

(e) As used in this section, the term "account in an insured savings and loan association" has the same meaning as in Section 1406.

Comment. Section 7363 continues the substance of former Section 541.1.

Note. Section 7363 is the same as Section 2328 and perhaps should be generalized. Ditto for "account in an insured savings and loan association."

§ 7364. Excessive bond

7364. If a personal representative moves to have the amount of the bond reduced, the motion shall include an affidavit setting forth the condition of the estate [and notice of hearing shall be given in the manner required by Section 1200.5].

Comment. Section 7364 continues the substance of former Section 553.3.

Note. Notice provisions will be reviewed later.

404/955

§ 7365. Release or substitution of sureties

7365. A personal representative who applies for a substitution and release of a surety shall file with the application an accounting as required by Section [921]. The court shall not order a substitution unless the accounting is approved.

Comment. Section 7365 continues the substance of former Section 553.5.

404/664

§ 7366. Cost of bond

7366. The personal representative shall be allowed the cost of the bond for every year it remains in force, not exceeding fifty dollars (\$50) for a bond in the amount of four thousand dollars (\$4,000) or a fraction thereof, and not exceeding one-half of one percent of the amount of the bond in excess of four thousand dollars (\$4,000).

Comment. Section 7366 continues the substance of former Section 541.5.

404/678

§ 7367. Law governing bond

7367. The provisions of the Bond and Undertaking Law (Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure) apply to a bond given pursuant to this division, except to the extent this division prescribes a different rule or is inconsistent.

Comment. Section 7367 is a specific application of existing law. See Code Civ. Proc. § 995.020 (application of Bond and Undertaking Law).

Article 6. Removal from Office

§ 7380. Procedure for removal

7380. (a) Any interested person may apply by petition for removal from office of the personal representative. A petition for removal may be combined with a petition for appointment of a successor personal representative pursuant to Article 7 (commencing with Section 7390).

(b) If upon a petition for removal the court has reason to believe from the judge's own knowledge or from credible information, whether upon the settlement of an account or otherwise, that there are grounds for removal, the court shall issue a citation to the personal representative to appear and show cause why the personal representative should not be removed. The court may suspend the powers of the personal representative and may make such orders as are necessary to deal with the property pending the hearing.

(c) Any interested person may appear at the hearing and file written allegations showing that the personal representative should be removed. The personal representative may demur to or answer the allegations. The court may compel the attendance of the personal representative and may compel the personal representative to answer questions, on oath, touching the administration. Failure to attend and answer is cause for removal from office of the personal representative.

(d) The issues shall be heard and determined by the court. If the court is satisfied from the evidence that the citation has been duly served and there exists cause for removal of the personal representative, the court shall revoke the appointment and remove the personal representative from office.

Comment. Section 7380 supersedes portions of former Section 451. Subdivision (b) continues the substance of portions of the first sentence of former Section 521. Subdivision (c) continues the substance of former Sections 522 and 523. The court may enforce its orders by any proper means, including contempt. Section 7122 (authority of court or judge).

37011

§ 7381. Revocation of letters

7381. Upon removal from office of a personal representative, any letters issued to the personal representative shall be revoked and the authority of the personal representative thereupon ceases.

Comment. Section 7381 generalizes a provision found in former Section 549.

32283

§ 7382. Grounds for removal

7382. A personal representative may be removed from office for any of the following causes:

(a) The personal representative has or is about to waste, embezzle, mismanage, or commit a fraud upon the estate.

(b) The personal representative is incompetent to execute the duties of the office or is otherwise not qualified for appointment as personal representative.

(c) The personal representative has wrongfully neglected the estate, or has long neglected to perform any act as personal representative.

(d) Removal is otherwise necessary for protection of the estate.

(e) For other cause provided by statute.

Comment. Section 7382 continues the substance of former Section 524 and portions of the first sentence of former Section 521, with the exception of permanent removal from the state, which is not continued as a ground for dismissal. See Article 8 (commencing with Section 7410) (nonresident personal representative). Other causes for removal are provided in this article and elsewhere by statute. See, e.g., Sections 7360 (bond required), 7416 (failure of nonresident personal representative to comply with Section 7412), 7380 (failure to attend and answer), 7386 (insufficient bond).

