

Memorandum 90-128

Subject: Study L-2011 - Revised and Supplemental Comments

The Commission published a report of approximately 1,000 pages containing the Comments to the new Probate Code, enacted by 1990 Stat. Ch. 79 - Assembly Bill 759 (Friedman). See *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990). The Comments explained the provisions of the bill as introduced and assumed that the provisions relating to the agreed fee for the probate attorney would be enacted as a part of the new code.

The official Comments contained in the Commission's recommendation need to be revised and supplemented to reflect revisions made in the new code before its enactment and to reflect amendments, additions, and repeals of provisions of the new code made by other legislation enacted upon Commission recommendation in 1990.

The attached report contains:

(1) An outline of the new code as enacted with revisions and additions necessary to reflect revisions and additions in the new code made by other legislation enacted upon Commission recommendation in 1990.

(2) Supplemental or substitute Comments (about 50 pages) which revise or supplement the official Comments contained in the Commission's *Recommendation Proposing New Probate Code* to reflect revisions made in the new code before its enactment and to reflect amendments, additions, and repeals of provisions of the new code made by other legislation enacted upon Commission recommendation in 1990.

The report contains some incomplete references, such as references to Senate Bill 1775 and Senate Bill 2649 and references to two recommendations submitted to the 1990 Legislature that will be published in our Annual Report later this year. We assume that Senate Bills 1775 and 2649 will be enacted. We will need to complete these references before we publish the report.

As you are aware, the publishers of the annotated California codes, and others, publish the code sections with the official Comments. It is important that the official Comment published by these publishers not contain material that is inaccurate because of revisions made in the new code before it was enacted and that the material they publish reflect amendments, additions, and repeals of provisions of the new code. The attached report of the Law Revision Commission contains the supplemental and substitute Comments that will provide the law publishers with the correct Comment for each section. The report also will be useful to members of the bench and bar.

We need to approve this report for publication at this time. We have encumbered money from the past fiscal year to print this report, and we need to get it printed before the Department of Finance reverts the money to the General Fund. Also, we need to get the revised and supplemental Comments to the law publishers as soon as possible so that the correct Comments will be printed in their publications.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

Revised and Supplemental Comments

to the

New Probate Code

September 1990

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

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The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 20 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1991.

Cite this pamphlet as *Revised and Supplemental Comments to the New Probate Code*, 20 Cal. L. Revision Comm'n Reports 2001 (1990).

REVISED AND SUPPLEMENTAL COMMENTS

2001

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

Revised and Supplemental Comments

to the

New Probate Code

September 1990

California Law Revision Commission
4000 Middlefield Road, Suite D-2
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2002

REVISED AND SUPPLEMENTAL COMMENTS

CONTENTS

	<i>Page</i>
Preface	2005
How To Use This Book	2007
Outline of New Probate Code	2009
Revised and Supplemental Comments	2085
Comments to Provisions in Other Codes	2137

2004

REVISED AND SUPPLEMENTAL COMMENTS

PREFACE

Upon recommendation of the Law Revision Commission, the 1990 session of the California Legislature enacted a new Probate Code. The new code (enacted by Chapter 79 of the Statutes of 1990) replaced the former Probate Code, which was repealed. The new code becomes operative on July 1, 1991.

The Commission's *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990), included a Law Revision Commission Comment to each section of the new code as recommended by the Commission.

The official Comments contained in the Commission's *Recommendation Proposing New Probate Code* have been revised and supplemented in this book to reflect revisions made in the new code before its enactment and to reflect amendments, additions, and repeals of provisions of the new code made by other legislation (listed below) enacted upon Commission recommendation in 1990:

1990 Cal. Stat. ch. 140, effectuating *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990)

1990 Cal. Stat. ch. 324, effectuating *Recommendation Relating to Disposition of Small Estate by Public Administrator*, 20 Cal. L. Revision Comm'n Reports 529 (1990)

1990 Cal. Stat. ch. [SB 1775], effectuating the following recommendations: *Recommendation Relating to Court-Authorized Medical Treatment*, 20 Cal. L. Revision Comm'n Reports 537 (1990); *Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will*, 20 Cal. L. Revision Comm'n Reports 549 (1990); *Recommendation Relating to Execution or Modification of Lease Without Court Order*, 20 Cal. L. Revision Comm'n Reports 557 (1990); *Recommendation Relating to Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding*, 20 Cal. L. Revision Comm'n Reports 565 (1990); *Recommendation Relating to Priority of Conservator or Guardian for Appointment as Administrator*, 20 Cal. L. Revision Comm'n Reports 607 (1990); *Recommendation Relating to Notice in*

Probate Where Address Unknown, 20 Cal. L. Revision Comm'n Reports 2245 (1990), published in Annual Report (December 1990); *Recommendation Relating to Jurisdiction of Superior Court in Trust Matters*, 20 Cal. L. Revision Comm'n Reports 2253 (1990), published in Annual Report (December 1990)

1990 Cal. Stat. ch. [SB 2649], effectuating *Recommendation Relating to Uniform Management of Institutional Funds Act*, 20 Cal. L. Revision Comm'n Reports 2265 (1990), published in Annual Report (December 1990)

The Comments in this book replace the Comments set out in the recommendations listed above. A Comment in this book includes a reference to the recommendation listed above that is relevant to the particular section. The recommendation will provide useful background information concerning the section.

Any defect believed to exist in the new Probate Code should be brought to the attention of the Commission so that the Commission can study the matter and present any necessary corrections for legislative consideration.

HOW TO USE THIS BOOK

This book is designed to be used with the Commission's *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990).¹ The official Comments contained in that recommendation remain applicable to the new code as it will become operative on July 1, 1991, except to the extent otherwise indicated in this book.

This book contains Comments that supplement or replace those contained in the Commission's *Recommendation Proposing New Probate Code*. An "Outline of New Probate Code" follows. This Outline can be used to quickly determine the status of a Comment in that recommendation. For an explanation, see the note at the beginning of the Outline.

Substitute Comments. Some of the Comments contained in the Commission's *Recommendation Proposing New Probate Code* are no longer accurate because of changes made in the recommended legislation before it was enacted. In these cases, a new Comment has been prepared and is included in this book. The new Comment is to be substituted for the Comment contained in the Commission's recommendation. This type of Comment, which *entirely replaces* the corresponding Comment in the Commission's recommendation, is designated a "Substitute Comment."

A "Substitute Comment" may also be included in this book in some cases where an amendment to a section of the new code was made by other legislation enacted upon Commission recommendation in 1990. Here again, the "Substitute Comment" replaces the original Comment to the section contained in the Commission's recommendation.

1. This 996 page softcover book contains a Commission prepared Comment to each section of the new Probate Code as recommended for enactment by the Commission. The book can be purchased from California Law Revision Commission, 4000 Middlefield Road, Suite D-2, Palo Alto, CA 94303-4739. The price is \$35.00. California residents add \$2.54 sales tax. The price is subject to change without notice. Checks or money orders should be made payable to the California Law Revision Commission. All sales are subject to payment in advance of shipment, with the exception of purchases by federal, state, county, city, and other governmental agencies.

Supplemental Comments. Where a section of the new code is affected by an amendment made by other legislation enacted in 1990, a Comment that explains *only the amendment* may be included in this book. These supplemental Comments, which are to be used in conjunction with the official Comment contained in the Commission's recommendation, are designated by "1990 Amendment."

1990 Additions. Where a section was added to the new code by other legislation enacted upon Commission recommendation in 1990, a new Comment is included in this book. This type of Comment is designated by "1990 Addition" and often will include a reference to the Commission recommendation proposing the section for enactment.

OUTLINE OF NEW PROBATE CODE
(Reflects Amendments, Additions, and Repeals Made in 1990)

You can determine from this Outline those sections for which this book contains a supplemental or substitute Comment. If you are interested in a particular section, find the section number in the Outline. The Outline will indicate in bold face type whether there is a supplemental or substitute Comment for the section. If there is no such indication, the only relevant Comment is found in the *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990).

DIVISION 1. PRELIMINARY PROVISIONS AND DEFINITIONS

PART 1. PRELIMINARY PROVISIONS

- § 1. Title of code
- § 2. Continuation of existing law; construction of provisions drawn from uniform acts
- § 3. General transitional provision
- § 4. Effect of headings in code
- § 5. Certified mail sufficient compliance with requirement of use of registered mail
- § 6. Construction of code
- § 7. Reference to statute includes amendments and additions
- § 8. Reference to division, part, chapter, article, section, or part of section
- § 9. Construction of tenses
- § 10. Construction of singular and plural
- § 11. Severability of provisions
- § 12. Meaning of "shall" and "may"

PART 2. DEFINITIONS

- § 20. Application of definitions
- § 21. "Account"
- § 22. "Account in an insured credit union"
- § 23. "Account in an insured savings and loan association"
- § 24. "Beneficiary"
- § 26. "Child"
- § 28. "Community property"
- § 29. "Conservatee"

- § 30. "Conservator"
- § 32. "Devise"
- § 34. "Devisee"
- § 36. "Dissolution of marriage"
- § 38. "Family allowance"
- § 39. "Fiduciary"
- § 40. "Financial institution"
- § 42. "General personal representative"
- § 44. "Heir"
- § 45. "Instrument"
- § 46. "Insured account in a financial institution"
- § 48. "Interested person"
- § 50. "Issue"
- § 52. "Letters"
- § 54. "Parent"
- § 55. "Pay-on-death account" or "P.O.D. account"
- § 56. "Person"
- § 58. "Personal representative"; "general personal representative"
- § 59. "Predeceased spouse"
- § 60. "Probate homestead"
- § 62. "Property"
- § 66. "Quasi-community property"
- § 68. "Real property"
- § 70. "Security"
- § 74. "State"
- § 76. "Subscribing witness"
- § 78. "Surviving spouse"
- § 80. "Totten trust account"
- § 81. "Transferor"
- § 82. "Trust"
- § 83. "Trust company"
- § 84. "Trustee"
- § 88. "Will"

DIVISION 2. GENERAL PROVISIONS

PART 1. EFFECT OF DEATH OF MARRIED PERSON ON COMMUNITY AND QUASI-COMMUNITY PROPERTY

- § 100. Community property
- § 101. Quasi-community property

- § 102. Recapture by surviving spouse of certain quasi-community property
- § 103. Effect on community and quasi-community property where not clear one spouse survived the other
- § 104. Community property held in certain revocable trusts
- § 105. Applicability of part

**PART 2. SURVIVING SPOUSE'S RIGHT IN
CALIFORNIA REAL PROPERTY OF
NONDOMICILIARY DECEDENT**

- § 120. Surviving spouse's right in California real property of nondomiciliary decedent

**PART 3. CONTRACTUAL ARRANGEMENTS
RELATING TO RIGHTS AT DEATH**

**CHAPTER 1. SURVIVING SPOUSE'S WAIVER OF
RIGHTS**

- § 140. "Waiver" defined
- § 141. Rights that may be waived
- § 142. Requirement of writing and signature; enforceability; defenses.
- § 143. Waiver enforceable as of right
- § 144. Waiver enforceable in discretion of court
- § 145. Effect of waiver of "all rights" or complete property settlement
- § 146. Alteration, amendment, or revocation of waiver
- § 147. Validity of waivers and agreements under prior law; validity or effect of premarital property agreements; revocation of consent or election to dispose of property under will of other spouse

**CHAPTER 2. CONTRACTS CONCERNING WILL OR
SUCCESSION**

- § 150. Contract concerning will or succession

**PART 4. ESTABLISHING AND REPORTING FACT
OF DEATH**

CHAPTER 1. PROCEEDINGS TO ESTABLISH DEATH

- § 200. Commencement of proceedings
- § 201. Venue; contents of petition
- § 202. Pendency of administration proceedings; combined proceedings

- § 203. Notice of hearing
- § 204. Admission of petition and affidavits in evidence; judgment as prima facie evidence

CHAPTER 2. RECORDING EVIDENCE OF DEATH

- § 210. Documents which may be recorded
- § 211. Documents subject to statutory requirements; index entry
- § 212. Recorded document as prima facie evidence of death

CHAPTER 3. REPORTING FACT OF DEATH

- § 215. Notice to Director of Health Services

PART 5. SIMULTANEOUS DEATH

CHAPTER 1. GENERAL PROVISIONS

- § 220. Proof of survival by clear and convincing evidence
- § 221. Exceptions to applicability of chapter [1990 Amendment]
- § 222. Survival of beneficiaries
- § 223. Joint tenants
- § 224. Life or accident insurance
- § 226. Chapter not applicable if death prior to January 1, 1985

CHAPTER 2. PROCEEDINGS TO DETERMINE SURVIVAL

- § 230. Petition for purpose of determining survival [1990 Amendment]
- § 231. Persons authorized to file petition
- § 232. Court where petition is to be filed
- § 233. Notice of hearing
- § 234. Determination and order

PART 6. DISTRIBUTION AMONG HEIRS OR BENEFICIARIES

CHAPTER 1. INTESTATE DISTRIBUTION SYSTEM

- § 240. Method of intestate distribution of shares
- § 241. Section 240 not applicable where death occurs before January 1, 1985

CHAPTER 2. DISTRIBUTION UNDER A WILL, TRUST, OR OTHER INSTRUMENT

- § 245. Distribution of shares where instrument does not specify manner

- § 246. Distribution of shares where instrument specifies division by representation or per stirpes
- § 247. Distribution of shares where instrument specifies division per capita at each generation

PART 7. EFFECT OF HOMICIDE

- § 250. Wills, intestate succession, and family protection
- § 251. Joint tenancies
- § 252. Life insurance and other beneficiary designations
- § 253. Cases not controlled by other provisions
- § 254. Determination whether killing was felonious and intentional
- § 255. Good faith purchasers
- § 256. Protection of obligors
- § 257. Applicability of part

PART 8. DISCLAIMER OF TESTAMENTARY AND OTHER INTERESTS

CHAPTER 1. DEFINITIONS

- § 260. Definitions govern construction of this part
- § 262. "Beneficiary"
- § 263. "Creator of the interest"
- § 264. "Disclaimant"
- § 265. "Disclaimer"
- § 266. "Employee benefit plan"
- § 267. "Interest"

CHAPTER 2. GENERAL PROVISIONS

- § 275. Right of beneficiary to disclaim interest
- § 276. Disclaimer on behalf of conservatee
- § 277. Disclaimer on behalf of minor or decedent
- § 278. Contents of disclaimer
- § 279. Time limits for filing disclaimer
- § 280. Filing of disclaimer; recording of disclaimers affecting real property
- § 281. Disclaimer irrevocable and binding
- § 282. Effect of disclaimer
- § 283. Disclaimer not a fraudulent transfer
- § 284. Waiver of right to disclaim
- § 285. Disclaimer not permitted after interest accepted
- § 286. Right to disclaim not affected by spendthrift or similar restriction

- § 287. Application of part to interest created before January 1, 1984
- § 288. Exclusive means of disclaimer

CHAPTER 3. DISCLAIMERS EFFECTIVE UNDER FEDERAL LAW

- § 295. Disclaimer effective under federal law effective under this part

PART 9. TRUST COMPANY AS FIDUCIARY

- § 300. Appointment of trust company
- § 301. Oath and bond of trust company

PART 10. DELIVERY OF DECEDENT'S TANGIBLE PERSONAL PROPERTY

- § 330. Delivery of decedent's tangible personal property

PART 11. FIDUCIARIES' WARTIME SUBSTITUTION LAW

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title and Definitions

- § 350. Short title
- § 351. Definitions govern construction of this part
- § 352. "Consultant"
- § 353. "Estate"
- § 354. "Interested person"
- § 355. "Original fiduciary"
- § 356. "War service"

Article 2. Scope of Part

- § 360. Part applies to all fiduciaries
- § 361. Provision in instrument controls

Article 3. Procedural Provisions

- § 365. Jurisdiction of proceedings
- § 366. Notice of hearing

CHAPTER 2. APPOINTMENT OF SUBSTITUTE FIDUCIARY

- § 370. Petition for appointment of substitute, suspension of powers,
or account
- § 371. Powers and duties of substitute fiduciary
- § 372. Bond of substitute fiduciary
- § 373. Reinstatement of original fiduciary
- § 374. Fiduciary's immunity for predecessor's acts

CHAPTER 3. DELEGATION OF POWERS**Article 1. Delegation by Fiduciary**

- § 380. Delegation of fiduciary's powers
- § 381. Limitations on delegation
- § 382. Resumption of fiduciary's powers
- § 383. Fiduciary's immunity for delegate's acts

Article 2. Delegation by Consultant

- § 385. Delegation of consultant's powers
- § 386. Suspension of consultant's powers
- § 387. Resumption of consultant's powers
- § 388. Consultant's immunity for delegate's acts

PART 12. PROBATE REFEREES**CHAPTER 1. APPOINTMENT AND REVOCATION**

- § 400. Appointment by Controller
- § 401. Qualifications for appointment
- § 402. Qualification examination
- § 403. Term of office of probate referee
- § 404. Standards for probate referee
- § 405. Revocation of appointment of probate referee
- § 406. Termination of authority
- § 407. Political activities of probate referees
- § 408. Appointment of probate referee before operative date

CHAPTER 2. POWERS OF PROBATE REFEREE

- § 450. General powers
- § 451. Compelling appearance,
- § 452. Examination, testimony, and production of documents
- § 453. Protective orders and enforcement

PART 13. LITIGATION INVOLVING DECEDENT**CHAPTER 1. LIABILITY OF DECEDENT COVERED BY
INSURANCE**

- § 550. Action authorized
- § 551. Statute of limitations [1990 Amendment]
- § 552. Procedure
- § 553. Defenses
- § 554. Damages [1990 Amendment]
- § 555. Application of chapter

CHAPTER 2. SURVIVAL OF ACTIONS

§ 573. Survival of actions

**PART 14. APPLICABILITY OF REPEALED OR
AMENDED PROVISIONS RELATING TO
COMPENSATION OF ESTATE ATTORNEY AND
PERSONAL REPRESENTATIVE**

§ 900. Applicability of repealed or amended provisions [1990
Amendment]

**DIVISION 3. GENERAL PROVISIONS OF A
PROCEDURAL NATURE****PART 1. GENERAL PROVISIONS****CHAPTER 1. RULES OF PRACTICE**

- § 1000. General rules of practice
- § 1001. Judicial Council and local court rules; forms
- § 1002. Costs
- § 1003. Appointment of guardian ad litem
- § 1004. Lis pendens

CHAPTER 2. PETITIONS AND OTHER PAPERS

- § 1020. General requirements for petitions, objections, responses,
reports, and accounts
- § 1021. Verification required
- § 1022. Affidavit or verified petition as evidence
- § 1023. Signing and verification by attorney

CHAPTER 3. HEARINGS AND ORDERS

- § 1040. General hearing procedure
- § 1041. Clerk to set matters for hearing
- § 1042. Notice of hearing
- § 1043. Response or objection
- § 1044. Plaintiff and defendant
- § 1045. Continuance or postponement
- § 1046. Hearing and order
- § 1047. Recital of jurisdictional facts unnecessary
- § 1048. Entry and filing
- § 1049. Enforcement of order
- § 1050. Judgment roll

PART 2. NOTICES AND CITATIONS**CHAPTER 1. GENERAL NOTICE PROVISIONS**

- § 1200. Application of part
- § 1201. Notice not required to be given to oneself or persons joining in petition
- § 1202. Additional notice on court order
- § 1203. Order shortening time
- § 1204. Waiver of notice
- § 1205. Notice of continued or postponed hearing
- § 1206. Notice to known heirs or devisees
- § 1207. Exceptions to notice requirement involving parent-child relationship
- § 1208. Notice to trust beneficiaries where personal representative and trustee are same person
- § 1209. Notice to State of California or to Attorney General
- § 1210. Guardian or conservator acting for ward or conservatee
- § 1211. Form of notice when form not otherwise prescribed
- § 1212. Manner of mailing notice of hearing [1990 Addition]

CHAPTER 2. MAILING IN GENERAL

- § 1215. Manner of mailing; when mailing complete [Substitute Comment]
- § 1216. Personal delivery instead of mailing
- § 1217. Mailed notice where no other manner of giving notice specified

CHAPTER 3. MAILING NOTICE OF HEARING

- § 1220. General manner of mailing notice of hearing [1990 Amendment]
- § 1221. Period and manner of giving notice of hearing where not otherwise prescribed by statute

CHAPTER 4. POSTING NOTICE OF HEARING

- § 1230. Manner of posting notice of hearing

CHAPTER 5. CITATIONS

- § 1240. Issuance of citation
- § 1241. Contents of citation
- § 1242. Service of citation

CHAPTER 6. REQUEST FOR SPECIAL NOTICE

- § 1250. Request for special notice
- § 1251. Modification or withdrawal of request for special notice

§ 1252. Notice to be given to person requesting special notice

CHAPTER 7. PROOF OF GIVING NOTICE

§ 1260. Proof of giving notice of hearing required; conclusiveness of order

§ 1261. Proof of mailing

§ 1262. Proof of publication

§ 1263. Proof of posting

§ 1264. Proof of personal delivery

§ 1265. Proof by testimony at hearing

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS

PART 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND DEFINITIONS

§ 1400. Short title

§ 1401. Application of definitions

§ 1403. "Absentee"