404/798

§ 7383. Removal at request of person with higher priority

7383. (a) Subject to subdivision (b), an administrator may be removed from office, upon the petition of the surviving spouse or a relative of the decedent entitled to succeed to all or part of the estate, or the nominee of the surviving spouse or relative, if such person is higher in priority than the administrator.

(b) The court in its discretion may refuse to grant the petition of a person or the nominee of a person who had actual notice of the proceeding in which the administrator was appointed and an opportunity to contest the appointment.

Comment. Subdivision (a) of Section 7383 supersedes former Sections 450 and 452. Subdivision (b) continues the substance of former Section 453. A petition pursuant to this section should be accompanied by a petition for appointment of a successor who has higher priority than the existing personal representative.

§ 7384. Subsequent probate of will

7384. A personal representative shall be removed from office upon the admission to probate of a will after appointment of an administrator on the ground of intestacy, or upon admission to probate of a later will after appointment of an executor or administrator with the will annexed.

Comment. Section 7384 continues the substance of the first portion of the first sentence of former Section 510.

405/925

§ 7385. Contempt

7385. (a) A personal representative may be removed from office if the personal representative is committed for contempt in disobeying an order of the court, and has remained in custody for 30 days without obeying the order or otherwise purging the contempt.

(b) Notwithstanding any other provision of this article, a personal representative may be removed from office pursuant to this section by court order reciting the facts and without further showing or notice.

Comment. Section 7385 continues the substance of former Section 526. See also Sections 7381 (revocation of letters) and 7392 (successor personal representative).

405/929

§ 7386. Insufficient bond

7386. A personal representative may be removed from office if the personal representative fails to give a sufficient bond, including a new, addition or supplemental bond, or fails to substitute a sufficient surety, pursuant to court order.

Comment. Section 7386 continues the substance of the first portion of former Section 549.

08365

Article 7. Changes in Administration

§ 7390. Vacancy in office

7390. (a) A vacancy occurs in the office of a personal representative who resigns, dies, is removed from office pursuant to Article 6 (commencing with Section 7380), or whose authority is otherwise terminated.

(b) A personal representative may resign by a writing filed in the court, upon 15 days written notice to interested persons.

Comment. Subdivision (a) of Section 7390 generalizes provisions found in various parts of former law. Subdivision (b) continues the substance of a portion of the first sentence of former Section 520, with the addition of a notice requirement drawn from Section 3-610 of the Uniform Probate Code. A personal representative who resigns is not excused from liability until accounts are settled and property delivered to the successor. Section 7395(b) (liability of former personal representative).

08370

§ 7391. Vacancy where other personal representatives remain

7391. (a) If a vacancy occurs in the office of fewer than all personal representatives, the remaining personal representatives shall complete the execution of the will or administration of the estate.

(b) The court, upon the filing of a verified petition alleging that a vacancy has occurred in the office of fewer than all personal representatives, may order the clerk to issue appropriate amended letters to the remaining personal representatives.

Comment. Section 7391 continues the substance of former Section 511.

405/597

§ 7392. Vacancy where no personal representatives remain

7392. (a) If a vacancy occurs in the office of a personal representative and there are no other personal representatives, the court shall appoint a successor personal representative.

(b) Appointment of a successor personal representative shall be upon petition and service of notice on interested persons and shall be subject to the same priority as for an original appointment of a personal representative. The personal representative of a deceased personal representative is not, as such, entitled to appointment as successor personal representative.

Comment. Section 7392 continues the substance of former Section 512 and a portion of former Section 451, and generalizes the first sentence of former Section 406. The notice required by this section must be served pursuant to Article 2 (commencing with Section 7240) of Chapter 2. This continues the effect of former Section 451.

§ 7393. Interim protection of estate

7393. The court may make such orders as are necessary to deal with the property between the time a vacancy occurs in the office of personal representative and appointment of a successor. Such orders may include appointment of a special administrator.

Comment. Section 7393 supersedes the second sentence of former Section 520.

405/605

§ 7394. Successor personal representative

7394. (a) A successor personal representative is entitled to demand, sue for, recover and collect all the property of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the former personal representative before the vacancy.

(b) No notice, process or claim given to or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative.

(c) Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration that the former personal representative would have had.