§ 1418. "Court"

§ 1419. "Court investigator"

§ 1420. "Developmental disability"

§ 1424. "Interested person"

§ 1430. "Petition"

§ 1431. "Proceedings to establish a limited conservatorship"

§ 1440. "Secretary concerned"

§ 1446. "Single-premium deferred annuity"

CHAPTER 2. GENERAL PROVISIONS

§ 1452. Trial by jury

§ 1453. When motion for new trial allowed

§ 1454. Appointment of court investigator

CHAPTER 3. NOTICES

§ 1460. Notice of hearings generally

§ 1461. Notice to Director of Mental Health or Director of
Developmental Services

§ 1461.4. Notice to director of regional center

§ 1461.5. Notice to Veterans Administration

§ 1461.7. Notice of time and place of hearing on petition, report, or
account where conservatee is a missing person

- § 1467. When service by mail deemed complete
- § 1469. Reference to Section 1220 considered a reference to this chapter

CHAPTER 4. APPOINTMENT OF LEGAL COUNSEL

- § 1470. Discretionary appointment of legal counsel
- § 1471. Mandatory appointment of legal counsel
- § 1472. Compensation of mandatory court-appointed counsel

CHAPTER 5. TRANSITIONAL PROVISIONS

- § 1488. Effect of nomination by adult of guardian for such adult
- § 1489. Effect of appointment of guardian by parent or other person for a minor
- § 1490. References in statutes

PART 2. GUARDIANSHIP

CHAPTER 1. ESTABLISHMENT OF GUARDIANSHIP

Article 1. Nomination of Guardian

- § 1500. Nomination of guardian of person or estate or both by parent
- § 1501. Nomination of guardian as to particular property
- § 1502. Manner of making nomination; when effective; effect of subsequent legal incapacity or death of nominator

Article 2. Appointment of Guardian Generally

- § 1510. Petition for appointment
- § 1511. Notice of hearing
- § 1512. Amendment of petition to disclose newly discovered proceeding affecting custody
- § 1513. Investigation and report by court-designated officer
- § 1513.1. Assessment for expense of county investigation and review
- § 1514. Appointment of guardian
- § 1515. No guardian of person for married minor
- § 1516. Notice to local agency designated to investigate guardianships

Article 3. Nonrelative Guardianships

- § 1540. Application of article
- § 1541. Additional contents of petition for guardianship
- § 1542. Notice to Director of Social Services and to local agency designated to investigate guardianships
- § 1543. Report on suitability of guardian

CHAPTER 2. TERMINATION

- § 1600. Majority, death, adoption, or marriage of ward
- § 1601. Termination by court order

PART 3. CONSERVATORSHIP**CHAPTER 1. ESTABLISHMENT OF CONSERVATORSHIP****Article 1. Persons for Whom Conservator May be Appointed**

- § 1800. Legislative intent
- § 1800.3. Conservatorships for adults or married minors
- § 1801. Showing required for appointment generally
- § 1802. Appointment upon request of proposed conservatee
- § 1803. Conservator of estate of "absentee"
- § 1804. Conservator of estate of missing person

**Article 2. Order of Preference for Appointment of
Conservator**

- § 1810. Nomination by proposed conservatee
- § 1811. Nomination by spouse or relative of proposed conservatee
- § 1812. Order of preference for appointment as conservator
- § 1813. Condition for appointment of absentee's spouse

Article 3. Establishment of Conservatorship

- § 1820. Filing of petition
- § 1821. Contents of petition
- § 1822. Notice of hearing
- § 1823. Citation to proposed conservatee
- § 1824. Service on proposed conservatee of citation and petition
- § 1825. Attendance of proposed conservatee at hearing
- § 1826. Investigation and report by court investigator if proposed conservatee will not attend hearing
- § 1827. Law and procedure applicable to hearing
- § 1827.5. Assessment of proposed limited conservatee at regional center
- § 1828. Information to proposed conservatee by court
- § 1828.5. Inquiry and information by court in limited conservatorship proceeding
- § 1829. Persons who may support or oppose petition
- § 1830. Contents of order appointing conservator
- § 1835. Informational package for private conservator

**Article 4. Special Provisions Applicable Where Proposed
Conservatee is an Absentee**

- § 1840. Procedure for appointment of conservator for absentee
- § 1841. Additional contents of petition
- § 1842. Notice of hearing
- § 1843. Citation to proposed conservatee not required
- § 1844. Proof of status of proposed conservatee; attendance at hearing not required

**Article 5. Special Provisions Applicable Where Proposed
Conservatee Is a Missing Person**

- § 1845. Appointment of conservator of estate of missing person whose whereabouts are unknown
- § 1846. Additional contents of petition
- § 1847. Notice of hearing
- § 1848. Acts not required in proceeding
- § 1849. Findings prerequisite to appointment of conservator
- § 1849.5. Application of article

**CHAPTER 2. PERIODIC REVIEW OF
CONSERVATORSHIP**

- § 1850. Court review of conservatorship
- § 1851. Visitation and findings by court investigator
- § 1851.5. Assessment of estate for investigation expense
- § 1852. Notification of counsel; representation of conservatee at hearing
- § 1853. Failure to locate conservatee; removal of conservator on failure to produce conservatee; petition to appoint new conservator

CHAPTER 3. TERMINATION

- § 1860. When conservatorship terminates
- § 1860.5. When limited conservatorship terminates
- § 1861. Petition for termination of conservatorship
- § 1862. Notice of hearing
- § 1863. Hearing and judgment
- § 1864. Termination of conservatorship of absentee
- § 1865. Restoring right to vote

CHAPTER 4. LEGAL CAPACITY OF CONSERVATEE**Article 1. Capacity to Bind or Obligate Conservatorship
Estate**

- § 1870. "Transaction" defined
- § 1871. Rights not affected by conservatorship
- § 1872. Effect of conservatorship on legal capacity of conservatee
- § 1873. Court order affecting legal capacity of conservatee
- § 1874. Petition for order affecting legal capacity of conservatee
- § 1875. Good faith purchaser or encumbrancer of real property
- § 1876. Applicability of other governing law

**Article 2. Capacity to Give Informed Consent for Medical
Treatment**

- § 1880. Order granting conservator exclusive authority to give consent for medical treatment
- § 1890. Time for making order; procedure
- § 1891. Petition
- § 1892. Notice of hearing
- § 1893. Attendance of conservatee at hearing
- § 1894. Investigation by court investigator if conservatee will not attend hearing
- § 1895. Hearing
- § 1896. Order
- § 1897. Duration of order
- § 1898. Modification or revocation of order

Article 3. Capacity of Conservatee to Marry

- § 1900. Capacity to marry
- § 1901. Order respecting capacity

CHAPTER 5. DISQUALIFICATION FROM VOTING

- § 1910. Disqualification from voting

CHAPTER 6. STERILIZATION

- § 1950. Legislative intent
- § 1951. Ability to consent; definitions
- § 1952. Petition for appointment of limited conservator
- § 1953. Notice of hearing
- § 1954. Appointment of counsel
- § 1954.5. Appointment of facilitator; duties
- § 1955. Coordination of investigation by regional center; examination by physicians; reports

- § 1956. Presence of conservatee at hearing
- § 1957. Consideration of conservatee's views
- § 1958. Factors to be established beyond a reasonable doubt before consent to sterilization may be authorized
- § 1959. Vulnerability to unlawful sexual conduct by others
- § 1960. Persons who already have conservator
- § 1961. Sterilization procedure
- § 1962. Statement of decision; automatic appeal
- § 1963. Payment of court costs and fees
- § 1964. Expiration of court order and termination of conservatorship; reappointment
- § 1965. Stay of order pending appeal
- § 1966. Material change in circumstances prerequisite to new petition after petition denied
- § 1967. Civil and criminal liability
- § 1968. Sterilization resulting from other treatment or surgery
- § 1969. Rights of developmentally disabled persons capable of giving consent

PART 4. PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIP

CHAPTER 1. GENERAL PROVISIONS

- § 2100. Law governing guardianships and conservatorships
- § 2101. Relationship is a fiduciary relationship
- § 2102. Court supervision
- § 2103. Effect of court authorization, approval, or confirmation
- § 2104. Nonprofit charitable corporation as guardian or conservator
- § 2105. Joint guardians or conservators
- § 2105.5. Liability of joint guardian or conservator of estate for breach by other guardian or conservator
- § 2106. One guardian or conservator for several wards or conservatees
- § 2107. Powers and duties of guardian or conservator of nonresident
- § 2108. Additional powers granted nominated guardian
- § 2109. Powers and duties of guardian as to particular property; allocation of duties between guardians
- § 2110. Liability of guardian or conservator who signs instrument
- § 2111. Transfer or conveyance of property pursuant to court order
- § 2112. Application of federal Indian law

CHAPTER 2. JURISDICTION AND VENUE**Article 1. Jurisdiction and Venue**

- § 2200. Jurisdiction in superior court
- § 2201. Venue for residents
- § 2202. Venue for nonresidents
- § 2203. Court having priority where proceedings commenced in several counties

Article 2. Change of Venue

- § 2210. Definitions
- § 2211. Authority to transfer proceeding
- § 2212. Who may petition for transfer
- § 2213. Contents of petition
- § 2214. Notice of hearing
- § 2215. Hearing and order
- § 2216. Transfer procedure

CHAPTER 3. TEMPORARY GUARDIANS AND CONSERVATORS

- § 2250. Appointment
- § 2251. Issuance of letters
- § 2252. Powers and duties
- § 2253. Change of conservatee's residence generally
- § 2254. Removal of conservatee from residence in case of emergency
- § 2255. Inventory and appraisal of estate
- § 2256. Accounts
- § 2257. Termination
- § 2258. Suspension, removal, resignation, and discharge

CHAPTER 4. OATH, LETTERS, AND BOND**Article 1. Requirement of Oath and Bond**

- § 2300. Oath and bond required before appointment effective

Article 2. Letters

- § 2310. Issuance of letters
- § 2311. Form of letters
- § 2312. Notice to ward or conservatee

Article 3. Bonds of Guardians and Conservators

- § 2320. General requirement of bond; amount
- § 2321. Waiver of bond by conservatee

- § 2322. Guardian or conservator of person only
- § 2323. Small estate
- § 2324. Nominated guardian
- § 2325. Bond of nonprofit charitable corporation
- § 2326. Joint guardians or conservators
- § 2327. Several wards or conservatees
- § 2328. Deposit of money or other property subject to court control
- § 2329. Reduction of amount of bond
- § 2330. Additional bond on real property transactions
- § 2333. **Limitation period for suit against sureties on bond [1990 Amendment]**
- § 2334. Suspension of powers upon filing of petition to require bond or objection to sufficiency of bond
- § 2335. Substitution of surety

Article 4. Registration of Private Professional Conservators

- § 2340. Prerequisite to appointment of private professional conservator
- § 2341. Private professional conservator
- § 2342. Statement and background check of private professional conservator
- § 2343. Annual filing fee

CHAPTER 5. POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE PERSON

- § 2350. Definitions
- § 2351. Care, custody, control, and education
- § 2351.5. Powers of limited conservator
- § 2352. Residence of ward or conservatee
- § 2353. Medical treatment of ward
- § 2354. Medical treatment of conservatee not adjudicated to lack capacity to give informed consent
- § 2355. Medical treatment of conservatee adjudicated to lack capacity to give informed consent
- § 2356. **Prohibited treatment and drugs [1990 Amendment]**
- § 2357. **Court-authorized medical treatment for ward or conservatee [1990 Amendment]**
- § 2358. Additional conditions in order of appointment
- § 2359. Instructions from or confirmation by court

CHAPTER 6. POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE ESTATE

Article 1. Definitions and General Provisions

- § 2400. Definitions
- § 2401. Duty to manage estate using ordinary care and diligence
- § 2401.3. Measure of liability for breach of fiduciary duty
- § 2401.5. Measure of liability for interest
- § 2401.7. Other remedies not affected
- § 2402. Additional conditions in order of appointment
- § 2403. Instructions from or confirmation by court
- § 2404. Order compelling guardian or conservator to pay support or debts
- § 2405. Submitting disputed claim for summary determination
- § 2406. Submitting dispute to arbitration
- § 2407. Application of chapter to community property
- § 2408. Independent administration

Article 2. Support and Maintenance of Ward or Conservatee and Dependents

- § 2420. Support, maintenance, and education
- § 2421. Personal allowance for ward or conservatee
- § 2422. Order authorizing support notwithstanding third party liable
- § 2423. Payment of surplus income to relatives of conservatee

Article 3. Payment of Debts and Expenses

- § 2430. Payment of debts and expenses generally
- § 2431. Priority for wage claims

Article 4. Estate Management Powers Generally

- § 2450. Extent of court supervision
- § 2451. Collection of debts and benefits
- § 2452. Checks, warrants, and drafts
- § 2453. Deposit in insured account in financial institution
- § 2453.5. Interest on deposits by trust company
- § 2454. Deposit of personal property with trust company
- § 2455. Deposit of securities in securities depository
- § 2456. Accounts and deposits withdrawable only on court order
- § 2457. Maintaining home of ward or conservatee and dependents
- § 2458. Voting rights with respect to corporate shares or memberships or property
- § 2459. Life insurance, medical, retirement, and other plans and benefits

- § 2460. Liability and casualty insurance
- § 2461. Taxes and tax returns
- § 2462. Representation in actions and proceedings
- § 2463. Partition actions
- § 2464. Acceptance of deed in lieu of foreclosure or trustee's sale
- § 2465. Abandonment of valueless property
- § 2466. Advances by guardian or conservator
- § 2467. Care of estate after death of ward or conservatee

**Article 5. Compromise of Claims and Actions; Extension,
Renewal, or Modification of Obligations**

- § 2500. Authority to compromise claims and actions and to extend, renew, or modify obligations
- § 2501. **Matters relating to real property [1990 Amendment]**
- § 2502. Compromise in excess of specified amounts
- § 2503. Compromise of claim of ward or conservatee against guardian or conservator or attorney for guardian or conservator; modification of terms of obligation of guardian or conservator or attorney owing to ward or conservatee or estate
- § 2504. Support, wrongful death, and personal injury claims
- § 2505. Court from which approval is to be obtained
- § 2506. Petition for approval of court in guardianship or conservatorship proceeding
- § 2507. When another statute controls

**Article 6. Conveyance or Transfer of Property Claimed to
Belong to Ward or Conservatee or Other Person**

- § 2520. Petition for order
- § 2521. Notice of hearing
- § 2522. Continuance for preparation for hearing
- § 2524. Denial of petition if objection based on venue
- § 2525. Abatement of petition if civil action pending
- § 2526. Denial of petition if matter should be determined by civil action
- § 2527. Order
- § 2528. Execution of conveyance or transfer; effect of order

Article 7. Sales

- § 2540. Extent of court supervision
- § 2541. Purposes for which sale may be made
- § 2542. Terms of sale
- § 2543. Manner of sale

- § 2544. Securities sold on established exchange; certain over-the-counter securities
- § 2545. Sale or other disposition of tangible personal property not exceeding \$5,000 in value
- § 2547. Disposition of proceeds of sale
- § 2548. Limitation of action to recover property sold

Article 8. Notes, Mortgages, Leases, Conveyances, and Exchanges

- § 2550. Extent of court supervision
- § 2551. Borrowing money and giving security therefor
- § 2552. Refinancing or improving or repairing property
- § 2552.5. Lease term
- § 2553. Order authorizing lease required
- § 2554. Terms and conditions of leases
- § 2555. **Leases permitted without court authorization [1990 Amendment]**
- § 2556. Dedication or conveyance of real property or easement with or without consideration
- § 2557. Exchange of property

Article 9. Investments and Purchase of Property

- § 2570. Authority to invest generally; petition; hearing; order
- § 2571. Purchase of home for ward or conservatee or dependents
- § 2572. Order authorizing purchase of real property
- § 2573. Order authorizing investment in government bonds
- § 2574. United States and State of California obligations; listed stocks, bonds, and other securities

Article 10. Substituted Judgment

- § 2580. Petition to authorize proposed action
- § 2581. Notice of hearing
- § 2582. Consent or lack of capacity of conservatee; adequate provision for conservatee and dependents
- § 2583. Circumstances considered in determining whether to approve proposed action
- § 2584. Order
- § 2585. No duty to propose action
- § 2586. Production of conservatee's will and other relevant estate plan documents

Article 11. Independent Exercise of Powers

- § 2590. Order granting authority for independent exercise of powers
- § 2591. Powers that may be granted

- § 2592. Petition
- § 2593. Withdrawal or subsequent limitation of powers
- § 2594. Contents of letters; when new letters required
- § 2595. Use of other statutory authorizations or procedures not precluded

CHAPTER 7. INVENTORY AND ACCOUNTS

Article 1. Definitions and General Provisions

- § 2600. Definitions
- § 2601. Wages of ward or conservatee

Article 2. Inventory and Appraisal of Estate

- § 2610. Filing inventory and appraisal
- § 2611. Sending copy to Director of Mental Health or Director of Developmental Services
- § 2612. Sending copy to county assessor
- § 2613. Subsequently discovered or acquired property; supplemental inventory and appraisal
- § 2614. Objections to appraisals
- § 2614.5. Order to file inventory and appraisal
- § 2615. Damages for failure to file inventory

Article 2.5. Examination Concerning Assets of Estate

- § 2616. Examination concerning assets of estate
- § 2617. Written interrogatories
- § 2618. Examination in court
- § 2619. Citation to person controlling estate property
- § 2619.5. Double damages

Article 3. Accounts

- § 2620. Presentation of account periodically for settlement and allowance; contents of account; petition may include other requests
 - § 2620.1. Conservatee's status report
 - § 2620.2. Failure to file account
- § 2621. Notice of hearing
- § 2622. Objections to account
- § 2623. Allowance for expenses, compensation, and disbursements
- § 2624. Investment of cash
- § 2625. Review of sales, purchases, and other transactions
- § 2626. Termination of proceeding upon exhaustion of estate
- § 2627. Settlement of accounts and release by ward; discharge of guardian

§ 2628. No accounting required for certain small estates

§ 2629. Compelling filing of account

Article 4. Accounts on Termination of Relationship

§ 2630. Continuing jurisdiction of court

§ 2631. Death of ward or conservatee; disposition of assets

§ 2632. Account of dead, incapacitated, or absconding guardian or conservator

§ 2633. Termination before inventory is filed

**CHAPTER 8. COMPENSATION OF GUARDIAN,
CONSERVATOR, AND ATTORNEY**

§ 2640. Petition by guardian or conservator of estate

§ 2641. Petition by guardian or conservator of person

§ 2642. Petition by attorney

§ 2643. Order authorizing periodic payments of compensation to guardian or conservator or attorney

§ 2644. Contingent fee contract with attorney

CHAPTER 9. REMOVAL OR RESIGNATION

Article 1. Removal of Guardian or Conservator

§ 2650. Causes for removal

§ 2651. Petition for removal

§ 2652. Notice of hearing

§ 2653. Hearing and judgment

§ 2654. Surrender of estate and suspension of powers pending hearing

§ 2655. Contempt

Article 2. Resignation of Guardian or Conservator

§ 2660. Resignation of guardian or conservator

**CHAPTER 9.5. APPOINTMENT OF SUCCESSOR
GUARDIAN OR CONSERVATOR**

Article 1. Appointment of Successor Guardian

§ 2670. Court authorized to appoint successor guardian

Article 2. Appointment of Successor Conservator

§ 2680. Court authorized to appoint successor conservator

§ 2681. Who may file petition

§ 2682. Contents of petition

§ 2683. Notice of hearing

§ 2684. Interview and report by court investigator

§ 2685. Information to conservatee by court

§ 2686. Conservatee fails to attend hearing

- § 2687. Persons who may support or oppose petition
- § 2688. Order appointing successor conservator
- § 2689. Provisions applicable where conservatee is an "absentee"

CHAPTER 10. REQUESTS FOR SPECIAL NOTICE

- § 2700. Request for special notice
- § 2701. Modification or withdrawal of request; new request
- § 2702. Petitioner required to give requested special notice

CHAPTER 11. APPEALS

- § 2750. Appealable orders
- § 2751. Stay
- § 2752. Reversal of order appointing guardian or conservator

CHAPTER 12. TRANSFER OF PERSONAL PROPERTY OUT OF STATE

- § 2800. "Foreign guardian or conservator" defined
- § 2801. Order for transfer of assets out of state
- § 2802. Who may petition for transfer
- § 2803. Contents of petition
- § 2804. Notice of hearing
- § 2805. Objections to petition
- § 2806. Order for transfer
- § 2807. Manner of transfer; conditions
- § 2808. Termination of guardianship or conservatorship

PART 5. PUBLIC GUARDIAN

CHAPTER 1. TAKING TEMPORARY POSSESSION OR CONTROL OF PROPERTY

- § 2900. Authority to take possession or control
- § 2901. Recording certification in county property records; providing information and property to public guardian
- § 2902. Costs and compensation for taking possession or control
- § 2903. Transitional provision