Comment. Subdivision (a) of Section 7394 continues and broadens the application of the second sentence of former Section 510. Subdivisions (b) and (c) are drawn from Section 3-613 of the Uniform Probate Code.

405/336

§ 7395. Effect of vacancy

7395. (a) The acts of the personal representative before a vacancy occurs are valid to the same extent as if no vacancy had subsequently occurred.

(b) The liability of a personal representative whose office is vacant, or of the surety on the bond, is not discharged, released, or affected by the vacancy or by appointment of a successor, but continues until settlement of the accounts of the personal representative and delivery of all the property to the successor personal representative or other person appointed by the court to receive it. The personal represen-

tative shall render an account of the administration within such time as the court directs.

Comment. Subdivision (a) of Section 7395 continues the substance of former Section 525. The first sentence of subdivision (b) continues the substance of the third sentence of former Section 520. The second sentence of subdivision (b) continues the substance of the last portion of the second sentence of former Section 510.

09578

Article 8. Nonresident Personal Representative

§ 7410. "Nonresident personal representative" defined

7410. As used in this section, "nonresident personal representative" means a nonresident of the state appointed as personal representative, or a personal representative formerly a resident who removes from and resides without the state.

Comment. Section 7410 is new. It is intended as a drafting aid.

CROSS-REFERENCES

Definition

Personal representative § 59

09577

§ 7411. Secretary of State as attorney

7411. (a) Acceptance of appointment by a nonresident personal representative is equivalent to and constitutes an irrevocable and binding appointment by the nonresident personal representative of the Secretary of State to be the true and lawful attorney of the personal representative for the purpose of this article. Such appointment also applies to any personal representative of a deceased nonresident personal representative.

(b) All lawful processes, and notices of motion under Section 385 of the Code of Civil Procedure, in an action or proceeding against the nonresident personal representative with respect to the estate or founded upon or arising out of the acts or omissions of the nonresident personal representative in that capacity may be served upon the Secretary of State as the true and lawful attorney of the nonresident personal representative.

Comment. Section 7411 continues the substance of former Section 405.1.

CROSS-REFERENCES

Definition

Nonresident personal representative § 7410

09576

§ 7412. Statement of address

7412. A nonresident personal representative shall sign, acknowledge, and file with the court a statement of the permanent address of the nonresident personal representative. If the permanent address is changed, the nonresident personal representative shall forthwith file in the same manner a statement of the change of address.

Comment. Section 7412 continues the substance of former Section 405.2.

CROSS-REFERENCES

Definitions

Court § 30

Nonresident personal representative § 7410

09047

§ 7413. Manner of service

7413. (a) Service of process, or notice of a motion under Section 385 of the Code of Civil Procedure, in any action or proceeding against the nonresident personal representative shall be made by delivering to and leaving with the Secretary of State two copies of the summons and complaint or notice of motion and either of the following:

(1) A copy of the statement by the nonresident personal representative pursuant to Section 7412.

(2) If the nonresident personal representative has not filed a statement pursuant to Section 7412, a copy of the letters issued to the nonresident personal representative together with a written statement signed by the party or attorney of the party seeking service that sets forth an address for use by the Secretary of State.

(b) The Secretary of State shall forthwith mail by registered mail one copy of the summons and complaint or notice of motion to the non-

resident personal representative at the address shown on the statement delivered to the Secretary of State.

(c) Personal service of process, or notice of motion, upon the non-resident personal representative wherever found shall be the equivalent of service as provided in this section.

Comment. Section 7413 continues the substance of former Section 405.3.

CROSS-REFERENCES

Definition

Nonresident personal representative § 7410

406/228

§ 7414. Proof of service

7414. Proof of compliance with Section 7413 shall be made in the following manner:

(a) In the event of service by mail, by certificate of the Secretary of State, under official seal, showing the mailing. The certificate shall be filed with the court from which process issued.

(b) In the event of personal service outside the state, by the return of any duly constituted public officer qualified to serve like process, or notice of motion, of and in the jurisdiction where the nonresident personal representative is found, showing the service to have been made. The return shall be attached to the original summons, or notice of motion, and filed with the court from which process issued.

Comment. Section 7414 continues the substance of former Section 405.4.

CROSS-REFERENCES

Definition

Nonresident personal representative § 7410

09040

§ 7415. Effect of service

7415. (a) Except as provided in this section, service made pursuant to Section 7413 has the same legal force and validity as if made personally in this state.

(b) A nonresident personal representative served pursuant to Section 7413 may appear and answer the complaint within 30 days from the date of service.

(c) Notice of motion shall be served upon a nonresident personal representative pursuant to Section 7413 not less than 30 days before the date of the hearing on the motion.

Comment. Section 7415 continues the substance of former Section 405.5.

CROSS-REFERENCES

Definition

Nonresident personal representative § 7410

08934

§ 7416. Noncompliance

7416. Failure of a nonresident personal representative to comply with Section 7412 is cause for removal from office.

Comment. Section 7416 continues the substance of former Section 405.6.

CROSS-REFERENCES

Definition

Nonresident personal representative § 7410

08929

Article 9. Special Administrators

§ 7430. Grounds for appointment

7430. (a) If the circumstances of the estate require the immediate appointment of a personal representative for any of the following causes, the court may appoint a special administrator to exercise such powers as may be necessary for the preservation of the estate:

(1) No application is made for appointment of a personal representative.

(2) There is delay in appointment of a personal representative.

(3) A sufficient bond is not given as required by statute.

(4) The personal representative dies, resigns, or is removed from office.

(b) The appointment may be for a specified term, to perform particular acts, or on such other terms as the court may direct.

Comment. Subdivision (a) of Section 7430 continues the substance of the first clause of former Section 460, with the exception of the

references to letters "granted irregularly" and "suspension" of the personal representative, which are not continued. Subdivision (b) is drawn from Section 3-617 of the Uniform Probate Code. See also Section 7434 (special powers, duties, and obligations). A judge may appoint a special administrator at chambers. Section 7123(a)(4) (actions at chambers).

08928

§ 7431. Procedure for appointment

7431. (a) Appointment of a special administrator may be made at any time without notice or upon such notice to such interested persons as the court deems reasonable.

(b) In making the appointment, the court shall ordinarily give preference to the person entitled to appointment as personal representative. The court may appoint the public administrator.

(c) The order of appointment of a special administrator is not appealable.

Comment. Section 7431 continues the substance of former Section 461 and the last clause of former Section 460. Appointment of a special administrator may be made by the judge at chambers. Section 7123(a)(4) (actions at chambers).

08374

§ 7432. Issuance of letters

7432. (a) The clerk shall issue letters to the special administrator after both of the following conditions are satisfied:

(1) The special administrator gives a bond approved by the court in such amount as the court directs, conditioned that the special administrator will faithfully execute the duties of the office according to law.

(2) The special administrator takes the usual oath indorsed on the letters.

(b) This section does not apply to the public administrator.

Comment. Section 7432 continues the substance of subdivisions (a) and (b) of former Section 462. The judge may approve the bond at chambers. Code Civ. Proc. § 166(a)(5).

§ 7433. Waiver of bond

7433. Subject to Section 7361, if the will waives the requirement of a bond for the executor and the person named as executor in the will is appointed special administrator, the court shall direct that no bond be filed.

Comment. Section 7433 continues the substance of a portion of subdivision (c) of former Section 462. For additional provisions on waiver of the bond of a special administrator, see Section 7361 (waiver of bond).

09948

§ 7434. Special powers, duties, and obligations

7434. (a) Unless the order appointing a special administrator prescribes duties, the special administrator has the following duties:

(1) To take possession of all of the real and personal property of the decedent and preserve it from damage, waste, and injury.

(2) To collect all claims, rents, and other income belonging to the estate.

(b) In the exercise of the duties a special administrator has the following powers:

(1) Power to commence and maintain or defend suits and other legal proceedings.

(2) Power to sell perishable property.

(3) Power to borrow money, or to lease, mortgage, or execute a deed of trust upon real property, in the same manner as an administrator. This power may be exercised only by leave of court.

(4) Power to pay the interest due or all or any part of an obligation secured by a mortgage, lien, or deed of trust on property in the estate, where there is danger that the holder of the security may enforce or foreclose on the obligation and the property exceeds in value the amount of the obligation. This power may be exercised only by court order, made upon petition of the special administrator or any interested person, with such notice as the court deems proper. The order may also direct that interest not yet accrued be paid as it becomes due, and the order shall remain in effect and cover the future interest unless and until for good cause set aside or modified by the court in the same manner as for the original order.