CHAPTER 2. APPOINTMENT OF PUBLIC GUARDIAN

- § 2920. Application for appointment
- § 2921. Persons under jurisdiction of Departments of Mental Health or Developmental Services
- § 2922. Letters, oath, and bond

CHAPTER 3. ADMINISTRATION BY PUBLIC GUARDIAN

- § 2940. Deposit or investment of funds
- § 2941. Employment of attorneys
- § 2942. Compensation and expenses of public guardian; bond fee
- § 2943. Inventory and appraisal
- § 2944. Immunity of public guardian

**PART 6. MANAGEMENT OR DISPOSITION OF
COMMUNITY PROPERTY WHERE SPOUSE LACKS
LEGAL CAPACITY****CHAPTER 1. DEFINITIONS AND GENERAL
PROVISIONS****Article 1. Definitions**

- § 3000. Application of definitions
- § 3002. "Community property"
- § 3004. "Conservator"
- § 3006. "Conservatorship estate"
- § 3008. "Conservatorship proceeding"
- § 3012. "Legal capacity" with respect to community property

Article 2. General Provisions

- § 3020. Rights of spouses in community property preserved
- § 3023. Determination of character of property
- § 3024. Appeals

**CHAPTER 2. MANAGEMENT, CONTROL, AND
DISPOSITION****Article 1. Management, Control, and Disposition Generally**

- § 3051. Community property
- § 3054. Authority of court
- § 3055. Effect on consent of death or subsequent lack of legal capacity
- § 3056. Manner of management, control, and disposition of property
as part of conservatorship estate
- § 3057. Protection of rights of spouse who lacks legal capacity

Article 2. Substitute for Joinder or Consent Requirements

- § 3070. Article provides substitute for joinder or consent requirements
of other statutes
- § 3071. Substitute for joinder or consent
- § 3072. Court order authorizing joinder or consent by conservator

- § 3073. Manner of joinder or consent
- § 3074. Good faith purchaser or encumbrancer for value

Article 3. Enforcement of Support of Spouse Who Has Conservator

- § 3080. Petition
- § 3081. Notice of hearing
- § 3082. Examination of spouse in control of property
- § 3083. Order
- § 3084. Income and expense declaration and property declaration
- § 3085. Ex parte orders pending determination
- § 3086. Continuance
- § 3087. Determination of character of property
- § 3088. Order for support and maintenance of conservatee
- § 3089. Division of community property
- § 3090. Enforcement of orders
- § 3091. Judicial Council rules
- § 3092. Other procedures not limited

CHAPTER 3. PROCEEDING FOR PARTICULAR TRANSACTION

Article 1. General Provisions

- § 3100. "Transaction" defined
- § 3101. Nature of proceeding under this chapter
- § 3102. Transactions that may be subject of the proceeding

Article 2. Commencement of Proceeding

- § 3110. Jurisdiction and venue
- § 3111. Who may file petition
- § 3112. Representation of petitioning spouse
- § 3113. Appointment of conservator not required

Article 3. Petition

- § 3120. Combining several transactions; permissible allegations
- § 3121. Required contents of petition
- § 3122. Petition for court order authorizing transaction
- § 3123. Petition for court order declaring legal capacity for transaction

Article 4. Citation and Notice of Hearing

- § 3130. Citation to nonpetitioning spouse alleged to lack legal capacity; notice to conservator in lieu of citation
- § 3131. Notice to nonpetitioning spouse having legal capacity and relatives

Article 5. Hearing and Order

- § 3140. Representation of spouse alleged to lack legal capacity; appointment of legal counsel
- § 3141. Presence of spouse at hearing
- § 3142. Information to be given to spouse by court
- § 3143. Order declaring legal capacity
- § 3144. Court determinations before authorizing transaction; order authorizing transaction
- § 3145. Effect of determination of lack of legal capacity

Article 6. Consummation of Transaction

- § 3150. Bond
- § 3151. Execution, delivery, and recording of documents; credit sales
- § 3152. Effect of action taken pursuant to court order
- § 3153. Liability of conservator
- § 3154. Further proceedings if transaction not consummated

PART 7. AUTHORIZATION OF MEDICAL TREATMENT FOR ADULT WITHOUT CONSERVATOR

- § 3200. "Patient" defined
- § 3201. Petition for court authorization for medical treatment
- § 3202. Jurisdiction and venue
- § 3203. Who may file petition
- § 3204. Contents of petition
- § 3205. Appointment of legal counsel
- § 3206. Notice of hearing
- § 3207. Submission for determination on medical affidavits
- § 3208. **Court-authorized medical treatment for person unable to consent to treatment [1990 Amendment]**
- § 3209. Continuing jurisdiction of court
- § 3210. Procedure supplemental and alternative
- § 3211. Prohibited treatment

PART 8. OTHER PROTECTIVE PROCEEDINGS**CHAPTER 1. GENERAL PROVISIONS**

- § 3300. Parent must account to minor
- § 3301. Consent of court for hospital or medical care or enlistment in armed forces
- § 3302. Approval of contract for attorney's fees for minor; fees in absence of contract

§ 3303. Effect on Uniform Transfers to Minors Act

**CHAPTER 2. MONEY OR PROPERTY BELONGING TO
MINOR**

Article 1. Total Estate Not in Excess of \$5,000

- § 3400. "Total estate of the minor" defined
- § 3401. Delivery of money or property to parent
- § 3402. Effect of written receipt of parent

Article 2. Property in the Form of Money

- § 3410. Application of article; computing "money belonging to the minor"
- § 3411. Filing of petition
- § 3412. Order of court where guardianship of estate
- § 3413. Order of court where no guardianship of estate

**CHAPTER 3. COMPROMISE BY PARENT OF MINOR'S
DISPUTED CLAIM**

- § 3500. Parent's right to compromise minor's claim

**CHAPTER 4. MONEY OR PROPERTY PAID OR
DELIVERED PURSUANT TO COMPROMISE OR
JUDGMENT FOR MINOR OR INCOMPETENT PERSON**

Article 1. General Provisions

- § 3600. Application of article
- § 3601. Order directing payment of expenses, costs, and fees
- § 3602. Disposition of remaining balance
- § 3603. Reference to "incompetent person"

**Article 2. Disposition of Money or Other Property Where No
Guardianship or Conservatorship**

- § 3610. Disposition of remaining balance
- § 3611. Order of court
- § 3612. Reservation of jurisdiction until minor attains age 18

**CHAPTER 5. PERSONAL PROPERTY OF ABSENT
FEDERAL PERSONNEL**

Article 1. Definitions

- § 3700. Definitions

Article 2. Court Proceeding to Set Aside Personal Property of Absentee

- § 3701. Setting aside personal property of absentee
- § 3702. Who may petition
- § 3703. Contents of petition
- § 3704. Notice of hearing
- § 3705. Hearing and order
- § 3706. Jurisdiction of court not affected by size of absentee's estate
- § 3707. Joint tenancy property
- § 3708. Accounting

Article 3. Management and Disposition of Personal Property of Absentee Without Court Proceeding

- § 3710. Right of absentee's family to collect and dispose of property
- § 3711. Transfer of evidences of interest, indebtedness, or right
- § 3712. Commencement of time for action by absentee

Article 4. Absentee's Power of Attorney

- § 3720. Continuation of expired power of attorney

CHAPTER 6. REMOVAL OF PROPERTY OF NONRESIDENT

- § 3800. Petition
- § 3801. Notice
- § 3802. Certificate of nonresident fiduciary
- § 3803. Order for removal

PART 9. CALIFORNIA UNIFORM TRANSFERS TO MINORS ACT

- § 3900. Short title
- § 3901. Definitions
- § 3902. Scope and jurisdiction
- § 3903. Nomination of custodian
- § 3904. Transfer by gift or exercise of power of appointment
- § 3905. Transfer authorized by will or trust
- § 3906. Other transfer by fiduciary
- § 3907. Transfer by obligor
- § 3908. Receipt for custodial property
- § 3909. Methods of creation and transfer of custodial property
- § 3910. Single custodianship
- § 3911. Validity and effect of transfer
- § 3912. Care of custodial property

- § 3913. Powers of custodian
- § 3914. Use of custodial property
- § 3915. Custodian's expenses, compensation, and bond
- § 3916. Protection of third person from liability
- § 3917. Liability to third persons
- § 3918. Renunciation, resignation, death, or removal of custodian;
designations of successor custodian
- § 3919. Accounting by and determination of liability of custodian
- § 3920. Termination of custodianship
- § 3920.5. Delayed time for transfer to minor; procedure
- § 3921. Venue
- § 3922. Transfers subject to part
- § 3923. Transfers made before January 1, 1985
- § 3925. Method of transfer provided by part not exclusive

DIVISION 5. NONPROBATE TRANSFERS

PART 1. PROVISIONS RELATING TO EFFECT OF DEATH

- § 5000. Nonprobate transfers at death

PART 2. MULTIPLE-PARTY ACCOUNTS

CHAPTER 1. SHORT TITLE AND DEFINITIONS

Article 1. Short Title

- § 5100. Citation of part

Article 2. Definitions

- § 5120. Application of definitions
- § 5122. Account
- § 5124. Agent
- § 5126. Beneficiary
- § 5128. Financial institution
- § 5130. Joint account
- § 5132. Multiple-party account
- § 5134. Net contribution
- § 5136. Party
- § 5138. Payment
- § 5139. P.O.D.
- § 5140. P.O.D. account
- § 5142. P.O.D. payee
- § 5144. Proof of death

- § 5146. Receives
- § 5148. Request
- § 5150. Sums on deposit
- § 5152. Withdrawal

CHAPTER 2. GENERAL PROVISIONS

- § 5201. Governing provisions
- § 5202. Transfer in fraud of creditors
- § 5203. Creation of multiple-party relationship
- § 5204. Special power of attorney for account transactions
- § 5205. Application of part

CHAPTER 3. OWNERSHIP BETWEEN PARTIES AND THEIR CREDITORS AND SUCCESSORS

- § 5301. Ownership during lifetime
- § 5302. Right of survivorship
- § 5303. Rights of survivorship determined by form of account at time of death; methods for change of terms of account
- § 5304. Testamentary effect of statutory survivorship provisions
- § 5305. Presumption that sums on deposit are community property
- § 5306. Account expressly described as "tenancy in common" account
- § 5307. Account expressly described as "community property" account

CHAPTER 4. PROTECTION OF FINANCIAL INSTITUTION

- § 5401. Multiple-party accounts; terms; requirements
- § 5402. Payment of joint account
- § 5403. Payment of P.O.D. account
- § 5404. Payment of Totten trust account
- § 5405. Payment as discharge; refusal to pay upon receipt of notice
- § 5406. Payment of account held in trust form where financial institution has no notice that account is not a "Totten trust account"
- § 5407. Payment to minor

DIVISION 6. WILLS AND INTESTATE SUCCESSION

PART 1. WILLS

CHAPTER 1. GENERAL PROVISIONS

- § 6100. Persons who may make a will
- § 6100.5. Persons not mentally competent to make a will

- § 6101. Property which may be disposed of by will
- § 6102. Persons to whom will may dispose of property
- § 6103. Application of certain chapters where testator died before
January 1, 1985
- § 6104. Effect of duress, menace, fraud, or undue influence
- § 6105. Conditional will

CHAPTER 2. EXECUTION OF WILLS

- § 6110. Witnessed will
- § 6111. **Holographic will [1990 Amendment]**
- § 6111.5. **Admissibility of extrinsic evidence [1990 Addition]**
- § 6112. Witnesses; interested witnesses
- § 6113. Choice of law as to validity of execution of will

CHAPTER 3. REVOCATION AND REVIVAL

- § 6120. Revocation by subsequent will or by act
- § 6121. Revocation of will executed in duplicate
- § 6122. Dissolution or annulment of marriage; provisions revoked; no
revocation by other change in circumstances
- § 6123. Second will revoking first will; effect of revocation of second
will
- § 6124. Presumption that will destroyed with intent to revoke

CHAPTER 4. REFERENCE TO MATTERS OUTSIDE THE WILL

- § 6130. Incorporation by reference
- § 6131. References to acts and events of independent significance

CHAPTER 5. RULES OF CONSTRUCTION OF WILLS

Article 1. General Provisions

- § 6140. **Intention of testator [Substitute Comment]**
- § 6141. Choice of law as to meaning and effect of disposition in will
- § 6142. Will passes all property, including after-acquired property
- § 6143. Devisees as owners in common
- § 6144. Direction in will to convert real property to money
- § 6145. Common law rule of worthier title abolished
- § 6146. Failure of devisee to survive
- § 6147. Anti-lapse statute; substitute devisee
- § 6148. Failed devise
- § 6149. Conditions regarding "issue"
- § 6150. Devise to a class; time of vesting; afterborn member
- § 6151. Class gift to "heirs," "next of kin," "relatives," or the like

- § 6152. Half-bloods, adopted persons, persons born out of wedlock, stepchildren, and foster children
- § 6153. Presumption that testamentary disposition vests at testator's death
- § 6154. Classification of devises

**Article 2. Ascertaining Meaning of Language
Used in the Will**

- § 6160. Every expression to be given some effect; intestacy to be avoided
- § 6161. Construction of will as a whole
- § 6162. Words given their ordinary meaning; technical words

Article 3. Exoneration; Ademption

- § 6165. Rules of construction if testator's intention not indicated
- § 6170. No exoneration of lien where specific devise
- § 6171. Specific devise of securities
- § 6172. Unpaid proceeds of sale, condemnation, or insurance; property obtained as a result of foreclosure
- § 6173. Specifically devised property sold by conservator; proceeds of specifically devised property paid to conservator
- § 6174. Property given during testator's lifetime; ademption by satisfaction
- § 6175. Contract by testator for sale or transfer of specifically devised property
- § 6176. Encumbrance on specifically devised property after execution of will
- § 6177. Alteration of testator's interest in specifically devised property after execution of will
- § 6178. Rules stated in Sections 6172 to 6177 not exhaustive
- § 6179. Death of decedent before January 1, 1985

CHAPTER 6. CALIFORNIA STATUTORY WILL

Article 1. Definitions and Rules of Construction

- § 6200. Definitions and rules of construction that govern this chapter
- § 6201. "Testator"
- § 6202. "Spouse"
- § 6203. "Executor"
- § 6204. "Trustee"
- § 6205. "Descendants"
- § 6206. Reference to Uniform Gifts to Minors Act
- § 6207. Masculine pronouns; plural and singular words
- § 6208. Use of "shall" or "may" in statutory will

- § 6209. Manner of distribution to "descendants"
- § 6210. "Person"
- § 6211. **120-hour survival requirement [1990 Addition]**

Article 2. General Provisions

- § 6220. Persons who may execute statutory wills
- § 6221. Execution procedure
- § 6221.5. Execution of attestation clause
- § 6222. Types of statutory wills; contents
- § 6223. Selection of more than one or no property disposition clause
- § 6224. Titles of clauses disregarded
- § 6225. Revocation or amendment of statutory will
- § 6226. Effect of dissolution or annulment of testator's marriage

Article 3. Form and Full Text of Clauses

- § 6240. California statutory will form
- § 6241. California statutory will with trust form
- § 6242. Full text of paragraph 2.1 of all California statutory wills
- § 6243. Full text of property disposition clauses of California statutory will form
- § 6244. Full text of property disposition clauses of California statutory will with trust form
- § 6245. Mandatory clauses of all California statutory wills
- § 6246. Additional mandatory clauses for California statutory will with trust form
- § 6247. **Will includes only texts of clauses as they exist when will is executed [1990 Amendment]**
- § 6248. Application of general law

CHAPTER 7. UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT

- § 6300. Testamentary additions to trusts
- § 6301. Chapter does not invalidate devise made by will executed before September 17, 1965
- § 6303. Chapter citation

CHAPTER 8. TRUST FOR INSURANCE OR EMPLOYEE BENEFITS

- § 6320. Definitions
- § 6321. Designation of trustee as beneficiary, payee, or owner
- § 6322. Required provision in designator's will
- § 6323. Payment or transfer to trustee without administration
- § 6324. Effect of designator's debts

- § 6325. Jurisdiction of court
- § 6326. Applicability of Division 9
- § 6327. Appealable orders
- § 6328. Absence of qualified trustee
- § 6329. No effect on other trusts
- § 6330. Chapter as restatement and continuation of former law

CHAPTER 9. DEVISE SUBJECT TO CALIFORNIA UNIFORM TRANSFERS TO MINORS ACT

- § 6341. Devised property paid, delivered, or transferred to custodian subject to Uniform Gifts to Minors Act or Uniform Transfers to Minors Act
- § 6345. Successor or substitute custodians; compensation
- § 6347. Notice to and participation of custodian
- § 6348. Jurisdiction of court
- § 6349. Construction of chapter

CHAPTER 11. UNIFORM INTERNATIONAL WILLS ACT

- § 6380. Definitions
- § 6381. Validity of international will; application of chapter
- § 6382. Requirements for international will
- § 6383. Additional provisions concerning form of will
- § 6384. Certificate of authorized person
- § 6385. Effect of certificate
- § 6386. Revocation
- § 6387. Source and construction of this chapter
- § 6388. "Authorized person" includes California lawyer
- § 6389. Registry system
- § 6390. Chapter as restatement and continuation of former law

PART 2. INTESTATE SUCCESSION

- § 6400. Property subject to intestacy provisions
- § 6401. Intestate share of surviving spouse
- § 6402. Intestate share of heirs other than surviving spouse
- § 6402.5. Portion of decedent's estate attributable to decedent's predeceased spouse
- § 6403. Requirement that heir survive decedent
- § 6404. Escheat if no taker
- § 6406. Relatives of halfblood
- § 6407. Unborn relatives of decedent

- § 6408. Parent and child relationship
- § 6409. Advancements
- § 6410. Debt owed to decedent
- § 6411. Aliens
- § 6412. Dower and curtesy not recognized
- § 6413. Person related to decedent through two lines of relationships
- § 6414. Testator's death before January 1, 1985

PART 3. FAMILY PROTECTION

CHAPTER 1. TEMPORARY POSSESSION OF FAMILY DWELLING AND EXEMPT PROPERTY

- § 6500. Temporary right to remain in possession
- § 6501. Petition for order; notice of hearing

CHAPTER 2. SETTING ASIDE EXEMPT PROPERTY OTHER THAN FAMILY DWELLING

- § 6510. Setting aside exempt property
- § 6511. Petition for order; notice of hearing

CHAPTER 3. SETTING ASIDE PROBATE HOMESTEAD

- § 6520. Court may select and set aside probate homestead
- § 6521. Persons for whose use homestead to be set apart
- § 6522. Property out of which homestead selected [1990 Amendment]
- § 6523. Factors to be considered in setting apart homestead
- § 6524. Duration of homestead; rights of parties
- § 6525. Petition; notice of hearing
- § 6526. Liability of property set apart as homestead for claims against estate
- § 6527. Modification or termination of homestead right
- § 6528. Declared homestead not affected

CHAPTER 4. FAMILY ALLOWANCE

- § 6540. Persons for whom family allowance may be made
- § 6541. Grant or modification; petition; notice of hearing
- § 6542. Time of commencement of allowance
- § 6543. Termination of allowance
- § 6544. Cost of proceeding paid as expense of administration
- § 6545. No stay on appeal if undertaking furnished

CHAPTER 5. SPOUSE OR CHILD OMITTED FROM WILL

Article 1. Omitted Spouse

- § 6560. Share of omitted spouse who married testator after execution of will
- § 6561. Circumstances where spouse does not receive share
- § 6562. Manner of satisfying share of omitted spouse

Article 2. Omitted Children

- § 6570. Share of omitted child born or adopted after execution of will
- § 6571. No share if child intentionally omitted or otherwise provided for
- § 6572. Testator's erroneous belief
- § 6573. Manner of satisfying share of omitted child

Article 3. Testator's Death Before January 1, 1985

- § 6580. Chapter not applicable where testator died before January 1, 1985

CHAPTER 6. SMALL ESTATE SET-ASIDE

- § 6600. "Decedent's estate" defined; exclusions in determining estate of the decedent or its value
- § 6601. "Minor child" defined
- § 6602. Petition to set aside estate; maximum value
- § 6603. Venue
- § 6604. Contents of petition
- § 6605. Filing of petition
- § 6606. Who may file
- § 6607. Notice of hearing
- § 6608. Inventory and appraisal
- § 6609. Court order
- § 6610. Effect of court order
- § 6611. **Liability for unsecured debts of decedent [1990 Amendment]**
- § 6612. Order where estate not set aside
- § 6613. Attorney's fee
- § 6614. Chapter not applicable where decedent died before July 1, 1987
- § 6615. Reference to provision of former law deemed reference to provision of this chapter

PART 4. ESCHEAT OF DECEDENT'S PROPERTY

- § 6800. Escheat of property of decedent
- § 6801. Real property in this state
- § 6802. Tangible personal property customarily kept in this state
- § 6803. Tangible personal property subject to control of superior court in this state
- § 6804. Intangible personal property of decedent domiciled in this state
- § 6805. Intangible personal property subject to control of superior court in this state
- § 6806. Benefits distributable from certain trusts