(5) Such other powers as are conferred by order of the court.

(c) Except where the powers, duties, and obligations of a general personal representative are conferred pursuant to Section 7435, the special administrator is not liable to an action by a creditor on a claim against the decedent.

Comment. Section 7434 continues the substance of former Section 463 and a portion of former Section 460. Subdivision (b)(4) continues the substance of former Section 464.

Note. This section will be reviewed in connection with the general provisions on powers of personal representatives.

69422

§ 7435. General powers, duties, and obligations

7435. (a) Notwithstanding Section 7434, the court shall grant a special administrator the same powers, duties, and obligations as a general personal representative in the following circumstances:

(1) The special administrator is appointed pending determination of a will contest or pending an appeal from an order appointing or removing the personal representative.

(2) After appointment of the special administrator a will contest is instituted. The court may require as a condition of the grant that the special administrator give such additional bond as the court deems proper. The order is not appealable, and from the time of approving and filing the additional bond, the special administrator shall have the powers, duties, and obligations of a general personal representative.

(b) If an appeal is taken from an order revoking probate of a will, the court may appoint a special administrator with or without a grant of the powers, duties, and obligations of a general personal representative. The order shall be made upon such notice to such interested persons as the court deems reasonable.

(c) If a grant is made pursuant to this section, the letters shall recite that the special administrator has the powers of a general personal representative.

Comment. Section 7435 continues the substance of former Section 465, with the exception of the reference to "suspending" a personal representative.

§ 7436. Termination of authority

7436. (a) The powers of a special administrator cease upon appointment and issuance of letters to a general personal representative or as otherwise directed by the court.

(b) The special administrator shall forthwith deliver to the general personal representative:

(1) All property in the possession of the special administrator.

(2) A listing of all creditors' claims presented [or filed in any proceeding on the estate of the decedent] of which the special administrator has knowledge. The listing shall show the name and address of each creditor, the amount of the claim, and what action has been taken with respect to the claim. A copy of the listing shall be filed in the court.

(c) The special administrator shall render a verified account of the proceedings in the same manner as a general personal representative is required to do.

Comment. Subdivisions (a) and (b) of Section 7436 continue the substance of former Section 466. The personal representative may prosecute to final judgment any suit commenced by the special administrator. Section 7394 (successor personal representative). Subdivision (c) continues the substance of the first sentence of former Section 467.

CROSS-REFERENCES

Definitions

Court § 30

Personal representative § 59

Note. This section will be reviewed in connection with creditors claims.

10003

§ 7437. Fees and commissions

7437. (a) Subject to the limitations of this section, the court shall fix the commissions and allowances of the special administrator and the fees of the attorney of the special administrator.

(b) The total commissions paid and extra allowances made to the special administrator and personal representative shall not, together, exceed the sums provided in this division and commissions and extra allowances for the services of personal representatives. When the same

person does not act as both special administrator and personal representative, the commissions and allowances shall be divided in such proportion as the court deems just.

(c) The total fees paid to the attorneys both of the special administrator and the personal representative shall not, together, exceed the sums provided in this division as compensation for the ordinary and extraordinary services of attorneys for personal representatives. When the same attorney does not act for both the special administrator and personal representative, the fees shall be divided between the attorneys in such proportion as the court deems just.

(d) Fees of an attorney for extraordinary services to a special administrator may be awarded in the same manner and subject to the same standards as for extraordinary services to a personal representative, except that the petition of the attorney may be made upon settlement of the final account of the special administrator if settlement occurs within four months of the appointment of the special administrator.

Comment. Subdivisions (a)-(c) of Section 7437 continue the substance of former Sections 467-468. Subdivision (d) supersedes former Section 469. See Section _____ (extraordinary fees).

CROSS-REFERENCES

Definition

Personal representative § 59

Note. This section will be reviewed in connection with fees and commissions.

EXHIBIT 2

35075

§ 21.5. Administrator

21.5. "Administrator" includes administratrix.

Comment. Section 21.5 is consistent with provisions found in other California codes. See, e.g., Civil Code § 14; Code Civ. Proc. § 17; Gov't Code § 12; Penal Code § 7.

35076

§ 37. Executor

37. "Executor" includes executrix.

Comment. Section 37 is consistent with provisions found in other California codes. See, e.g., Civil Code § 14; Code Civ. Proc. § 17; Gov't Code § 12; Penal Code § 7.

35092

§ 52. Letters

52. "Letters" includes letters testamentary, letters of administration, letters of administration with the will annexed, and letters of special administration [and letters of conservatorship and guardianship].

Comment. Section 52 is intended to simplify drafting. Cf. Uniform Probate Code § 1-201(23).

405/358

PART 9. TRUST COMPANY AS FIDUCIARY

§ 300. Appointment of trust company

300. A corporation or association authorized to conduct the business of a trust company in this state may be appointed to act as a personal representative, guardian or conservator of an estate, or trustee, in the same manner as an individual. Such an entity shall not be appointed guardian or conservator of the person of a ward or conservatee.

Comment. Section 300 continues the substance of former Section 480.

CROSS-REFERENCES

Definition

Personal representative § 59

§ 301. Oath and bond of trust company

301. A corporation or association appointed as personal representative, guardian or conservator of an estate, or trustee shall not be required to give a bond, but the liability of the corporation or association and the manner of its making of oaths and affidavits are governed by Article 3 (commencing with Section 1540) of Chapter 12 of Division 1 of, and Section 1587 of, the Financial Code.

Comment. Section 301 continues the substance of former Section 481.

EXHIBIT 3

35098

Probate Code § 400 (repealed)

Comment. The substance of former Section 400 is continued in Section 7310 (appointment necessary).

Probate Code § 401 (repealed)

Comment. The substance of former Section 401 is continued in Section 7311 (qualifications).

Probate Code § 402 (repealed)

Comment. The substance of former Section 402 is continued in Section 7321 (executor not specifically named).

Probate Code § 403 (repealed)

Comment. The substance of former Section 403 is continued in Section 7322 (power to designate executor).

Probate Code § 404 (repealed)

Comment. The substance of former Section 404 is continued in Section 7323 (successor corporation as executor).

Probate Code § 405 (repealed)

Comment. The substance of the portion of former Section 405 that related to a minor named as executor is continued in Section 7325 minor named as executor). The portion relating to a person absent from the state is not continued. See Section 7410 et seq. (nonresident personal representative).

Probate Code § 405.1 (repealed)

Comment. The substance of former Section 405.1 is continued in Section 7411 (Secretary of State as attorney).

Probate Code § 405.2 (repealed)

Comment. The substance of former Section 405.2 is continued in Section 7412 (statement of address).

Probate Code § 405.3 (repealed)

Comment. The substance of former Section 405.3 is continued in Section 7413 (manner of service).

Probate Code § 405.4 (repealed)

Comment. The substance of former Section 405.4 is continued in Section 7414 (proof of service).

Probate Code § 405.5 (repealed)

Comment. The substance of former Section 405.5 is continued in Section 7415 (effect of service).

Probate Code § 405.6 (repealed)

Comment. The substance of former Section 405.6 is continued in Section 7416 (noncompliance).

Probate Code § 406 (repealed)

Comment. The substance of the first sentence of former Section 406 is continued in Section 7392 (vacancy where no personal representatives remain). The substance of the second sentence is continued in Section 7330 (appointment of administrator with will annexed).

Probate Code § 407 (repealed)

Comment. The substance of the first sentence of former Section 407 is continued in Sections 7214 (opposition) and 7215 (hearing). The second sentence is superseded by Section 7320 (right to appointment as personal representatives).

Probate Code § 408 (repealed)

Comment. The substance of former Section 408 is continued in Section 7326 (when fewer than all executors appointed).

Probate Code § 409 (repealed)

Comment. The substance of the first sentence of former Section 409 is continued in Section 7332 (authority of administrator with will annexed). The substance of the second sentence is continued in Section 7331 (priority for appointment). The third sentence is superseded by Section 7331.

405/337

Probate Code § 410 (repealed)

Comment. The substance of former Section 410 is continued in Section 7360 (bond required).