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS**PART 1. GENERAL PROVISIONS****CHAPTER 1. PASSAGE OF DECEDENT'S PROPERTY**

- § 7000. Passage of decedent's property
- § 7001. Limitations on passage of decedent's property

CHAPTER 2. JURISDICTION AND COURTS**Article 1. Jurisdiction and Venue**

- § 7050. Jurisdiction and authority of court or judge
- § 7051. Venue where decedent domiciled in this state
- § 7052. Venue where decedent not domiciled in this state

Article 2. Disqualification of Judge

- § 7060. Disqualification of judge

Article 3. Transfer of Proceedings

- § 7070. Grounds for transfer
- § 7071. Place of transfer
- § 7072. Retransfer

CHAPTER 3. RULES OF PROCEDURE**Article 1. Trial by Jury**

- § 7200. Trial by jury

Article 2. New Trials

- § 7220. New trial

Article 3. Appeals

- § 7240. Appealable orders and refusals to make orders
- § 7241. Stay on appeal
- § 7242. Transitional provision

Article 3.5. Judgments and Orders

- § 7250. Effect of court authorization or approval

Article 4. Orders and Transactions Affecting Property

- § 7260. "Transaction" defined
- § 7261. Court-ordered real property transaction; statement in instrument
- § 7262. Effect of court-ordered transaction
- § 7263. Recording of order affecting title to real property

Article 5. United States as Interested Person

- § 7280. Rights of United States where federal allowance made to decedent's estate

CHAPTER 4. PUBLIC ADMINISTRATORS**Article 1. Taking Temporary Possession or Control of Property**

- § 7600. Report of public employee to inform public administrator
- § 7600.5. Giving notice of death of patient to public administrator
- § 7601. Duty of public administrator to take control of property
- § 7602. Search for property, will, and instructions for disposition of remains
- § 7603. Providing information and access to public administrator
- § 7604. Subsequent appointment of another as personal representative; public administrator's expenses and fees

Article 2. Appointment as Personal Representative

- § 7620. Petition for appointment; court-ordered appointment
- § 7621. Procedure for appointment; bond fee
- § 7622. Manner of administration; compensation of public administrator [Substitute Comment]
- § 7623. Additional compensation [Substitute Comment]
- § 7624. Money remaining after final distribution of estate

Article 3. Deposit of Money of Estate

- § 7640. Deposit with financial institution or county treasurer
- § 7641. Withdrawals
- § 7642. Interest or dividends
- § 7643. County treasurer's duties with reference to deposit

§ 7644. Abandoned deposit in financial institution

Article 4. Summary Disposition of Small Estates

§ 7660. Estates subject to summary disposition

§ 7661. Collection and sale of property

§ 7662. **Priority for payments from estate [Substitute Comment]**

§ 7663. **Distribution of property [1990 Amendment]**

§ 7664. **Liability for decedent's unsecured debts [1990 Amendment]**

§ 7665. Statement showing property and disposition; receipts and records of expenditures

§ 7666. **Compensation of public administrator and attorney for public administrator [Substitute Comment]**

PART 2. OPENING ESTATE ADMINISTRATION

CHAPTER 1. COMMENCEMENT OF PROCEEDINGS

§ 8000. Petition

§ 8001. Failure of person named executor to petition

§ 8002. Contents of petition

§ 8003. Setting and notice of hearing

§ 8004. Opposition

§ 8005. Hearing; examination and compelling attendance of witnesses; matters to be established

§ 8006. Court order

§ 8007. Determination of jurisdiction conclusive

CHAPTER 2. NOTICE OF HEARING

Article 1. Contents

§ 8100. Form of notice of hearing

Article 2. Service of Notice of Hearing

§ 8110. Time for service; manner; persons to be served

§ 8111. Service on Attorney General

§ 8112. Notice to creditors and public entity claimants

§ 8113. Notice involving foreign citizen

Article 3. Publication

§ 8120. Publication required

§ 8121. Time and manner of publication

§ 8122. Good faith compliance with publication requirement

§ 8123. Type size

§ 8124. Affidavit of publication

- § 8125. Contents of subsequent published notice

CHAPTER 3. PROBATE OF WILL

Article 1. Production of Will

- § 8200. Delivery of will
§ 8201. Order to produce will
§ 8202. Will detained outside California

Article 2. Proof of Will

- § 8220. Evidence of subscribing witness
§ 8221. Proof where no subscribing witness available
§ 8222. Holographic will
§ 8223. Lost or destroyed will
§ 8224. Preserving testimony; admissibility in subsequent proceeding
§ 8225. Admission of will to probate
§ 8226. Effect of admission of will to probate

Article 3. Contest of Will

- § 8250. Summons; persons to be served; time for responsive pleading; executor's duty to defend will
§ 8251. Responsive pleading
§ 8252. Trial
§ 8253. Evidence of execution
§ 8254. Judgment

Article 4. Revocation of Probate

- § 8270. Time to petition for revocation; eligible petitioners; contents of petition
§ 8271. Summons; service; time for responsive pleading; failure timely to respond
§ 8272. Revocation; effect of revocation

CHAPTER 4. APPOINTMENT OF PERSONAL REPRESENTATIVE

Article 1. General Provisions

- § 8400. Appointment necessary
§ 8401. Deposit of money or other property subject to withdrawal by court order only
§ 8402. Persons ineligible for appointment
§ 8403. Oath
§ 8404. Statement of duties and liabilities [Substitute Comment]
§ 8405. Form of letters
§ 8406. Effect of reversal of appointment of personal representative

Article 2. Executors

- § 8420. Person named in will as executor
- § 8421. Person not named in will but apparently intended by will to be executor
- § 8422. Power conferred by will to designate executor
- § 8423. Successor trust company as executor
- § 8424. Minor named as executor
- § 8425. Court appointment of fewer than all persons named in will as executors

Article 3. Administrators With the Will Annexed

- § 8440. When appointment required
- § 8441. Priority for appointment
- § 8442. Authority of administrator with the will annexed

Article 4. Administrators

- § 8460. Appointment of administrator
- § 8461. **Priority for appointment [1990 Amendment]**
- § 8462. Priority of relatives
- § 8463. Surviving spouse
- § 8464. Minors and incompetent persons
- § 8465. Nominee of person entitled to appointment
- § 8466. Priority of creditor
- § 8467. Equal priority
- § 8468. Failure of persons having priority to claim appointment
- § 8469. **Conservator or guardian who does not meet requirements of Section 8461 [1990 Addition]**

Article 5. Bond

- § 8480. Bond required
- § 8481. Waiver of bond
- § 8482. Amount of bond
- § 8483. Reduction of bond by deposit of assets
- § 8484. Petition to reduce amount of bond
- § 8485. Substitution or release of sureties
- § 8486. Cost of bond
- § 8487. Law governing bond
- § 8488. Statute of limitation for action against sureties on bond

Article 6. Removal from Office

- § 8500. Procedure for removal
- § 8501. Revocation of letters
- § 8502. Grounds for removal

- § 8503. Removal at request of person with higher priority
- § 8504. Subsequent probate of will
- § 8505. Contempt for disobeying court order

Article 7. Changes in Administration

- § 8520. Vacancy in office of personal representative
- § 8521. Vacancy where other personal representatives remain
- § 8522. Vacancy where no personal representatives remain
- § 8523. Interim protection of estate
- § 8524. Powers and duties of successor personal representative
- § 8525. Effect of vacancy

Article 8. Special Administrators

- § 8540. Grounds for appointment; term of office
- § 8541. Procedure for appointment
- § 8542. Issuance of letters
- § 8543. Waiver of bond
- § 8544. Special powers, duties, and obligations
- § 8545. Special administrator with powers and duties of a general personal representative
- § 8546. Termination of authority
- § 8547. **Compensation of special administrator and attorney for special administrator [Substitute Comment]**

Article 9. Nonresident Personal Representative

- § 8570. "Nonresident personal representative" defined
- § 8571. Bond of nonresident personal representative
- § 8572. Secretary of State as attorney for service
- § 8573. Statement of address
- § 8574. Manner of service
- § 8575. Proof of service
- § 8576. Effect of service; time limits for answer or hearing of motion
- § 8577. Removal from office for failure to file statement of address

PART 3. INVENTORY AND APPRAISAL

CHAPTER 1. GENERAL PROVISIONS

- § 8800. Inventory and appraisal required
- § 8801. Supplemental inventory and appraisal
- § 8802. Form of inventory and appraisal
- § 8803. Notice of filing of inventory and appraisal
- § 8804. Failure to timely file inventory and appraisal

CHAPTER 2. INVENTORY**Article 1. General Provisions**

- § 8850. Contents of inventory
- § 8851. Discharge or devise of claims
- § 8852. Oath of personal representative

Article 2. Discovery of Property of Decedent

- § 8870. Citation to appear and be examined concerning decedent's property
- § 8871. Interrogatories
- § 8872. Examination
- § 8873. Citation to appear and account
- § 8874. Wrongful taking, concealment, or disposition of property in estate

CHAPTER 3. APPRAISAL**Article 1. Procedure**

- § 8900. Appraisal by personal representative, probate referee, and independent expert
- § 8901. Appraisal by personal representative
- § 8902. Appraisal by probate referee
- § 8903. Waiver of appraisal by probate referee
- § 8904. Appraisal by independent expert
- § 8905. Verification of appraisal
- § 8906. Objection to appraisal
- § 8907. Fee for appraisal by personal representative [Substitute Comment]
- § 8908. Appraisal report, backup data, and justification of appraisal
- § 8909. Retention of records by probate referee

Article 2. Designation and Removal of Probate Referee

- § 8920. Designation by court
- § 8921. Designation at request of personal representative
- § 8922. Discretion not to designate person as probate referee
- § 8923. Disqualification of probate referee
- § 8924. Removal of probate referee

Article 3. Time for Probate Referee Appraisal

- § 8940. Time required for appraisal or status report
- § 8941. Hearing and order

Article 4. Commission and Expenses of Probate Referee

- § 8960. Payment of commission and expenses
- § 8961. Amount of commission and expenses

- § 8963. Maximum and minimum commissions
- § 8964. Division of commission between referees

Article 5. Transitional Provision

- § 8980. Transitional provision

PART 4. CREDITOR CLAIMS

CHAPTER 1. GENERAL PROVISIONS

- § 9000. "Claim" defined
- § 9001. Notice to creditors
- § 9002. Claim requirement
- § 9003. Payment of claims
- § 9004. Application of part

CHAPTER 2. NOTICE TO CREDITORS

- § 9050. Notice required [1990 Amendment]
- § 9051. Time of notice [1990 Amendment]
- § 9052. Form of notice [1990 Amendment]
- § 9053. Immunity of personal representative
- § 9054. When notice not required

CHAPTER 3. TIME FOR FILING CLAIMS

- § 9100. Claim period [1990 Amendment]
- § 9101. Time not extended by vacancy in office
- § 9102. Where personal representative acts on claim after expiration of time
- § 9103. Late claims [1990 Amendment]
- § 9104. Amended or revised claim

CHAPTER 4. FILING OF CLAIMS

- § 9150. How claim is filed
- § 9151. Documentary support of claim
- § 9152. Claim based on written instrument
- § 9153. Form for claim
- § 9154. Waiver of formal defects

CHAPTER 5. CLAIMS BY PUBLIC ENTITIES

- § 9200. Claim by public entity required
- § 9201. Claims governed by special statutes [1990 Amendment]
- § 9202. Claim by Director of Health Services
- § 9203. Distribution before claim
- § 9204. Priority of claims not affected by chapter
- § 9205. Limitation on application of chapter

CHAPTER 6. ALLOWANCE AND REJECTION OF CLAIMS

- § 9250. Procedure by personal representative
- § 9251. Procedure by court
- § 9252. Where personal representative is creditor
- § 9253. Effect of statute of limitations
- § 9254. Contest of allowed and approved claims
- § 9255. Partial allowance
- § 9256. Failure of personal representative or court to act

CHAPTER 7. CLAIMS ESTABLISHED BY JUDGMENT

- § 9300. Money judgment against decedent
- § 9301. Money judgment against personal representative
- § 9302. Enforcement of nonmoney judgment
- § 9303. Property subject to execution lien
- § 9304. Converting attachment lien to judgment lien

CHAPTER 8. CLAIMS IN LITIGATION

Article 1. Claim Where No Pending Action or Proceeding

- § 9350. Application of article
- § 9351. Claim prerequisite to bringing action
- § 9352. Tolling of statute of limitations
- § 9353. Bar of rejected claims
- § 9354. Venue and procedure for action on claim

Article 2. Claim Where Action or Proceeding Pending

- § 9370. Claim prerequisite to continuing action

Article 3. Litigation Where No Claim Required

- § 9390. Claim covered by insurance [1990 Amendment]
- § 9391. Enforcement of security interest [1990 Amendment]
- § 9392. Liability of distributee [1990 Addition]

Article 4. Transitional Provision

- § 9399. Transitional provision for claims in litigation

PART 5. ESTATE MANAGEMENT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Duties and Liabilities of Personal Representative

- § 9600. Duty to manage estate using ordinary care and diligence
- § 9601. Measure of liability for breach of fiduciary duty
- § 9602. Measure of liability for interest

- § 9603. Other remedies not affected
- § 9604. Enforceability of promise of personal representative personally to answer in damages or to pay debts of decedent
- § 9605. Claims against personal representative
- § 9606. Liability of personal representative who signs instrument

Article 2. Court Supervision

- § 9610. Extent of court supervision
- § 9611. Instructions from or confirmation by court
- § 9613. Order compelling personal representative to act or not to act
- § 9614. Suspension of powers of personal representative

Article 3. Summary Determination of Disputes

- § 9620. Submission of dispute to temporary judge
- § 9621. Submission of dispute to arbitration

Article 4. Joint Personal Representatives

- § 9630. Authority of joint personal representatives to act
- § 9631. Liability of joint personal representative for breach of duty by another personal representative

Article 5. Independent Administration

- § 9640. Independent administration authority not limited

Article 6. Transitional Provision

- § 9645. Matters pending on July 1, 1988; orders made or actions taken before July 1, 1988

CHAPTER 2. ESTATE MANAGEMENT GENERALLY

- § 9650. Possession and management of decedent's estate
- § 9651. **Taking possession of property in good faith [Substitute Comment]**
- § 9652. Duty to keep cash invested
- § 9653. Duty to recover property transferred in fraud of creditors
- § 9654. Action by heirs or devisees for possession of or to quiet title to property
- § 9655. Voting rights with respect to corporate shares or memberships or property
- § 9656. Insuring estate property; insuring personal representative against liability
- § 9657. Profit or loss to the estate

CHAPTER 2.5. HIRING AND PAYING ATTORNEYS, ADVISERS, AND OTHERS [NOT ENACTED]

Chapter 2.5 (consisting of Sections 9680 to 9686, inclusive, was recommended for enactment by the California Law Revision Commission. See *Recommendations Relating to Probate Law: Hiring and Paying Attorneys, Advisors, and Others; Compensation of Personal Representative*, 20 Cal. L. Revision Comm'n Reports 31 (1990). The *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990), included Comments to those sections. However, since the sections recommended by the Commission were not enacted by the Legislature, the Comments to the provisions of Chapter 2.5 (commencing with Section 9680) are no longer relevant to the new Probate Code which does not contain the sections.

CHAPTER 3. DEPOSIT OF MONEY AND PERSONAL PROPERTY WITH FINANCIAL INSTITUTIONS

- § 9700. Deposit in insured account
- § 9701. Deposit of personal property with trust company
- § 9702. Deposit of securities in securities depository
- § 9703. Accounts and deposits withdrawable only upon court order
- § 9704. Direct distribution by depository
- § 9705. Interest on deposits by trust company

CHAPTER 4. INVESTMENTS AND PURCHASE OF PROPERTY

- § 9730. Investments permitted without prior court authorization
- § 9731. Investment in federal or state securities with court authorization
- § 9732. Investment of money as provided in will
- § 9733. Purchase of annuity granted in will
- § 9734. Exercise of option right
- § 9735. Purchase of securities or commodities sold short
- § 9736. Holding securities in name of nominee or in other form
- § 9737. Exercise of subscription rights

CHAPTER 5. OPERATION OF DECEDENT'S BUSINESS

- § 9760. Operation of decedent's business other than partnership
- § 9761. Account by decedent's surviving partner
- § 9762. Personal representative continuing as partner in decedent's general partnership

- § 9763. Exercise of decedent's partnership rights by personal representative

CHAPTER 6. ABANDONMENT OF TANGIBLE PERSONAL PROPERTY

- § 9780. Abandonment of tangible personal property
§ 9781. Court authorization or approval not required unless will otherwise provides
§ 9782. Notice of proposed disposition or abandonment
§ 9783. Objection to proposed disposition or abandonment
§ 9784. Restraining order
§ 9785. Notice not required where consent or waiver
§ 9786. Notice of hearing of petition for court authorization
§ 9787. Waiver of right to court review
§ 9788. Tender of possession of property to person objecting

CHAPTER 7. BORROWING, REFINANCING, AND ENCUMBERING PROPERTY

- § 9800. Borrowing money, refinancing, and encumbering property
§ 9801. Acting jointly with other owners of interests in estate property
§ 9802. Petition
§ 9803. Notice of hearing
§ 9804. Court order
§ 9805. Execution of instrument
§ 9806. Effectiveness of encumbrance
§ 9807. Deficiency in case of foreclosure or sale under security interest or deed of trust

CHAPTER 8. ACTIONS AND PROCEEDINGS BY OR AGAINST PERSONAL REPRESENTATIVE

- § 9820. Authority to sue and defend
§ 9822. Action on bond of former personal representative
§ 9823. Partition actions

CHAPTER 9. COMPROMISE OF CLAIMS AND ACTIONS; EXTENSION, RENEWAL, OR MODIFICATION OF OBLIGATIONS

- § 9830. Authority to compromise claims and actions and to extend, renew, or modify obligations
§ 9831. Compromise before time for filing creditors' claims has expired
§ 9832. Matters relating to real property [1990 Amendment]

- § 9833. Compromise in excess of specified amount
- § 9834. Claim of estate against personal representative or estate attorney; debt or obligation of personal representative or estate attorney to estate
- § 9835. Wrongful death and personal injury claims
- § 9836. Court having authority to give authorization
- § 9837. Petition for court authorization; notice of hearing
- § 9838. Transfer of property to effectuate court approved compromise or settlement
- § 9839. Claim paid for less than full amount

**CHAPTER 10. ACCEPTANCE OF DEED IN LIEU OF
FORECLOSURE OR TRUSTEE'S SALE; GRANT OF
PARTIAL SATISFACTION OR PARTIAL
RECONVEYANCE**

- § 9850. Acceptance of deed in lieu of foreclosure or trustee's sale
- § 9851. Grant of partial satisfaction or partial reconveyance

**CHAPTER 11. CONVEYANCE OR TRANSFER OF
PROPERTY CLAIMED TO BELONG TO
DECEDENT OR OTHER PERSON**

- § 9860. Petition for order
- § 9861. Notice of hearing
- § 9862. Continuance for preparation for hearing
- § 9864. Denial of petition if objection based on venue
- § 9865. Abatement of petition if civil action pending
- § 9866. Denial of petition if matter should be determined by civil action
- § 9867. Order
- § 9868. Effect of order; execution and effect of conveyance or transfer

**CHAPTER 12. PURCHASE OF CLAIMS OR ESTATE
PROPERTY BY PERSONAL REPRESENTATIVE OR
PERSONAL REPRESENTATIVE'S ATTORNEY**

- § 9880. Prohibition against purchase of estate property or claim against estate
- § 9881. Purchase with consent of heirs or devisees
- § 9882. Purchase where authorized by will
- § 9883. Petition for order under Section 9881 or 9882
- § 9884. Purchase pursuant to contract of decedent to sell
- § 9885. Option to purchase given in will

**CHAPTER 13. DEDICATION OR CONVEYANCE TO
GOVERNMENTAL ENTITY; EASEMENTS
AND ACCESS RIGHTS**

- § 9900. Dedication or conveyance of real property to governmental entity; dedication or conveyance of easement; conveyance or release of access rights
- § 9901. Petition; notice of hearing

CHAPTER 14. EXCHANGE OF PROPERTY

- § 9920. Court authorization for exchange
- § 9921. Petition
- § 9922. Notice of hearing
- § 9923. Error does not invalidate proceedings

CHAPTER 15. LEASES

- § 9940. Effect of including option to purchase in lease
- § 9941. Leases permitted without court authorization [1990 Amendment]
- § 9942. Court authorization for lease; proposed lease that includes option to purchase
- § 9943. Petition for order
- § 9944. Notice of hearing
- § 9945. Hearing and order
- § 9946. Terms and conditions of leases
- § 9947. Maximum term of lease
- § 9948. Execution and effectiveness of lease

**CHAPTER 16. GRANTING OPTION TO PURCHASE
REAL PROPERTY**

- § 9960. Authority to grant option
- § 9961. Petition
- § 9962. Minimum purchase price
- § 9963. Notice of hearing
- § 9964. Order
- § 9965. Expiration of record of recorded option
- § 9966. Error does not invalidate proceedings