Probate Code § 420 (repealed)

Comment. The substance of former Section 420 is continued in Section 7311 (qualifications).

Probate Code § 421 (repealed)

Comment. The substance of former Section 421 is continued in Section 7311.

Probate Code § 422 (repealed)

Comment. The substance of former Section 422 is continued in Sections 7341 (priority for appointment), 7342 (priority of relatives), and 7343 (estranged spouse).

Probate Code § 423 (repealed)

Comment. The substance of former Section 423 is continued in Sections 7312 (nominee of person entitled to appointment) and 7345 (priority of nominee).

Probate Code § 424 (repealed)

Comment. Former Section 424 is not continued. Wholeblood relatives are no longer preferred over halfblood relatives. Section 6406.

Probate Code § 425 (repealed)

Comment. The substance of the first clause of former Section 425 is continued in Section 7347 (equal priority). The substance of the second clause is continued in Section 7346 (priority of creditor).

Probate Code § 426 (repealed)

Comment. The substance of former Section 426 is continued in Section 7344 (minors and incompetent persons).

Probate Code § 427 (repealed)

Comment. The substance of former Section 427 is continued in Section 7348 (administration by any competent person).

405/820

Probate Code § 440 (repealed)

Comment. The substance of the first portion of former Section 440 is continued in Section 7212 (contents of petition), with the exception of the provision for signature by counsel, which is not continued. The substance of the last paragraph is continued in Section 7216(b) (court order).

Probate Code § 441 (repealed)

Comment. The substance of the first sentence of former Section 441 is continued in Section 7213 (setting and notice of hearing). The substance of the second sentence is continued in Sections 7240 (persons on whom notice served) and 7241 (manner of service of notice). The substance of the third sentence is continued in Section 7230 (form of notice).

Probate Code § 442 (repealed)

Comment. The substance of former Section 442 is continued in Section 7214 (opposition).

Probate Code § 443 (repealed)

Comment. The substance of former Section 443 is continued in Section 7215 (hearing).

Probate Code § 450 (repealed)

Comment. Former Section 450 is superseded by Sections 7383(a) (removal at request of person with higher priority) and Article 7 (commencing with Section 7390) (changes in administration).

Probate Code § 451 (repealed)

Comment. Former Section 451 is superseded by Sections 7380 (procedure for removal) and Article 7 (commencing with Section 7390) (changes in administration).

Probate Code § 452 (repealed)

Comment. Former Section 452 is superseded by Section 7383(a) (removal at request of person with higher priority).

Probate Code § 453 (repealed)

Comment. The substance of former Section 453 is continued in Section 7383(b) (removal at request of person with higher priority).

405/982

Probate Code § 460 (repealed)

Comment. The substance of former Section 460 is continued in Sections 7430 (grounds for appointment) and 7434 (special powers, duties, and obligations).

Probate Code § 461 (repealed)

Comment. The substance of former Section 461 is continued in Section 7431 (procedure for appointment).

Probate Code § 462 (repealed)

Comment. The substance of former Section 462 is continued in Section 7432 (issuance of letters).

Probate Code § 463 (repealed)

Comment. The substance of former Section 463 is continued in Section 7434 (special powers, duties, and obligations).

Probate Code § 464 (repealed)

Comment. The substance of former Section 464 is continued in Section 7434(b)(4) (special powers, duties, and obligations).

Probate Code § 465 (repealed)

Comment. The substance of former Section 465 is continued in Section 7435, with the exception of the reference to "suspending" an executor or administrator.

Probate Code § 466 (repealed)

Comment. The substance of former Section 466 is continued in Sections 7436(a) & (b) (termination of authority) and 7394 (successor personal representative).

Probate Code § 467 (repealed)

Comment. The substance of the first sentence of former Section 467 is continued in Section 7436(c) (termination of authority). The substance of the second sentence is continued in Section 7437(a)-(c) (fees and commissions).

Probate Code § 468 (repealed)

Comment. The substance of former Section 468 is continued in Section 7437(b)-(c) (fees and commissions).

406/164

Probate Code § 469 (repealed)

Comment. Former Section 469 is superseded by Section 7437(d) (fees and commissions).

Probate Code § 480 (repealed)

Comment. The substance of former Section 480 is continued in Section 300 (appointment of trust company).