CHAPTER 17. OPTION TO PURCHASE GIVEN IN WILL

- § 9980. Option to purchase given in will
- § 9981. Order; petition; notice of hearing
- § 9982. Protection of rights of creditors
- § 9983. Error does not invalidate proceedings

CHAPTER 18. SALES**Article 1. General Provisions**

- § 10000. When estate property may be sold
- § 10001. Court order requiring sale of property
- § 10002. Directions in will as to mode of selling or property to be sold
- § 10003. Discretion of personal representative as to property to be sold and mode of selling
- § 10004. Sale of assets, whether real or personal, as a unit
- § 10005. Sale for more or less than appraised value
- § 10006. Cotenant's consent to sale

Article 2. Contract With Agent, Broker, or Auctioneer

- § 10150. Contract with agent or broker
- § 10151. Contract with auctioneer

Article 3. Compensation of Agent, Broker, or Auctioneer

- § 10160. Limitation on liability of estate
- § 10160.5. No commission where broker is purchaser
- § 10161. Compensation and fees to be in reasonable amount determined by court
- § 10162. Limitation on compensation of agent or broker producing successful overbidder
- § 10162.3. Compensation where there is no exclusive contract and sale is made to purchaser produced by agent or broker on bid returned to court or on overbid
- § 10162.5. Compensation where there is an exclusive contract and no other broker or agent is involved in sale
- § 10162.6. Exclusive contract providing that no compensation payable if sale confirmed to particular purchaser named in contract
- § 10162.7. Compensation where there is an exclusive contract and sale is made to purchaser produced by another agent or broker on bid returned to court or on overbid
- § 10163. Compensation where original bid made by purchaser not produced by agent or broker and sale made to overbidder produced by agent or broker
- § 10164. Compensation where sale made on increased bid by purchaser not produced by agent or broker
- § 10165. Sale made on increased bid by purchaser produced by agent or broker; compensation where original bid returned to

- court made by a purchaser produced by another agent or broker; compensation where another agent or broker holds exclusive right to sell contract
- § 10166. Condition of bid that certain amount of bid be paid to agent or broker
- § 10167. Compensation and expenses of auctioneer
- § 10168. Agreement dividing compensation between cooperating agents and brokers [1990 Addition]

Article 4. Special Provisions Applicable to Particular Types of Property

- § 10200. Sale or surrender for redemption or conversion of securities
- § 10201. Sale or withdrawal of savings accounts and mutual capital certificates
- § 10202. Sale of subscription rights
- § 10203. Sale of decedent's leasehold interest
- § 10204. Sale of decedent's partnership interest
- § 10205. Sale of decedent's chose in action
- § 10206. Sale of decedent's contract right to purchase real property
- § 10207. Sale to grazing or pasture association in conformity with the federal Consolidated Farm and Rural Development Act

Article 5. Sale of Personal Property

- § 10250. Notice of sale
- § 10251. Shortening time of notice of sale
- § 10252. Sale without notice
- § 10253. Contents of notice of sale
- § 10254. Sale at public auction
- § 10255. Private sale
- § 10256. Bids to comply with notice of sale
- § 10257. Sale for cash or on credit
- § 10258. Court order relaxing requirements for credit sale
- § 10259. Passage of title without court confirmation
- § 10260. Report of sale and petition for confirmation of sale
- § 10261. Hearing on petition for confirmation of sale
- § 10262. Overbid
- § 10263. Proof that notice of sale was given
- § 10264. Error does not invalidate proceedings

Article 6. Sale of Real Property

- § 10300. Publication of notice of sale
- § 10301. Notice of sale where property appraised at not more than \$5,000

- § 10302. Shortening time of notice of sale
- § 10303. Sale without notice where will directs or authorizes sale
- § 10304. Contents of notice of sale
- § 10305. Sale at public auction
- § 10306. Private sale
- § 10307. Bids to comply with notice of sale
- § 10308. Report of sale and petition for confirmation of sale
- § 10309. Minimum price for private sale of real property
- § 10310. Hearing on petition for confirmation of sale
- § 10311. Overbid
- § 10312. Proof that notice of sale was given
- § 10313. Order confirming or vacating sale
- § 10314. Conveyance or assignment after confirmation
- § 10315. Sale on credit
- § 10316. Error does not invalidate proceedings

Article 7. Vacating Sale for Purchaser's Default; Liability of Defaulting Purchaser for Damages

- § 10350. Order vacating sale and directing resale; liability of defaulting purchaser
- § 10351. Order vacating sale and confirming sale to new high bidder

Article 8. Application of Sale Proceeds of Encumbered Property; Sale to Lienholder

- § 10360. Definitions
- § 10361. Application of purchase money on sale of encumbered property
- § 10362. Payment to clerk of court
- § 10363. Sale to lienholder

Article 9. Damages and Recovery of Property

- § 10380. Damages for neglect or misconduct of personal representative
- § 10381. Liquidated damages for fraudulent sale of real property
- § 10382. Statute of limitation for action for recovery of property

PART 6. INDEPENDENT ADMINISTRATION OF ESTATES

CHAPTER 1. GENERAL PROVISIONS

- § 10400. Citation of this part
- § 10401. "Court supervision" defined
- § 10402. "Full authority" defined

- § 10403. "Limited authority" defined
- § 10404. This part not applicable if will so provides
- § 10404.5. [Repealed 1990] [Substitute Comment]
- § 10405. Special administrator
- § 10406. Application of part where independent administration authority granted under repealed Probate Code [Substitute Comment]

CHAPTER 2. GRANTING OR REVOKING INDEPENDENT ADMINISTRATION AUTHORITY

- § 10450. Petition for order granting independent administration authority
- § 10451. Notice of hearing
- § 10452. Hearing and order
- § 10453. Amount of bond
- § 10454. Revoking or limiting independent administration authority

CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT ADMINISTRATION AUTHORITY

Article 1. General Provisions

- § 10500. Administration without court supervision [Substitute Comment]
- § 10501. Matters requiring court supervision [Substitute Comment]
- § 10502. Powers exercisable under independent administration authority
- § 10503. Manner of sale of property under independent administration authority

Article 2. Powers Exercisable Only After Giving Notice of Proposed Action

- § 10510. Article describes powers that may be exercised only after giving notice of proposed action
- § 10511. Selling or exchanging real property
- § 10512. Selling or incorporating decedent's business
- § 10513. Abandoning tangible personal property
- § 10514. Borrowing; encumbering estate property
- § 10515. Granting option to purchase real property
- § 10516. Transferring to person given option to purchase in will
- § 10517. Completing contract of decedent to convey or transfer property

- § 10518. Determining claims to property claimed to belong to decedent or other person
- § 10519. Making a disclaimer

Article 3. Powers the Exercise of Which Requires Giving of Notice of Proposed Action Under Some Circumstances

- § 10530. Article describes powers that may in some circumstances be exercised only after giving notice of proposed action
- § 10531. Managing and controlling estate property generally
- § 10532. Entering into contracts
- § 10533. Investing money of the estate
- § 10534. Continuing operation of decedent's business
- § 10535. Paying family allowance
- § 10536. Leasing real and personal property
- § 10537. Selling or exchanging personal property
- § 10538. Granting or extending exclusive right to sell property

Article 4. Powers Exercisable Without Giving Notice of Proposed Action

- § 10550. Article describes powers that may be exercised without giving notice of proposed action
- § 10551. Powers that any personal representative may exercise without court supervision
- § 10552. Acting on claims against estate
- § 10553. Commencing and defending actions and proceedings
- § 10554. Modifying terms of obligation
- § 10555. Conveying property to effectuate a specific power
- § 10556. Paying taxes, assessments, and expenses
- § 10557. Purchasing annuity granted in will
- § 10558. Exercising option
- § 10559. Purchasing securities or commodities sold short
- § 10560. Holding securities in name of nominee or in other form
- § 10561. Exercising security subscription or conversion rights
- § 10562. Making repairs and improvements
- § 10563. Accepting deed in lieu of foreclosure or trustee's sale
- § 10564. Giving partial satisfaction of mortgage or partial reconveyance under trust deed
- § 10565. [Repealed 1990] [Substitute Comment]

**CHAPTER 4. NOTICE OF PROPOSED ACTION
PROCEDURE**

- § 10580. When notice of proposed action required or permitted
- § 10581. Persons to whom notice must be given

- § 10582. Consent to proposed action
- § 10583. Waiver of notice
- § 10584. Revocation of consent or waiver
- § 10585. Form and contents of notice of proposed action
- § 10585.5. **[Repealed 1990] [Substitute Comment]**
- § 10586. Mailing or delivery of notice
- § 10587. Delivery or mailing of objection to proposed action
- § 10588. Restraining order
- § 10589. **Court supervision and notice of hearing required if personal representative has notice of objection [Substitute Comment]**
- § 10590. Effect of failure to object to proposed action
- § 10591. Protection of persons dealing in good faith with personal representative
- § 10592. Failure of personal representative to satisfy statutory requirements grounds for removal from office

**PART 7. COMPENSATION OF PERSONAL
REPRESENTATIVE
AND ESTATE ATTORNEY**

[There is a Substitute Comment for Part 7.]

CHAPTER 1. AMOUNT OF COMPENSATION

Article 1. Compensation of Personal Representative

- § 10800. **Compensation for ordinary services [Substitute Comment]**
- § 10801. **Additional compensation for extraordinary services [Substitute Comment]**
- § 10802. **Compensation provided by decedent's will [Substitute Comment]**
- § 10803. **Agreement for higher compensation void [Substitute Comment]**
- § 10804. **No compensation as estate attorney unless authorized by will or court order [Substitute Comment]**
- § 10805. **Apportionment of compensation [Substitute Comment]**

Article 2. Compensation of Estate Attorney [1990 Addition]

- § 10810. **Compensation of estate attorney [1990 Addition]**

**CHAPTER 2. ALLOWANCE OF COMPENSATION
BY COURT**

- § 10830. Partial allowance of compensation [Substitute Comment]
- § 10831. Final compensation [Substitute Comment]
- § 10832. Limitation on allowance of compensation for extraordinary services [Substitute Comment]

CHAPTER 3. APPLICATION OF PART

- § 10850. Application of provisions of this part [Substitute Comment]

PART 8. ACCOUNTS

[There is a Substitute Comment for Part 8.]

CHAPTER 1. GENERAL PROVISIONS

- § 10900. Contents of account [Substitute Comment]
- § 10901. Production of supporting documents
- § 10902. Procedure on account

CHAPTER 2. WHEN ACCOUNT REQUIRED

- § 10950. Court-ordered account
- § 10951. Final account
- § 10952. Account after authority terminated
- § 10953. Account where personal representative dies, absconds, or becomes incapacitated
- § 10954. When account is not required [Substitute Comment]

CHAPTER 3. SETTLEMENT OF ACCOUNT

- § 11000. Notice of hearing [Substitute Comment]
- § 11001. Contest of account
- § 11002. Hearing on account
- § 11003. Litigation expenses [Substitute Comment]
- § 11004. Expenses of personal representative
- § 11005. Settlement of claim not properly filed

CHAPTER 4. COMPELLING ACCOUNT

- § 11050. Sanction for failure to account
- § 11051. Citation
- § 11052. Punishment for contempt

PART 9. PAYMENT OF DEBTS**CHAPTER 1. DEFINITIONS AND PRELIMINARY PROVISIONS****Article 1. Definitions**

- § 11400. Application of definitions
- § 11401. Debt
- § 11402. Wage claim

Article 2. Proceedings Commenced Before July 1, 1988

- § 11405. Administration proceedings commenced before July 1, 1988

CHAPTER 2. GENERAL PROVISIONS

- § 11420. Priority for payment
- § 11421. Immediate payment of priority debts
- § 11422. Payment of debts on court order
- § 11423. Interest
- § 11424. Duty of personal representative to pay debts pursuant to court order
- § 11425. Payment of debt not due
- § 11426. Trust for installment or contingent debt
- § 11427. Disputed and contingent debts
- § 11428. Deposit for missing creditor
- § 11429. Unpaid creditor [1990 Amendment]

CHAPTER 3. ALLOCATION OF DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE

- § 11440. When allocation may be made
- § 11441. Petition for allocation
- § 11442. Inventory of property of surviving spouse
- § 11443. Notice of hearing
- § 11444. Allocation
- § 11445. Order implementing allocation
- § 11446. Funeral expenses and last illness expenses

PART 10. DISTRIBUTION OF ESTATE**CHAPTER 1. ORDER FOR DISTRIBUTION****Article 1. General Provisions**

- § 11600. Petition for distribution
- § 11601. Notice of hearing
- § 11602. Opposition to petition

- § 11603. Hearing and order
- § 11604. Distribution to person other than beneficiary
- § 11605. Conclusiveness of order

Article 2. Preliminary Distribution

- § 11620. Time for petition
- § 11621. Order for distribution
- § 11622. Bond
- § 11623. **Distribution under Independent Administration of Estates Act [1990 Amendment]**
- § 11624. Costs of proceeding

Article 3. Final Distribution

- § 11640. Petition and order
- § 11641. Distribution under court order
- § 11642. After-acquired or after-discovered property

CHAPTER 2. DETERMINATION OF PERSONS ENTITLED TO DISTRIBUTION

- § 11700. Petition
- § 11701. Notice of hearing
- § 11702. Responsive pleading
- § 11703. Attorney General as party
- § 11704. Hearing
- § 11705. Court order

CHAPTER 3. DISTRIBUTION OF PROPERTY IN ESTATE

- § 11750. Responsibility for distribution
- § 11751. Receipt for distributed property
- § 11752. Inventory by life tenant
- § 11753. Filing receipts and discharge

CHAPTER 4. DECEASED DISTRIBUTE

- § 11801. Distribution despite death of beneficiary
- § 11802. Manner of distribution

CHAPTER 5. DEPOSIT WITH COUNTY TREASURER

- § 11850. When deposit with county treasurer authorized
- § 11851. Deposit of money; sale of personal property and deposit of proceeds
- § 11852. Receipt by county treasurer
- § 11853. Copy of order for distribution
- § 11854. Claim of property deposited in county treasury

CHAPTER 6. DISTRIBUTION TO STATE

- § 11900. Distribution to State of California
- § 11901. Distribution in trust for a class
- § 11902. Disposition of property distributed to state
- § 11903. Claims against property distributed to state
- § 11904. No deposit in county treasury

**CHAPTER 7. PARTITION OR ALLOTMENT OF
PROPERTY**

- § 11950. Right to partition or allotment
- § 11951. Petition
- § 11952. Parties and notice
- § 11953. Disposition of property
- § 11954. Referees
- § 11955. Expenses
- § 11956. Effect of division

**CHAPTER 8. INTEREST AND INCOME ACCRUING
DURING ADMINISTRATION**

- § 12000. Application of chapter
- § 12001. Rate of interest
- § 12002. Income and expenses of specific devise
- § 12003. Interest on general pecuniary devise
- § 12004. Interest on annuity
- § 12005. Interest on devise for maintenance
- § 12006. Remaining income to residuary or intestate distributees
- § 12007. Law applicable where decedent died before July 1, 1989

PART 11. CLOSING ESTATE ADMINISTRATION**CHAPTER 1. TIME FOR CLOSING ESTATE**

- § 12200. Time required for closing or status report
- § 12201. Report of status of administration
- § 12202. Failure to petition or make report
- § 12203. Continuation of administration to pay family allowance
- § 12204. Failure of personal representative to comply with order
- § 12205. Sanction for failure to timely close estate [Substitute
Comment]
- § 12206. Testamentary limitation of time for administration

CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

- § 12250. Order of discharge
- § 12251. Discharge without administration
- § 12252. Administration after discharge

PART 12. ADMINISTRATION OF ESTATES OF MISSING PERSONS PRESUMED DEAD

- § 12400. "Missing person" defined
- § 12401. Presumption of death for purposes of administration
- § 12402. Manner of administration of missing person's estate
- § 12403. Jurisdiction of court
- § 12404. Petition for administration
- § 12405. Notice of hearing
- § 12406. Determination whether person is person presumed to be dead; search for missing person
- § 12407. Appointment of personal representative and determination of date of disappearance
- § 12408. Recovery of property by missing person upon reappearance

PART 13. NONDOMICILIARY DECEDENT**CHAPTER 1. DEFINITIONS**

- § 12500. Application of definitions
- § 12501. Ancillary administration
- § 12502. Foreign nation
- § 12503. Foreign nation personal representative
- § 12504. Local personal representative
- § 12505. Nondomiciliary decedent
- § 12506. Sister state
- § 12507. Sister state personal representative

CHAPTER 2. ANCILLARY ADMINISTRATION**Article 1. Opening Ancillary Administration**

- § 12510. Commencement of proceedings
- § 12511. Venue
- § 12512. Procedure
- § 12513. Preference for appointment as local personal representative

Article 2. Probate of Nondomiciliary Decedent's Will Admitted to Probate in Sister State or Foreign Nation

- § 12520. Proceedings governed by this article

- § 12521. Petition for probate of nondomiciliary decedent's will
- § 12522. Will admitted to probate in sister state
- § 12523. Will admitted to probate in foreign nation
- § 12524. Effect of admission of nondomiciliary decedent's will

Article 3. Application of General Provisions

- § 12530. Applicability of general provisions relating to estate administration

Article 4. Distribution of Property to Sister State Personal Representative

- § 12540. Order for distribution to sister state personal representative
- § 12541. Sale of real property and distribution of proceeds
- § 12542. Distribution where estate in sister state is insolvent

CHAPTER 3. COLLECTION OF PERSONAL PROPERTY OF SMALL ESTATE BY SISTER STATE PERSONAL REPRESENTATIVE WITHOUT ANCILLARY ADMINISTRATION

- § 12570. Collection of personal property of small estate without ancillary administration
- § 12571. Payment, delivery, or transfer of property to sister state personal representative
- § 12572. Action against holder of property to compel payment, delivery, or transfer
- § 12573. Liability of sister state personal representative who takes property under this chapter

CHAPTER 4. JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVE

- § 12590. Jurisdiction by act of foreign personal representative
- § 12591. Jurisdiction by act of decedent

DIVISION 8. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

PART 1. COLLECTION OR TRANSFER OF SMALL ESTATE WITHOUT ADMINISTRATION

CHAPTER 1. DEFINITIONS

- § 13000. Construction of words and phrases
- § 13002. Holder of the decedent's property
- § 13004. Particular item of property

§ 13006. Successor of the decedent

CHAPTER 2. GENERAL PROVISIONS

- § 13050. Exclusions in determining property or estate of decedent or its value
- § 13051. Authority of guardian, conservator, trustee, custodian, foreign personal representative, or attorney-in-fact
- § 13052. Date of valuation of property
- § 13053. Application of this part
- § 13054. Reference to provision of former law deemed reference to comparable provisions of Chapter 3

CHAPTER 3. AFFIDAVIT PROCEDURE FOR COLLECTION OR TRANSFER OF PERSONAL PROPERTY

- § 13100. Collection or transfer of personal property without probate
- § 13101. Furnishing affidavit or declaration
- § 13102. Presenting decedent's evidence of ownership
- § 13103. Inventory and appraisal of real property
- § 13104. Proof of identity
- § 13105. Transfer of property to successor
- § 13106. Protection of transferor from liability
- § 13106.5. Recording of affidavit or declaration where property is obligation secured by lien on real property
- § 13107. Claim against estate in probate
- § 13108. No pending probate proceeding; later probate proceeding not precluded
- § 13109. **Liability for decedent's unsecured debts [1990 Amendment]**
- § 13110. Liability to person having superior right
- § 13111. Restitution if estate proceeding commenced
- § 13112. Limitation on liability under Sections 13109 and 13110
- § 13113. Other remedies not affected
- § 13114. Payment of costs and fees of public administrator and costs of coroner
- § 13115. Chapter does not apply to real property
- § 13116. Chapter supplemental to other procedures

CHAPTER 4. COURT ORDER DETERMINING SUCCESSION TO REAL PROPERTY

- § 13150. No pending or completed probate proceeding
- § 13151. Petition for court order determining succession to real property

- § 13152. Contents of petition; inventory and appraisal
- § 13153. Notice of hearing
- § 13154. Court order
- § 13155. Effect of order
- § **13156. Liability for decedent's unsecured debts [1990
Amendment]**
- § 13157. Attorney's fee

CHAPTER 5. AFFIDAVIT PROCEDURE FOR REAL PROPERTY OF SMALL VALUE

- § 13200. Filing affidavit in superior court; inventory and appraisal
- § 13201. Filing fee
- § 13202. Filing; certified copy; recording
- § 13203. Effect of recorded affidavit
- § **13204. Liability for decedent's unsecured debts [1990
Amendment]**
- § 13205. Liability to person having superior right
- § 13206. Restitution if estate proceeding commenced
- § 13207. Limitation on liability under Sections 13204 and 13205
- § 13208. Other remedies not affected

PART 2. PASSAGE OF PROPERTY TO SURVIVING SPOUSE WITHOUT ADMINISTRATION

CHAPTER 1. GENERAL PROVISIONS

- § 13500. Necessity of administration
- § 13501. Property subject to administration
- § 13502. Election of administration
- § 13503. Election to transfer property to trustee
- § 13504. Property held in a revocable trust
- § 13505. Application of this part
- § 13506. Reference in statute or written instrument to repealed statutory provision

CHAPTER 2. RIGHT OF SURVIVING SPOUSE TO DISPOSE OF REAL PROPERTY

- § 13540. Right of surviving spouse to dispose of real property
- § 13541. Recording notice of interest in property
- § 13542. Dispositions under former law not affected

CHAPTER 3. LIABILITY FOR DEBTS OF DECEASED SPOUSE

- § 13550. Personal liability of surviving spouse
- § 13551. Limitation on liability
- § 13552. Effect of commencement of proceedings for administration of estate of deceased spouse
- § 13553. No liability if all property administered
- § 13554. Enforcement of liability [1990 Amendment]

CHAPTER 4. COLLECTION BY AFFIDAVIT OF COMPENSATION OWED TO DECEASED SPOUSE

- § 13600. Collection of salary or other compensation, not exceeding \$5,000, by affidavit
- § 13601. Contents of affidavit; proof of identity
- § 13602. Payment by employer
- § 13603. Protection of employer from liability
- § 13604. Enforcement of payment
- § 13605. Rights of heirs or devisees of deceased spouse not affected
- § 13606. Other methods of collecting compensation not affected

CHAPTER 5. DETERMINATION OR CONFIRMATION OF PROPERTY PASSING OR BELONGING TO SURVIVING SPOUSE

- § 13650. Filing of petition
- § 13651. Contents of petition
- § 13652. Filing petition in pending proceeding
- § 13653. Filing petition with petition for probate proceeding
- § 13654. Effect of petition
- § 13655. Notice of hearing
- § 13656. Court order
- § 13657. Effect of court order
- § 13658. Protection of interests of creditors of business of deceased spouse
- § 13659. Inventory and appraisal
- § 13660. Attorney's fee

DIVISION 9. TRUST LAW

PART 1. GENERAL PROVISIONS

- § 15000. Short title
- § 15001. General rule concerning application of division
- § 15002. Common law as law of state

- § 15003. **Effect of division on constructive and resulting trusts, fiduciary relationships, and entities and relationships not included in definition of "trust"; substantive law of constructive and resulting trusts not affected [1990 Amendment]**
- § 15004. Application of division to charitable trusts

PART 2. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUSTS

CHAPTER 1. CREATION AND VALIDITY OF TRUSTS

- § 15200. Methods of creating trust
- § 15201. Intention to create trust
- § 15202. Trust property
- § 15203. Trust purpose
- § 15204. Trust for indefinite or general purposes
- § 15205. Designation of beneficiary
- § 15206. Statute of Frauds
- § 15207. Oral trust of personal property
- § 15208. Consideration
- § 15209. Exception to doctrine of merger
- § 15210. Recording of trust relating to real property

CHAPTER 2. RESTRICTIONS ON VOLUNTARY AND INVOLUNTARY TRANSFERS

- § 15300. Restraint on transfer of income
- § 15301. Restraint on transfer of principal
- § 15302. Trust for support
- § 15303. Transferee or creditor cannot compel trustee to exercise discretion; liability of trustee for payment to or for beneficiary
- § 15304. Where settlor is a beneficiary
- § 15305. Claims for child or spousal support
- § 15306. Liability for public support
- § 15306.5. Rights of general creditors
- § 15307. Income in excess of amount for education and support subject to creditors' claims
- § 15308. Subsequent modification of court's order
- § 15309. Disclaimer not a transfer

CHAPTER 3. MODIFICATION AND TERMINATION OF TRUSTS

- § 15400. Presumption of revocability
- § 15401. Method of revocation by settlor; limit on modification or revocation pursuant to power of attorney
- § 15402. Power to revoke includes power to modify
- § 15403. Modification or termination of irrevocable trust by all beneficiaries
- § 15404. Modification or termination by settlor and all beneficiaries
- § 15405. Guardian ad litem
- § 15406. No conclusive presumption of fertility
- § 15407. Termination of trust; trustee's powers on termination
- § 15408. Trust with uneconomically low principal
- § 15409. Modification or termination in changed circumstances
- § 15410. Disposition of property upon termination
- § 15411. Combination of similar trusts
- § 15412. Division of trusts

PART 3. TRUSTEES AND BENEFICIARIES

CHAPTER 1. TRUSTEES

Article 1. General Provisions

- § 15600. Acceptance of trust by trustee
- § 15601. Rejection of trust; nonliability of person who rejects trust
- § 15602. Trustee's bond
- § 15603. Certificate of trustee

Article 2. Cotrustees

- § 15620. Actions by cotrustees
- § 15621. Vacancy in office of cotrustee
- § 15622. Temporary incapacity of cotrustee

Article 3. Resignation and Removal of Trustees

- § 15640. Resignation of trustee [Substitute Comment]
- § 15641. Liability of resigning trustee
- § 15642. Removal of trustee [Substitute Comment]
- § 15643. Vacancy in office of trustee
- § 15644. Delivery of property by former trustee upon occurrence of vacancy

- § 15645. **Costs and attorney's fees in proceedings for transfer of trust to successor trust company [Substitute Comment]**

Article 4. Appointment of Trustees

- § 15660. **Appointment of trustee to fill vacancy [Substitute Comment]**

Article 5. Compensation and Indemnification of Trustees

- § 15680. **Trustee's compensation as provided in trust instrument; different compensation**
- § 15681. **Trustee's compensation where trust silent**
- § 15682. **Court determination of prospective compensation**
- § 15683. **Compensation of cotrustees**
- § 15684. **Repayment of trustee for expenditures**
- § 15685. **Trustee's lien**
- § 15686. **Notice of increased trustee's fee [Substitute Comment]**

CHAPTER 2. BENEFICIARIES

- § 15800. **Limits on rights of beneficiary of revocable trust**
- § 15801. **Consent by beneficiary of revocable trust**
- § 15802. **Notice to beneficiary of revocable trust**
- § 15803. **Rights of holder of power of appointment or withdrawal**
- § 15804. **Notice in case involving future interest of beneficiary**
- § 15805. **Attorney General subject to limitations on rights of beneficiaries of revocable trusts**

PART 4. TRUST ADMINISTRATION

CHAPTER 1. DUTIES OF TRUSTEES

Article 1. Trustee's Duties in General

- § 16000. **Duty to administer trust**
- § 16001. **Duties of trustee of revocable trust**
- § 16002. **Duty of loyalty**
- § 16003. **Duty to deal impartially with beneficiaries**
- § 16004. **Duty to avoid conflict of interest**
- § 16005. **Duty not to undertake adverse trust**
- § 16006. **Duty to take control of and preserve trust property**
- § 16007. **Duty to make trust property productive**
- § 16008. **Duty to dispose of improper investments**
- § 16009. **Duty to keep trust property separate and identified**
- § 16010. **Duty to enforce claims**
- § 16011. **Duty to defend actions**
- § 16012. **Duty not to delegate**

- § 16013. Duty with respect to cotrustees
- § 16014. Duty to use special skills
- § 16015. Certain actions not violations of duties

Article 2. Trustee's Standard of Care

- § 16040. Trustee's standard of care in administering trust
- § 16041. Standard of care not affected by compensation
- § 16042. Interpretation of trust terms concerning legal investments

Article 3. Trustee's Duty to Report Information and Account to Beneficiaries

- § 16060. Trustee's general duty to report information to beneficiaries
- § 16061. Duty to report information about trust on request
- § 16062. Duty to account to beneficiaries
- § 16063. Contents of account
- § 16064. Exceptions to duty to report information and account

Article 4. Duties With Regard to Discretionary Powers

- § 16080. Discretionary powers to be exercised reasonably
- § 16081. Standard for exercise of "absolute," "sole," or "uncontrolled" powers
- § 16082. Limitations on power to appoint or distribute income or principal

Article 5. Duties of Trustees of Private Foundations, Charitable Trusts, and Split-Interest Trusts

- § 16100. Definitions
- § 16101. Distribution under charitable trust or private foundation
- § 16102. Restrictions on trustees under charitable trust, private foundation, or split-interest trust
- § 16103. Exceptions applicable to split-interest trusts
- § 16104. Incorporation in trust instruments
- § 16105. Proceedings

CHAPTER 2. POWERS OF TRUSTEES

Article 1. General Provisions

- § 16200. General powers of trustee
- § 16201. Power of court to relieve trustee from restrictions on powers
- § 16202. Exercise of powers subject to trustee's duties
- § 16203. Application of rules governing trustees' powers

Article 2. Specific Powers of Trustees

- § 16220. Collecting and holding property
- § 16221. Receiving additions to trust

- § 16222. Participation in business; change in form of business
- § 16223. Investments
- § 16224. Investments in obligations of United States government
- § 16225. Deposits
- § 16226. Acquisition and disposition of property
- § 16227. Management of property
- § 16228. Encumbrances
- § 16229. Repairs and alterations of property
- § 16230. Development of land
- § 16231. Leases
- § 16232. Mineral leases
- § 16233. Options
- § 16234. Voting rights with respect to corporate shares, memberships,
or property
- § 16235. Payment of calls and assessments
- § 16236. Stock subscriptions and conversions
- § 16237. Consent to change in form of business; voting trusts
- § 16238. Holding securities in name of nominee
- § 16239. Deposit of securities in securities depository
- § 16240. Insurance
- § 16241. Borrowing money
- § 16242. Payment and settlement of claims
- § 16243. Payment of taxes, trustee's compensation, and other
expenses
- § 16244. Loans to beneficiary
- § 16245. Distribution to beneficiaries under legal disability
- § 16246. Nature and value of distributions
- § 16247. Hiring persons
- § 16248. Execution and delivery of instruments
- § 16249. Actions and proceedings

CHAPTER 3. REVISED UNIFORM PRINCIPAL AND INCOME ACT

- § 16300. Short title
- § 16301. Definitions
- § 16302. Duty of trustee as to receipts and expenditures
- § 16303. Income and principal
- § 16304. When right to income arises; apportionment of income
- § 16305. Income earned during administration of decedent's estate
- § 16306. Corporate distributions
- § 16307. Bonds and other obligations for payment of money

- § 16308. Business and farming operations
- § 16309. Natural resources
- § 16310. Other property subject to depletion
- § 16311. Underproductive property
- § 16312. Charges against income and principal
- § 16313. Reserve or allowance for depreciation or depletion
- § 16314. Income and interest on trust distributions
- § 16315. Application of changes made in Sections 16304 and 16305 and of Section 16314 to trust created before July 1, 1989

CHAPTER 4. LIABILITY OF TRUSTEES TO BENEFICIARIES

Article 1. Liability for Breach of Trust

- § 16400. Breach of trust
- § 16401. Trustee's liability to beneficiary for acts of agent
- § 16402. Trustee's liability to beneficiary for acts of cotrustee
- § 16403. Trustee's liability to beneficiary for acts of predecessor

Article 2. Remedies for Breach of Trust

- § 16420. Remedies for breach of trust
- § 16421. Remedies for breach exclusively in equity

Article 3. Measure of Liability for Breach of Trust

- § 16440. Measure of liability for breach of trust
- § 16441. Measure of liability for interest
- § 16442. Other remedies not affected

Article 4. Limitations and Exculpation

- § 16460. Limitations on proceedings against trustee
- § 16461. Exculpation of trustee
- § 16462. Nonliability for following instructions under revocable trust
- § 16463. Consent of beneficiary to relieve trustee of liability for breach of trust
- § 16464. Discharge of trustee's liability by release or contract
- § 16465. Discharge of trustee's liability by subsequent affirmance

PART 5. JUDICIAL PROCEEDINGS CONCERNING TRUSTS

CHAPTER 1. JURISDICTION AND VENUE

- § 17000. Subject matter jurisdiction
- § 17001. Full-power court [1990 Amendment]
- § 17002. Principal place of administration of trust

- § 17003. Jurisdiction over trustees and beneficiaries
- § 17004. Basis of jurisdiction over trust, trust property, and trust parties
- § 17005. Venue
- § 17006. Jury trial

CHAPTER 2. NOTICE

- § 17100. General notice provisions apply
- § 17102. [Repealed 1990] [Substitute Comment]
- § 17105. Court order not required for notice

CHAPTER 3. PROCEEDINGS CONCERNING TRUSTS

- § 17200. Petitioners; grounds for petition [Substitute Comment]
- § 17201. Commencement of proceeding
- § 17202. Dismissal of petition
- § 17203. Notice
- § 17204. Request for special notice
- § 17205. Request for copy of petition
- § 17206. Authority to make necessary orders; temporary trustee
- § 17207. Appeal
- § 17209. Intermittent judicial intervention in trust administration
- § 17210. Enforcement of beneficiary's rights under charitable trust by Attorney General

CHAPTER 4. TESTAMENTARY TRUSTS SUBJECT TO CONTINUING COURT JURISDICTION

Article 1. Administration of Testamentary Trusts Subject to Continuing Court Jurisdiction

- § 17300. Application of article
- § 17301. Continuing court jurisdiction
- § 17302. Applicable procedures
- § 17303. Effect of removal from continuing jurisdiction
- § 17304. Transfer of jurisdiction over trust to different county

Article 2. Removal of Trusts From Continuing Court Jurisdiction

- § 17350. Application of article
- § 17351. Removal of trust from continuing jurisdiction where trustee is trust company
- § 17352. Removal of trust from continuing jurisdiction where no trustee is trust company
- § 17353. Removal by trust company as successor trustee

- § 17354. Effect of change in trustees or other event on removal

CHAPTER 5. TRANSFER OF TRUST TO ANOTHER JURISDICTION

- § 17400. Application of chapter
§ 17401. Transfer of place of administration or property from California
§ 17402. Contents of petition
§ 17403. Notice and hearing
§ 17404. Order granting transfer
§ 17405. Manner of transfer; discharge of trustee

CHAPTER 6. TRANSFER OF TRUST FROM ANOTHER JURISDICTION

- § 17450. Application of chapter
§ 17451. Transfer of place of administration or property to California
§ 17452. Venue
§ 17453. Contents of petition
§ 17454. Notice and hearing
§ 17455. Order accepting transfer and appointing trustee
§ 17456. Conditional order accepting transfer
§ 17457. Administration of transferred trust; validity and construction of trust

PART 6. RIGHTS OF THIRD PERSONS

CHAPTER 1. LIABILITY OF TRUSTEE TO THIRD PERSONS

- § 18000. Personal liability of trustee to third persons on contracts
§ 18001. Personal liability of trustee arising from ownership or control of trust estate
§ 18002. Personal liability of trustee for torts
§ 18003. Liability of dissenting cotrustee to third persons
§ 18004. Assertion of claims against trust
§ 18005. Liability as between trustee and trust estate

CHAPTER 2. PROTECTION OF THIRD PERSONS

- § 18100. Protection of third person dealing with trustee
§ 18101. Application of property delivered to trustee by third person
§ 18102. Protection of third person dealing with former trustee
§ 18103. Effect on third person of omission of trust from grant of real property

- § 18104. Effect on real property transactions where beneficiary undisclosed

CHAPTER 3. RIGHTS OF CREDITORS OF SETTLOR

- § 18200. Creditor's rights against revocable trust during settlor's lifetime
 § 18201. Creditor's rights against revocable trust after settlor's death

PART 7. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

[This is a new part added to the new Probate Code in 1990.]

- § 18500. Short title [1990 Addition]
 § 18501. Definitions [1990 Addition]
 § 18502. Expenditure of asset net appreciation for current use [1990 Addition]
 § 18503. Construction of gift instrument [1990 Addition]
 § 18504. Investment authority [1990 Addition]
 § 18505. Delegation of investment management [1990 Addition]
 § 18506. Standard of care [1990 Addition]
 § 18507. Release of restriction in gift instrument [1990 Addition]
 § 18508. Status of governing boards [1990 Addition]
 § 18509. Laws relating to expenditure of public funds [1990 Addition]

DIVISION 10. PRORATION OF TAXES

CHAPTER 1. PRORATION OF ESTATE TAXES

Article 1. General Provisions

- § 20100. Definitions
 § 20101. Transitional provision

Article 2. Proration

- § 20110. Proration among persons interested in estate
 § 20111. Manner of proration
 § 20112. Allowance and charges for credits, deductions, interest, and other adjustments
 § 20113. Trusts and temporary interests
 § 20114. Proration of additional tax on certain qualified real property
 § 20114.5. Excess retirement accumulations
 § 20115. Proration of extended estate tax
 § 20116. Where property not in possession of personal representative
 § 20117. Reimbursement for overpayment

Article 3. Judicial Proceedings

- § 20120. Who may commence proceeding
- § 20121. Petition
- § 20122. Notice of hearing
- § 20123. Court order to effectuate proration
- § 20124. Modification of court order
- § 20125. Enforcement of out-of-state proration

**CHAPTER 2. PRORATION OF TAXES ON
GENERATION-SKIPPING TRANSFERS****Article 1. General Provisions**

- § 20200. Definitions
- § 20201. Transitional provision

Article 2. Proration

- § 20210. Proration among transferees
- § 20211. Manner of proration
- § 20212. Allowance and charges for credits, deductions, and interest
- § 20213. Trusts and temporary interests
- § 20214. Where property not in possession of trustee
- § 20215. Reimbursement for overpayment

Article 3. Judicial Proceedings

- § 20220. Who may commence proceeding
- § 20221. Petition
- § 20222. Notice of hearing
- § 20223. Court order to effectuate proration
- § 20224. Modification of court order
- § 20225. Enforcement of out-of-state proration

**DIVISION 11. CONSTRUCTION OF WILLS,
TRUSTS, AND OTHER INSTRUMENTS****PART 1. GENERAL PROVISIONS**

- § 21101. Division applicable to wills, trusts, and other instruments
- § 21120. Satisfaction of a pecuniary gift

PART 3. NO CONTEST CLAUSE

- § 21300. Definitions
- § 21301. Application of part
- § 21302. Instrument may not make contrary provision
- § 21303. Validity of no contest clause
- § 21304. Construction of no contest clause

- § 21305. Declaratory relief
- § 21306. Forgery or revocation
- § 21307. Interested participant

PART 4. ABATEMENT

- § 21400. Abatement subject to transferor's intent
- § 21401. Purposes for which abatement made
- § 21402. Order of abatement
- § 21403. Abatement within classes
- § 21404. No exoneration by abatement of specific gift
- § 21405. Contribution in case of abatement
- § 21406. Transitional provision

PART 5. COMPLIANCE WITH INTERNAL REVENUE CODE

CHAPTER 1. GENERAL PROVISIONS

- § 21500. "Internal Revenue Code" defined
- § 21501. Application of part
- § 21502. Effect of instrument on application of part
- § 21503. Application of formula clause to federal estate tax

CHAPTER 2. MARITAL DEDUCTION GIFTS

- § 21520. Definitions
- § 21521. Sections 21524 and 21526 not applicable to estate trust
- § 21522. Marital deduction gifts
- § 21523. Maximum marital deduction for instrument dated before
September 12, 1981
- § 21524. Marital deduction gift in trust
- § 21525. Survival requirement for marital deduction gift
- § 21526. QTIP election

CHAPTER 3. CHARITABLE GIFTS

- § 21540. Charitable remainder unitrusts and annuity trusts
- § 21541. Charitable lead trusts

REVISED AND SUPPLEMENTAL COMMENTS

§ 221 (amended). Exceptions to applicability of chapter

1990 Amendment

Comment. Section 221 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 1. The amendment added a reference to Section 6211 (120-hour survival requirement under California statutory will). For background on the 1990 amendment, see *Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will*, 20 Cal. L. Revision Comm'n Reports 549 (1990).

§ 230 (amended). Petition for purpose of determining survival

1990 Amendment

Comment. Section 230 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 2. The amendment added a reference to Section 6211 (120-hour survival requirement under California statutory will). For background on the 1990 amendment, see *Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will*, 20 Cal. L. Revision Comm'n Reports 549 (1990).

§ 551 (amended). Statute of limitations

1990 Amendment

Comment. Section 551 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 3.1 to make clear that the general one-year limitation period for commencement of an action on a cause of action against a decedent under Code of Civil Procedure Section 353 does not apply to an action under this chapter. For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 554 (amended). Damages

1990 Amendment

Comment. Section 554 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 3. The 1990 amendment revised subdivision (b)(2) to make clear that the claim must comply with the requirements of Section 9390. This was a technical, nonsubstantive revision.

§ 900 (amended). Applicability of repealed or amended provisions**1990 Amendment**

Comment. Section 900 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 3.5. The section, as enacted by Chapter 79 of the Statutes of 1990, was based on the assumption that Law Revision Commission recommended legislation substituting an agreed attorney fee system for the statutory attorney fee system (Assembly Bill 831 of the 1989-90 regular session) would be enacted in 1990 and would become operative on January 1, 1991. However, Assembly Bill 831 was not enacted.

Assembly Bill 831 would have effectuated the Commission's *Recommendations Relating to Probate Law: Hiring and Paying Attorneys, Advisors, and Others; Compensation of Personal Representative*, 20 Cal. L. Revision Comm'n Reports 31 (1990). Although the recommended legislation relating to probate attorney fees was not enacted, other provisions of the same recommendation, such as the provisions relating to compensation of personal representatives, were enacted as a part of the new Probate Code by Chapter 79 of the Statutes of 1990, which became operative on July 1, 1991. Section 900 is amended to reflect that the operative date of the provisions that were enacted as a part of the new Probate Code is July 1, 1991, rather than January 1, 1991.