Probate Code § 481 (repealed)

Comment. The substance of former Section 481 is continued in Section 301 (oath and bond of trust company).

Probate Code § 500 (repealed)

Comment. The substance of former Section 500 is continued in Section 7314 (form of letters).

Probate Code § 501 (repealed)

Comment. Former Section 501 is superseded by Section 7314 (form of letters) and 7141 (Judicial Council to prescribe forms).

Probate Code § 502 (repealed)

Comment. Former Section 502 is superseded by Sections 7314 (form of letters) and 7141 (Judicial Council to prescribe forms).

Probate Code § 510 (repealed)

Comment. The substance of the first sentence of former Section 510 is continued in Sections 7384 (subsequent probate of will) and 7395(b) (effect of vacancy). The substance of the second sentence is continued in Section 7394 (successor personal representative).

Probate Code § 511 (repealed)

Comment. The substance of former Section 511 is continued in Section 7391 (vacancy where other personal representatives remain).

Probate Code § 512 (repealed)

Comment. The substance of former Section 512 is continued in Section 7392.

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Probate Code § 520 (repealed)

Comment. The substance of the first sentence of former Section 520 is continued in Sections 7390(b) (vacancy in office) and 7395(b) (effect of vacancy). The second sentence is superseded by Section 7393 (interim protection of estate). The substance of the third sentence is continued in Section 7395(b).

Probate Code § 521 (repealed)

Comment. The substance of the first sentence of former Section 521 is continued in Section 7380(b) (procedure for removal) and 7382 (grounds for removal), with the exception of the provision relating to permanent

removal from the state, which is not continued. See Section 7410 et seq. (nonresident personal representative). The second sentence is not continued; it was impliedly repealed by former Section 1207 (service of citation), which is continued as Section _____.

Probate Code § 522 (repealed)

Comment. The substance of former Section 522 is continued in Section 7380(c) (procedure for removal).

Probate Code § 523 (repealed)

Comment. The substance of former Section 523 is continued in Section 7380(c) (procedure for removal).

Probate Code § 524 (repealed)

Comment. The substance of former Section 524 is continued in Section 7382 (grounds for removal). See also Section 7380 (procedure for removal).

Probate Code § 525 (repealed)

Comment. The substance of former Section 525 is continued in Section 7395 (effect of vacancy).

Probate Code § 526 (repealed)

Comment. The substance of former Section 526 is continued in Sections 7385 (contempt), 7381 (revocation of letters), and 7392 (successor personal representative).

Probate Code § 540 (repealed)

Comment. The substance of former Section 540 is continued in Section 7313 (oath).

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Probate Code § 541 (repealed)

Comment. The substance of the first sentence of subdivision (a) of Section 541 is continued in Sections 7360 (bond required) and 7361(a) (waiver of bond) and in Code of Civil Procedure Section 166(a)(5) (judge may approve bond). The substance of the second sentence is continued in Section 7362(a) (amount of bond).

The substance of subdivision (b) is continued in Section 7361(b) (waiver of bond).

Probate Code § 541.1 (repealed)

Comment. The substance of Section 541.1 is continued in Section 7363 (reduction of bond by deposit of assets).

Probate Code § 541.5 (repealed)

Comment. The substance of former Section 541.5 is continued in Section 7366 (cost of bond).

Probate Code § 542 (repealed)

Comment. The substance of former Section 542 is continued in Section 7362(b) (amount of bond).

Probate Code § 543 (repealed)

Comment. The substance of former Section 543 is continued in Section 7361(c) (waiver of bond).

Probate Code § 544 (repealed)

Comment. The substance of former Section 544 is continued in the second sentence of Section 7360 (bond required).

Probate Code § 549 (repealed)

Comment. The substance of former Section 549 is continued in Sections 7386 (insufficient bond), 7392 (successor personal representative), and 7381 (revocation of letters).

Probate Code § 550 (repealed)

Comment. Former Section 550 is superseded by Section 7315 (restraining personal representative).

Probate Code § 553.3 (repealed)

Comment. The substance of former Section 553.3 is continued in Section 7364 (excessive bond).

Probate Code § 553.5 (repealed)

Comment. The substance of former Section 553.5 is continued in Section 7365 (release or substitution of sureties).