For another provision having the same effect as Section 900, see Section 10850. See the Comment to that section.

§ 1212 (added). Manner of mailing notice of hearing**1990 Addition**

Comment. Section 1212 (added by 1990 Cal. Stat. ch. [SB 1775] § 4) generalizes former Section 17102 (enacted by 1990 Cal. Stat. ch. 79 and repealed by 1990 Cal. Stat. [SB 1775] § 45) (manner of giving notice under Trust Law where address is unknown). For background on this section, see *Recommendation Relating to Notice in Probate Where Address Unknown*, 20 Cal. L. Revision Comm'n Reports 2245 (1990).

§ 1215 (amended). Manner of mailing; when mailing complete**Substitute Comment**

Comment. Section 1215 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 5.

As enacted, Section 1215 continued Section 1215 of the repealed Probate Code without substantive change, but subdivision (d) made clear that the rule provided by that subdivision is limited to proceedings under this code concerning the administration of a decedent's estate. The 1990 amendment revised subdivision (d) to delete the authority to mail notice to the person at the county seat where the proceedings are pending and to provide a cross reference to Section 1212 governing the manner of giving notice to a person whose address is unknown. For background on the 1990 amendment, see *Recommendation Relating to Notice in Probate Where Address Unknown*, 20 Cal. L. Revision Comm'n Reports 2245 (1990).

Deposit for collection in the United States mail includes deposit in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service.

The introductory clause makes clear that this section does not apply to the extent that the applicable mailing provision expressly provides a different rule. This section does not apply where service is required to be made by mail in the manner authorized in Section 415.30 of the Code of Civil Procedure. See Section 1467 and the Comment thereto. This section does not apply where service is made out-of-state in the manner provided in Section 415.40 of the Code of Civil Procedure. For special notice provisions relating to guardianships and conservatorships, see Sections 1460-1467. See also Section 5 (certified mail sufficient compliance with requirement of use of registered mail).

Subdivision (e) makes clear that the applicable period of notice is not extended where a notice or other paper is mailed.

This part does not apply to the giving of a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1991. See Section 1200(c). As to the application of any amendments made after that date, see Section 3.

Background on Section 1215 of Repealed Code

Section 1215 was a new provision added by 1987 Cal. Stat. ch. 923 § 60. The section was amended by 1988 Cal. Stat. ch. 1199 § 60.7. The section was drawn in part from Section 1465 (Guardianship-Conservatorship Law) of the repealed Probate Code and also generalized part of former Probate Code Section 328 (repealed by 1988 Cal. Stat. ch. 1199 § 40).

§ 1220 (amended). General manner of mailing notice of hearing

1990 Amendment

Comment. Section 1220 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 6. The 1990 amendment revised subdivision (a)(3) to adopt the

general rule applicable where notice is required to be mailed to a person whose address is unknown. See the Comment to Section 1212. For background on the 1990 amendment, see *Recommendation Relating to Notice in Probate Where Address Unknown*, 20 Cal. L. Revision Comm'n Reports 2245 (1990).

§ 2333 (amended). Limitation period for suit against sureties on bond

1990 Amendment

Comment. Section 2333 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 7. The amendment deleted subdivision (c) to make the rule under Section 2333 consistent with the rule for decedents' estates. See Section 8488. For background on the 1990 amendment, see *Recommendation Relating to Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding*, 20 Cal. L. Revision Comm'n Reports 565 (1990).

§ 2356 (amended). Prohibited treatment and drugs

1990 Amendment

Comment. Section 2356 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 8. The 1990 amendment revised subdivision (a) to resolve an inconsistency in language between the first and second sentences. This amendment recognizes that the provisions of the Welfare and Institutions Code (part of the Lanterman-Petris-Short Act) cited in the second sentence govern situations where a person may be involuntarily placed (e.g., Welf. & Inst. Code §§ 5150, 5350.1), detained (e.g., Welf. & Inst. Code § 5151), confined (e.g., Welf. & Inst. Code § 5260), or committed (e.g., Welf. & Inst. Code § 5300). The language as revised is also consistent with Section 3211(a). The 1990 amendment also recognizes the court's power under Section 2357 to authorize treatment in the case of a serious threat to the mental health of the ward or conservatee. See Section 2357. For background on the 1990 amendment, see *Recommendation Relating to Court-Authorized Medical Treatment*, 20 Cal. L. Revision Comm'n Reports 537 (1990).

§ 2357 (amended). Court-authorized medical treatment for ward or conservatee

1990 Amendment

Comment. Section 2357 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB

1775] § 9. The amendment expanded subdivision (h)(2) to include a serious threat to mental health as a condition that justifies court authorization of medical treatment. See also Section 3208. For background on the 1990 amendment, see *Recommendation Relating to Court-Authorized Medical Treatment*, 20 Cal. L. Revision Comm'n Reports 537 (1990).

§ 2501 (amended). Matters relating to real property

1990 Amendment

Comment. Section 2501 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 10. The amendment revised subdivision (b) to increase the limit on extending, renewing, or modifying a lease without court approval from \$1,500 to \$5,000. See also Section 2555 (execution of lease by guardian or conservator). For a comparable provision relating to personal representatives, see Section 9832. For background on the 1990 amendment, see *Recommendation Relating to Execution or Modification of Lease Without Court Order*, 20 Cal. L. Revision Comm'n Reports 557 (1990).

§ 2555 (amended). Leases permitted without court authorization

1990 Amendment

Comment. Section 2555 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 11. The amendment increased the limit on executing a lease without court approval from \$1,500 to \$5,000. See also Section 2501 (extension, renewal, or modification of lease by guardian or conservator). For a comparable provision relating to personal representatives, see Section 9941. For background on the 1990 amendment, see *Recommendation Relating to Execution or Modification of Lease Without Court Order*, 20 Cal. L. Revision Comm'n Reports 557 (1990).

§ 3208 (amended). Court-authorized medical treatment for person unable to consent to treatment

1990 Amendment

Comment. Section 3208 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 12. The amendment expanded subdivision (a)(2) to include a serious threat to mental health as a condition that justifies court authorization of medical treatment. See also Section 2357. For

background on the 1990 amendment, see *Recommendation Relating to Court-Authorized Medical Treatment*, 20 Cal. L. Revision Comm'n Reports 537 (1990).

§ 6111 (amended). Holographic will

1990 Amendment

Comment. Section 6111 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 13 to continue language added to the repealed Probate Code by 1990 Cal. Stat. ch. 263 § 1.

§ 6111.5 (added). Admissibility of extrinsic evidence

1990 Addition

Comment. Section 6111.5 was added to the new Probate Code by 1990 Cal. Stat. ch. [SB 1775] § 14. The section continues Section 6111.5 of the repealed Probate Code (added by 1990 Cal. Stat. ch. 263 § 2) without change.

§ 6140. Intention of testator

Substitute Comment

Comment. Section 6140 continues Section 6140 of the repealed Probate Code without change. This section is drawn from Section 2-603 of the Uniform Probate Code (1987). As to the construction of provisions drawn from uniform acts, see Section 2. Nothing in the section limits the extent to which extrinsic evidence admissible under former law may be used to determine the testator's intent as expressed in the will. See generally 7 B. Witkin, *Summary of California Law Wills and Probate* §§ 160-62, at 5676-79 (8th ed. 1974). See also Section 6111.5 (admissibility of extrinsic evidence). Section 6140 does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 12206 (limitation in will of time for administration of estate is directory only).

Background on Section 6140 of Repealed Code

Section 6140 was added by 1983 Cal. Stat. ch. 842 § 55 and amended by 1984 Cal. Stat. ch. 892 § 24. The section superseded the second sentence of former Probate Code Section 101 (repealed by 1983 Cal. Stat. ch. 842 § 18). For background on the provisions of this part, see the Comment to this part under the part heading. The 1984 amendment substituted language drawn from Section 2-603 of the Uniform Probate Code (1987) for the former language of the section. This change was nonsubstantive. See *Communication of Law Revision Commission Concerning Assembly Bill 2290*, 18 Cal. L. Revision Comm'n Reports 77, 86 (1986). See also *Recommendation Relating to Revision of Wills and Intestate Succession Law*, 17 Cal. L. Revision Comm'n Reports 537 (1984).

§ 6211 (added). 120-hour survival requirement**1990 Addition**

Comment. Section 6211 was added to the new Probate Code by 1990 Cal. Stat. ch. [SB 1775] § 15 to provide a 120-hour survival rule for the beneficiary of a statutory will. Section 6211 is the same in substance as Section 6403 (requirement that heir survive decedent by 120 hours). Section 6211 does not apply if the testator died before the operative date of the section. See Section 6247. See also Section 230 (petition to determine for the purposes of Section 6211 whether one person survived another). For background on this section, see *Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will*, 20 Cal. L. Revision Comm'n Reports 549 (1990).

§ 6247 (amended). Will includes only texts of clauses as they exist when will is executed**1990 Amendment**

Comment. Section 6247 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 16 to add the second sentence to subdivision (b). See Section 6211 (120-hour survival requirement). For background on the 1990 amendment, see *Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will*, 20 Cal. L. Revision Comm'n Reports 549 (1990).

§ 6522 (amended). Property out of which homestead selected**1990 Amendment**

Comment. Section 6522 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 17 to remove any implication that the decedent's separate property may not be used for a probate homestead for both the surviving spouse and the minor children.

§ 6611 (amended). Liability for unsecured debts of decedent**1990 Amendment**

Comment. Section 6611 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 4.1 to delete former subdivision (c), which conflicted with Code of Civil Procedure Section 353 (statute of limitations), and to make clear that the general one-year statute of limitations applicable to all causes of action

against a decedent is applicable to liability for the decedent's debts under Section 6611. For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 7622. Manner of administration; compensation of public administrator

Substitute Comment

Comment. Section 7622 continues Section 7622 of the repealed Probate Code without substantive change, except that the reference to the court fixing the compensation of the public administrator's attorney in the first sentence of subdivision (b) has been omitted. The public administrator must file an inventory, commence actions for the recovery or protection of property, render accounts, and deliver the property of the estate in the same manner as personal representatives generally. See also Sections 7621(d) (bond fee), 7623 (additional compensation), 7666 (compensation when summary disposition procedure used).

Background on Section 7622 of Repealed Code

Section 7622 was added by 1988 Cal. Stat. ch. 1199 § 80.5. The section restated former Probate Code Section 1142 (repealed by 1988 Cal. Stat. ch. 1199 § 57.5) without substantive change. The section was amended by 1989 Cal. Stat. ch. 21 § 16 to make clear that the section applies in estate administration proceedings throughout the code, whether pursuant to this division or any other division of the code, and to incorporate provisions added by Chapter 280 of the Statutes of 1988. See *Communication from the California Law Revision Commission Concerning Assembly Bill 156*, 20 Cal. L. Revision Comm'n Reports 227, 230 (1990). For background on the provisions of this chapter, see the Comment to this chapter under the chapter heading.

§ 7623. Additional compensation

Substitute Comment

Comment. Section 7623 continues Section 7623 of the repealed Probate Code without substantive change.

Background on Section 7623 of Repealed Code

Section 7623 was added by 1988 Cal. Stat. ch. 1199 § 80.5. The section restated former Probate Code Section 1142.3 (repealed by 1988 Cal. Stat. ch. 1199 § 57.5) without substantive change. For background on the provisions of this chapter, see the Comment to this chapter under the chapter heading.

§ 7662 (amended). Priority for payments from estate

Substitute Comment

Comment. Section 7662 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB

1775] § 18. The section as amended continues Section 7662 of the repealed Probate Code revised to incorporate the order of payment prescribed by Section 11420.

Tax and other claims of public entities are entitled to priority under Section 11420. Because no notice to creditors is given pursuant to this article, the time for making claims is extended to the time of distribution of the decedent's property, and recipients of the property remain liable for creditor claims. See Section 7664 (liability for decedent's unsecured debts). Distribution may not be made until at least four months after commencement of administration. See Section 7663 (distribution of property).

Background on Section 7662 of Repealed Code

Section 7662 was added by 1988 Cal. Stat. ch. 1199 § 80.5. The section restated the second sentence of subdivision (a) of former Probate Code Section 1143 and a portion of subdivision (b) of former Probate Code Section 1143 (provisions repealed by 1988 Cal. Stat. ch. 1199 § 57.5), with the addition of specific references to fees and costs of administration. For background on the provisions of this chapter, see the Comment to this chapter under the chapter heading.

§ 7663 (amended). Distribution of property

1990 Amendment

Comment. Section 7663 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 324 § 2 to make clear that the procedure for disposition of unclaimed funds in the county treasury provided by Government Code Sections 50050-50056 applies to funds deposited by the public administrator under subdivision (b). Although the county treasurer has the duty to administer the funds deposited, a public record of the deposit is maintained by the State Controller under this section as well as by the public administrator pursuant to Section 7665.

It should be noted that, while claims for funds deposited under subdivision (b) are processed under the general Government Code provisions, claims for funds deposited with the county treasurer under Section 11850 are processed by the court under Section 11854. Deposit with the county treasurer under subdivision (b) is an exception to the deposit procedure generally applicable in estate administration. See Sections 11900 (distribution to state) and 7622 (general administration rules apply except as otherwise provided in this chapter). For background on the 1990 amendment, see *Recommendation Relating to Disposition of Small Estate by Public Administrator*, 20 Cal. L. Revision Comm'n Reports 529 (1990).

§ 7664 (amended). Liability for decedent's unsecured debts

1990 Amendment

Comment. Section 7664 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 5.1 to make clear that the general one-year statute of limitations applicable to all causes of action against a decedent is applicable to liability for the decedent's debts under Section 7664. For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 7666 (amended). Compensation of public administrator and attorney for public administrator

Substitute Comment

Comment. Section 7666 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 19. The section as amended continues Section 7666 of the repealed Probate Code without substantive change.

Background on Section 7666 of Repealed Code

Section 7666 was added by 1988 Cal. Stat. ch. 1199 § 80.5. The section superseded subdivision (c) of former Probate Code Section 1143 and the second sentence of former Probate Code Section 1144 (provisions repealed by 1988 Cal. Stat. ch. 1199 § 57.5). The 1990 amendment added language found in the repealed code section relating to the compensation of the attorney of the public administrator. As originally enacted in the new Probate Code, Section 7666 had been revised to reflect the fact that Assembly Bill 831 of the 1989-1990 regular session would have substituted an agreed fee system for the statutory fee system for probate attorney fees. However, Assembly Bill 831 was not enacted, and Section 7666 was amended by 1990 Cal. Stat. ch. [SB 1775] § 19 to reflect this fact. See the Comment to Section 900. For background on the provisions of this chapter, see the Comment to this chapter under the chapter heading.

§ 8404. Statement of duties and liabilities

Substitute Comment

Comment. Section 8404 continues Section 8404 of the repealed Probate Code with the following revisions:

(1) Subdivision (a) has been revised to except the public administrator from the requirement of filing an acknowledgment of receipt of the statement of duties and liabilities.

(2) The second sentence of subdivision (a) has been revised to eliminate the reference to the form provided in former subdivision (c).

(3) The form stating the personal representative's duties and liabilities in former subdivision (c) has been omitted because the form was superseded by the Judicial Council Form DE 147 (July 1, 1989).

Although the statement of duties and liabilities must be in the form prescribed by the Judicial Council, the attorney for the personal representative may supplement, explain, or otherwise address the subject matter separately, where appropriate.

Background on Section 8404 of Repealed Code

Section 8404 was added by 1988 Cal. Stat. ch. 1199 § 81.5. The section was a new provision drawn from general instructions given to personal representatives by a number of courts. Section 8404 was amended by 1989 Cal. Stat. ch. 21 § 17 to amend item 4 in subdivision (c) to conform with Section 8800. See *Communication from the California Law Revision Commission Concerning Assembly Bill 156*, 20 Cal. L. Revision Comm'n Reports 227, 230 (1990). For background on the provisions of this part, see the Comment to this part under the part heading.

§ 8461 (amended). Priority for appointment

1990 Amendment

Comment. Section 8461 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 20. The amendment revised subdivision (o) to limit the priority for a conservator or guardian of the estate to the case where a first account has been filed (Section 2620) and the conservator or guardian is not acting in that capacity for any other person. See also Section 8469 (court discretion to give priority to conservator or guardian where requirements of Section 8461 not met). For background on the 1990 amendment, see *Recommendation Relating to Priority of Conservator or Guardian for Appointment as Administrator*, 20 Cal. L. Revision Comm'n Reports 607 (1990).

§ 8469 (added). Conservator or guardian who does not meet requirements of Section 8461

1990 Addition

Comment. Section 8469 was added to the new Probate Code by 1990 Cal. Stat. ch. [SB 1775] § 21. The section permits the court to allow the priority given by Section 8461 to a conservator or guardian of the estate of the decedent serving in that capacity at the time of death, notwithstanding that the conservator or guardian fails to satisfy the other requirements of Section 8461. For background on this section, see *Recommendation Relating to Priority of Conservator or Guardian for Appointment as Administrator*, 20 Cal. L. Revision Comm'n Reports 607 (1990).

§ 8547 (amended). Compensation of special administrator and attorney for special administrator

Substitute Comment

Comment. Section 8547 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 22. The section as amended continues Section 8547 of the repealed Probate Code without substantive change.

Background on Section 8547 of Repealed Code

Section 8547 was added by 1988 Cal. Stat. ch. 1199 § 81.5. Subdivisions (a)-(c) of Section 8547 of the repealed Probate Code restated former Probate Code Sections 467-468 (repealed by 1988 Cal. Stat. ch. 1199 § 46), with the addition of provisions limiting payment of the special administrator until close of administration (except for extra allowances) and recognizing agreements of the special administrator, personal representative, and attorneys as to division of fees and commissions. Subdivision (d) of Section 8547 of the repealed Probate Code superseded former Probate Code Section 469 (repealed by 1988 Cal. Stat. ch. 1199 § 46), and was amended by 1989 Cal. Stat. ch. 21 § 20 to incorporate material omitted in the recodification of former Section 469. See *Communication from the California Law Revision Commission Concerning Assembly Bill 156*, 20 Cal. L. Revision Comm'n Reports 227, 230 (1990). The 1990 amendment added a reference in subdivision (a) to fixing the compensation of the attorney for the special administrator and restored subdivisions (c) and (d) so that the amended section conformed to Section 8547 of the repealed code. As originally enacted in the new Probate Code, Section 8547 had been revised to reflect the fact that Assembly Bill 831 of the 1989-1990 regular session would have substituted an agreed fee system for the statutory fee system for probate attorney fees. However, Assembly Bill 831 was not enacted, and Section 8547 was amended by 1990 Cal. Stat. ch. [SB 1775] § 22 to reflect this fact. See the Comment to Section 900. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 8907. Fee for appraisal by personal representative

Substitute Comment

Comment. Section 8907 continues Section 8907 of the repealed Probate Code with the omission of the reference to the personal representative's attorney. It should be noted that the limitation in this section applies only to appraisal of property; it does not affect estate tax work performed by the attorney.

Background on Section 8907 of Repealed Code

Section 8907 was added by 1988 Cal. Stat. ch. 1199 § 82.5. The section restated subdivision (c) of former Probate Code Section 605 (repealed by 1988 Cal. Stat. ch. 1199 § 51) and expanded it to preclude extra compensation not only for appraising cash items but also for appraising other property in the estate. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 9050 (amended). Notice required**1990 Amendment**

Comment. Section 9050 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 6.1 to require the personal representative to give notice to a creditor if the personal representative has knowledge of the creditor at any time during estate administration. If the personal representative first has knowledge of the creditor more than four months after letters were issued, the personal representative must give notice within 30 days after the personal representative first has knowledge of the creditor. See Section 9051(c) (time of notice). Such a notice does not extend the creditor's time to file a claim. See Section 9100 (claim period). However, the creditor may petition to file a late claim. See Section 9103 (late claims). For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 9051 (amended). Time of notice**1990 Amendment**

Comment. Section 9051 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 7.1 to require the personal representative to give notice to a creditor within 30 days after the personal representative first has knowledge of the creditor, in cases where the personal representative first has knowledge of the creditor more than four months after letters were issued. This implements the requirement of Section 9050 (notice required) that the personal representative must give notice to the creditor even if the personal representative first has knowledge of the creditor after expiration of the claim filing period. Such a notice does not extend the creditor's time to file a claim. See Section 9100 (claim period). However, the creditor may petition to file a late claim. See Section 9103 (late claims). For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 9052 (amended). Form of notice**1990 Amendment**

Comment. Section 9052 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 8.1 to revise the form of notice of administration so that it would inform

the creditor of the opportunity to petition to file a late claim. This implements the requirement of Section 9050 that the personal representative give notice to the creditor even if the personal representative first has knowledge of the creditor after expiration of the claim filing period. Such a notice does not extend the creditor's time to file a claim. See Section 9100 (claim period). However, the creditor may petition to file a late claim. See Section 9103 (late claims). For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 9100 (amended). Claim period

1990 Amendment

Comment. Section 9100 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 9.1 to make clear that notice to a creditor given after expiration of the claim filing period under Sections 9050 (notice required) and 9051 (time of notice) does not extend the creditor's time to file a claim. However, the creditor may petition to file a late claim. See Section 9103 (late claims). For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 9103 (amended). Late claims

1990 Amendment

Comment. Section 9103 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 10.1 to delete former subdivision (b), which limited the types of claims eligible for late claim treatment. It should be noted that a creditor who is omitted because the creditor had no knowledge of the administration is not limited to the remedy provided in this section. If assets have been distributed, a remedy may be available against distributees under Section 9392 (liability of distributee). If the creditor can establish that the lack of knowledge is a result of the personal representative's bad faith failure to notify known creditors under Chapter 2 (commencing with Section 9050) (notice to creditors), recovery may be available against the personal representative personally or on the bond, if any. See Section 11429 (unpaid creditor). See also Section 9053 (immunity of personal representative).

The 1990 amendment renumbered former subdivision (c) to be subdivision (b) and revised new subdivision (b)(2) to make clear that a

late claim should not be permitted if the statute of limitations has run on the claim. This is the consequence of the rule stated in Section 9253 that a claim barred by the statute of limitations may not be allowed by the personal representative or approved by the court or judge. Under Code of Civil Procedure Section 353, the statute of limitations runs one year after the decedent's death.

For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 9201 (amended). Claims governed by special statutes

1990 Amendment

Comment. Section 9201 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 11.1 to make clear that the section applies notwithstanding statutes located in places other than this part. Specifically, Section 9201 applies notwithstanding Code of Civil Procedure Section 353 (general statute of limitations running one year from the decedent's death). For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 9390 (amended). Claim covered by insurance

1990 Amendment

Comment. Section 9390 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 23. The 1990 amendment amended subdivision (c) to make clear that the subdivision is not an independent authorization for reimbursement of the insurer's costs and attorney's fees, but only a procedure for recovering those costs and attorney's fees if the decedent is liable under the contract. This amendment is a clarification of, and not a change in, existing law.

§ 9391 (amended). Enforcement of security interest

1990 Amendment

Comment. Section 9391 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 12.1 to except an action to enforce a lien from the one-year statute of limitations in Code of Civil Procedure Section 353. The statute of limitations otherwise applicable to an action to enforce the lien continues to apply notwithstanding Section 353. For background on the 1990

amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 9392 (added). Liability of distributee

1990 Addition

Comment. Section 9392 was added to the new Probate Code by Section 13.1 of Chapter 140 of the Statutes of 1990. The section implements the rule of *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988), that the claim of a known or reasonably ascertainable creditor whose claim is not merely conjectural but who is not given actual notice of administration may not be cut off by a short claim filing requirement. Section 9392 is intended as a limited remedy to cure due process failures only, and is not intended as a general provision applicable to all creditors.

A creditor who has knowledge of estate administration must file a claim or, if the claim filing period has expired, must petition for leave to file a late claim. See Sections 9100 (time for filing claims) and 9103 (late claims). This rule applies whether the creditor's knowledge is acquired through notification under Section 9050 (notice required), by virtue of publication under Section 8120 (publication required), or otherwise.

Under Section 9392, a creditor who has no knowledge of estate administration before an order is made for distribution of property has a remedy against distributees to the extent payment cannot be obtained from the estate. There is a one year statute of limitations, commencing with the date of the decedent's death, for an action under this section by the creditor. See Code Civ. Proc. § 353. Subdivision (c) is a specific application of the general purpose of this section to subject a distributee to personal liability but not to require rescission of a distribution already made.

An omitted creditor may also have a cause of action against a personal representative who in bad faith fails to give notice to a known creditor. See Sections 9053 (immunity of personal representative) and 11429 (unpaid creditor).

For background on this section, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 9651. Taking possession of property in good faith

Substitute Comment

Comment. Section 9651 continues Section 9651 of the repealed Probate Code except that the section omits the language that provided for

the court awarding the attorney for the personal representative reasonable compensation for services rendered in connection with the duties specified in the section. As to orders made, or actions taken, before July 1, 1988, and matters pending on July 1, 1988, see Section 9645.

Background on Section 9651 of Repealed Code

Section 9651 was added by 1987 Cal. Stat. ch. 923 § 93. The section restated subdivision (c) of former Probate Code Section 571 (repealed by 1987 Cal. Stat. ch. 923 § 35) without substantive change. For background on the provisions of this part, see the Comment to this part under the part heading.

**CHAPTER 2.5. HIRING AND PAYING ATTORNEYS,
ADVISERS, AND OTHERS [NOT ENACTED]**

Chapter 2.5 (consisting of Sections 9680 to 9686, inclusive, was recommended for enactment by the California Law Revision Commission. See *Recommendations Relating to Probate Law: Hiring and Paying Attorneys, Advisors, and Others; Compensation of Personal Representative*, 20 Cal. L. Revision Comm'n Reports 31 (1990). The *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990), included Comments to those sections. However, since the sections recommended by the Commission were not enacted by the Legislature, the Comments to the provisions of Chapter 2.5 (commencing with Section 9680) are no longer relevant to the new Probate Code which does not contain the sections.

§ 9832 (amended). Matters relating to real property

1990 Amendment

Comment. Section 9832 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 24 to increase the limit on extending, renewing, or modifying a lease without court authorization from \$1,500 to \$5,000. See also 9941 (execution of lease by personal representative). For a comparable provision relating to guardians and conservators, see Section 2501. For background on the 1990 amendment, see *Recommendation Relating to Execution or Modification of Lease Without Court Order*, 20 Cal. L. Revision Comm'n Reports 557 (1990).

**§ 9941 (amended). Leases permitted without court
authorization**

1990 Amendment

Comment. Section 9941 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 25 to increase the limit on executing a lease without court

authorization from \$1,500 to \$5,000. See also Section 9832 (extension, renewal, or modification of lease by personal representative). For a comparable provision relating to guardians and conservators, see Section 2555. For background on the 1990 amendment, see *Recommendation Relating to Execution or Modification of Lease Without Court Order*, 20 Cal. L. Revision Comm'n Reports 557 (1990).

§ 10168 (added). Agreement dividing compensation between cooperating agents and brokers

1990 Addition

Comment. Section 10168 was added to the new Probate Code by 1990 Cal. Stat. ch. [SB 1775] § 26. The section provides a general rule consistent with the special rules concerning division of compensation between cooperating agents and brokers in Sections 10162.7(b), 10164(c), and 10165(c)(3).

§ 10404.5 (repealed). Hiring and paying attorney and others authorized whether or not independent administration authority granted

Substitute Comment

Comment. Section 10404.5 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was repealed by 1990 Cal. Stat. ch. [SB 1775] § 27. Section 10404.5 was included in the new Probate Code because Assembly Bill 831 of the 1989-1990 regular session would have extended the independent administration provisions to cover probate attorney fees. However, Assembly Bill 831 was not enacted, and as a result Section 10404.5 became unnecessary. See the Comment to Section 900.

§ 10406 (amended). Application of part where independent administration authority granted under repealed Probate Code

Substitute Comment

Comment. Section 10406 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 28.

The 1990 amendment deleted subdivision (c). This subdivision was included in the new Probate Code section because Assembly Bill 831 of the 1989-1990 regular session would have extended the independent administration provisions to cover probate attorney fees. However,

Assembly Bill 831 was not enacted, and as a result subdivision (c) became unnecessary. See the Comment to Section 900.

Section 10406 as amended in 1990 continues Section 10406 of the repealed Probate Code with the changes described below.

Subdivision (a) supersedes subdivisions (a) and (b) of Section 10406 of the repealed Probate Code. Under the superseded provisions, a personal representative who was granted authority prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act was governed by the provisions of the Independent Administration of Estates Act that were applicable at the time the petition requesting independent administration authority was granted. But the superseded provisions included an exception that allowed a personal representative who was granted independent administration authority prior to January 1, 1985, to exercise the authority granted by this part of the repealed Probate Code where a petition was filed after that date requesting authority to administer the estate under the independent administration statute in effect at the time the petition was filed and the petition was granted. Subdivision (a) Section 10406 abandons this now obsolete scheme and simplifies the law by providing that—subject to subdivision (b)—this part applies to all proceedings where independent administration authority has been granted, whether under the new Probate Code, under the provisions of the repealed Probate Code, or under the provisions of the Probate Code in effect prior to January 1, 1985. As to the application of any amendments made after that date, see Section 3.

Subdivision (b) continues subdivision (c) of Section 10405 of the repealed Probate Code without change. Subdivision (b) preserves the authority of a personal representative prior to July 1, 1988, to borrow money secured by real property where the personal representative was granted authority that did not include the authority to sell, exchange, or grant an option to purchase real property. Under the law in effect prior to July 1, 1988, such a personal representative had authority to borrow money with the loan secured by an encumbrance upon real property of the estate. This part of the repealed Probate Code (which became operative on July 1, 1988) added an additional limitation on the authority of a personal representative whose authority does not include authority to sell, exchange, or grant an option to purchase real property: Such a personal representative does not have authority to borrow money with the loan secured by an encumbrance upon real property of the estate. See Section 10403 (defining “limited authority”) and the Comment to that section; see also Section 10501(b) and the Comment to that section. Subdivision (b) of Section 10406 makes clear that this additional limitation does not apply to a personal representative who was granted

independent administration authority prior to July 1, 1988. Such a personal representative may borrow money on or after July 1, 1988, on a loan secured by real property of the estate, notwithstanding that the personal representative does not have authority to sell real property of the estate.

Background on Section 10406 of Repealed Code

Section 10406 was a new provision added by 1987 Cal. Stat. ch. 923 § 93. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 10500. Administration without court supervision

Substitute Comment

Comment. Section 10500 continues Section 10500 of the repealed Probate Code without change.

As the introductory clause of subdivision (a) recognizes, a personal representative who has been granted only limited authority under this part may not exercise authority with respect to matters not included within the scope of the authority granted. See Section 10501(b) (limited authority excludes power to sell, exchange, or grant option to purchase real property, or to borrow money with the loan secured by an encumbrance upon real property, using independent administration procedure). See also Sections 10403, 10450(b)(2), 10452 (limited authority); Section 10502 (decedent's will may restrict powers exercisable under independent administration authority).

Notwithstanding that full authority has been granted, some actions can be taken only under court supervision. See Section 10501 (court supervision required for allowance of compensation of the personal representative and attorney for personal representative, settlement of accounts, preliminary and final distributions and discharge, and certain transactions involving a possible conflict of interest on the part of the personal representative or the personal representative's attorney). See also Section 10401 (defining "court supervision").

The introductory clause of subdivision (a) also recognizes that independent administration authority must be exercised in compliance with the provisions of this part. Some actions can be taken only if the notice of proposed action procedure is followed. See Article 2 (commencing with Section 10510), Article 3 (commencing with Section 10530) (actions requiring notice of proposed action); see also Chapter 4 (commencing with Section 10580) (notice of proposed action procedure). For a general provision concerning the exercise of powers under this part, see Section 10502. See also the Comment to Section 10502.

Subdivision (b) makes clear that the personal representative may obtain court supervision of an action even though the personal representative is authorized to take the action using the independent administration procedure. For example, even though the personal representative has been granted full authority (full authority includes the power to sell real property using the independent administration procedure), the personal representative may nevertheless determine to sell the real property using the court supervised procedure for a real property sale. If the personal representative determines to use the court supervised procedure, all the requirements of the court supervised procedure apply to the same extent that they would apply if the personal representative had not been granted independent administration authority. See Section 10401 (defining "court supervision"). For example, except as provided in Sections 10301-10303, the requirement that notice of sale be published must be satisfied. See Section 10300. See also Section 10303 (notice of sale need not be published where decedent's will directs or authorizes the sale).

Where the personal representative decides to obtain court supervision of an action even though the personal representative is authorized to take the action using the independent administration procedure and no other procedure is provided by statute for court supervision of the particular proposed action, the personal representative may petition for instructions under Section 9611. For example, there being no specific procedure for obtaining authority under supervised administration for incorporation of the decedent's unincorporated business (see Section 10512), the personal representative may elect to petition for instructions under Section 9611 rather than using the notice of proposed action procedure under Chapter 4 (commencing with Section 10580). See also Section 10580(b) (personal representative may use notice of proposed action procedure for an action that could be taken without giving notice of proposed action).

As to the application of this part where independent administration authority was granted under the repealed Probate Code, see Section 10406.

Background on Section 10500 of Repealed Code

Section 10500 was added by 1987 Cal. Stat. ch. 923 § 93. Subdivision (a) restated the first sentence and the first portion of the second sentence of subdivision (a) of former Probate Code Section 591.2 (repealed by 1987 Cal. Stat. ch. 923 § 35) without substantive change. See also Section 10401 (defining "court supervision"). Subdivision (b) restated the first sentence of subdivision (b) of former Section 591.2 (repealed by 1987 Cal. Stat. ch. 923 § 35) without substantive change. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 10501 (amended). Matters requiring court supervision**Substitute Comment**

Comment. Section 10501 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 29.

As originally enacted, Section 10501 had revised the language taken from Section 10501 of the repealed Probate Code to reflect the fact that Assembly Bill 831 of the 1989-1990 regular session would have extended the independent administration provisions to cover probate attorney fees. However, Assembly Bill 831 was not enacted, and as a result the revisions the new Probate Code made in Section 10501 became unnecessary and were deleted by the 1990 amendment. See the Comment to Section 900.

Section 10501 as amended continues Section 10501 of the repealed Probate Code without substantive change.

The types of actions described in paragraphs (5)-(10) of subdivision (a) are ones where there often will be a conflict of interest.

Paragraphs (5)-(7) of subdivision (a) make clear that the personal representative cannot use the independent administration procedure to do any of the following:

(1) Sell estate property to the personal representative or the personal representative's attorney.

(2) Exchange estate property for property of the personal representative or the personal representative's attorney.

(3) Grant an option to purchase estate property to the personal representative or the personal representative's attorney.

The prohibitions of paragraphs (5)-(7) are subject to the qualification that the independent administration procedure may be used for the transaction when it is between the personal representative as such and the personal representative as an individual and the requirements of subdivision (c) of Section 10501 are satisfied. Special supervised administration provisions govern the transactions described in paragraphs (5)-(7). See, e.g., Sections 9880-9885. A purchase by or exchange with the personal representative or the personal representative's attorney may be accomplished only to the extent allowed under these special provisions and is subject to their limitations and requirements. Under these provisions, the purchase is permitted only if all known heirs or devisees give written consent to the purchase (Section 9881) and the court approves the purchase (Section 9883). The personal representative or personal representative's attorney may purchase property of the estate pursuant to a contract made during the lifetime of the decedent only if the statutory supervised administration requirements are satisfied. See

Sections 9860-9868, 9884. The personal representative or personal representative's attorney may exercise an option to purchase property of the estate given in the will of the decedent only if the statutory supervised administration requirements are satisfied. See Sections 9885, 9980-9983.

Paragraph (8) of subdivision (a) makes clear that the personal representative may not use the independent administration procedure for a claim against the estate by the personal representative or the personal representative's attorney. The personal representative must submit the claim for allowance or rejection by the judge pursuant to Section 9252. Paragraph (8) is subject to the qualification that the independent administration procedure may be used for a claim of the personal representative against the estate if the requirements of subdivision (c) are satisfied.

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

Paragraph (4) of subdivision (b) requires court supervision if the personal representative has limited authority and proposes to borrow money with the loan secured by an encumbrance upon real property of the estate. This limitation on borrowing money does not affect the powers of a personal representative who was granted independent administration authority prior to July 1, 1988. See Section 10406(b). In connection with subdivision (b), see Sections 10403, 10450(b)(2), 10452 (limited authority). See also Section 10502 (decedent's will may restrict powers exercisable under independent administration authority).

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

The term "the attorney for the personal representative" is used in a broad sense and includes the associates, partners, and attorneys of

counsel with the law firm of the attorney selected by the personal representative and also associates, partners, and attorneys of counsel with other law firms associated in the estate proceeding with the firm of the attorney selected by the personal representative.

As to the application of this part where independent administration authority was granted under the repealed Probate Code, see Section 10406.

Background on Section 10501 of Repealed Code

Section 10501 was added by 1987 Cal. Stat. ch. 923 § 93.

Paragraphs (1)-(4) of subdivision (a) restated without substantive change clauses (1)-(3) of the second sentence of subdivision (a) of former Probate Code Section 591.2 (repealed by 1987 Cal. Stat. ch. 923 § 35). Paragraphs (5)-(10) of subdivision (a) were new. Prior law did not expressly provide that the independent administration procedure could not be used for the types of actions listed in those paragraphs.

Paragraphs (1)-(3) of subdivision (b) restated without substantive change clause (4) of the second sentence of subdivision (a) of former Section 591.2 (repealed by 1987 Cal. Stat. ch. 923 § 35). Paragraph (4) of subdivision (b) was new and required court supervision if the personal representative had limited authority and proposed to borrow money with the loan secured by an encumbrance upon real property of the estate. Under former law, the personal representative with limited authority could use independent administration authority to borrow money with the loan secured by an encumbrance upon real property.

Subdivision (c) was new.

For background on the provisions of this part, see the Comment to this part under the part heading.

§ 10565 (repealed). Hiring and paying attorneys, advisers, and others

Substitute Comment

Comment. Section 10565 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was repealed by 1990 Cal. Stat. ch. [SB 1775] § 30. This section was included in the new Probate Code because Assembly Bill 831 of the 1989-1990 regular session would have extended the independent administration provisions to cover probate attorney fees. However, Assembly Bill 831 was not enacted, and as a result Section 10565 became unnecessary. See the Comment to Section 900.

§ 10585.5 (repealed). Estimated amount of compensation to be included in notice of proposed action; copy of contract

Substitute Comment

Comment. Section 10585.5 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was repealed by 1990 Cal. Stat. ch. [SB 1775] § 31. This section was included in the new Probate Code

because Assembly Bill 831 of the 1989-1990 regular session would have extended the independent administration provisions to cover probate attorney fees. However, Assembly Bill 831 was not enacted, and as a result Section 10585.5 became unnecessary. See the Comment to Section 900.

§ 10589. Court supervision and notice of hearing required if personal representative has notice of objection

Substitute Comment

Comment. Section 10589 continues Section 10589 of the repealed Probate Code without substantive change.

Where notice of proposed action is required, subdivision (a) requires that the proposed action be taken only under court supervision if the personal representative has notice of a written objection or a restraining order with respect to the proposed action. And, when the proposed action is taken under court supervision, all the requirements of the court supervised procedure apply to the same extent that they would apply if the personal representative had not been granted independent administration authority. See Section 10401 (defining "court supervision"). For example, except as provided in Sections 10301-10303, if the proposed action is the sale of real property, notice of sale must be published. See Section 10300.

Subdivision (a) applies not only to a case where notice of proposed action is required but also to a case where notice of proposed action is not required to be given for a proposed action that would require court supervision if independent administration authority had not been granted. See Section 10580(b) (personal representative may give notice of proposed action with respect to a proposed action that could be taken without giving notice of proposed action). If the personal representative elects to give notice of proposed action in such a case, even though not required, subdivision (a) permits the personal representative to take the proposed action only under court supervision if the personal representative has notice of a written objection to the proposed action or of a restraining order issued with respect to the proposed action.

Subdivision (b) applies where the personal representative decides to give notice of proposed action in a case where the personal representative would be authorized to take the proposed action without court supervision even if the personal representative had not been granted independent administration authority. In such a case, if the personal representative has notice of a written objection to the proposed action or of a restraining order issued with respect to the proposed action, subdivision (b) requires that the proposed action be taken only after

authorization by court order obtained in a proceeding on a petition for instructions.

The benefit of the procedure provided by subdivision (b) of Section 10580 and subdivisions (a) and (b) of Section 10589 is that the procedure permits a court review of the proposed action before it is taken if the personal representative has notice of an objection rather than having the objection first made after the action has been taken. For further discussion, see the Comment to Section 10580.

What are the consequences if the personal representative goes ahead with the proposed transaction without court supervision after the personal representative has notice of a written objection to the transaction? As far as the third party to the transaction is concerned, the third party is protected if the third party is a bona fide purchaser or a third person dealing in good faith with the personal representative who changes his or her position in reliance upon the action, conveyance, or transfer, without actual notice of the failure of the personal representative to comply with the court supervision requirements. See Section 10591. As far as the personal representative is concerned, there are two sanctions that would apply where the personal representative goes ahead with a transaction knowing that there is a written objection to the transaction. First, the personal representative can be surcharged if the personal representative violates the standard of ordinary care and diligence established by Section 9600. In view of the objection, the burden is on the personal representative to establish that the action taken satisfied the requirements of Section 9600. Second, taking an action without obtaining court supervision where there has been an objection to the proposed action is grounds for removal of the personal representative. See Section 10592 and the Comment thereto. If the objection was made by serving a restraining order with respect to the proposed action, the personal representative also would be subject to sanctions for violation of the court order.

Subdivision (c) of Section 10589 requires that notice of hearing be given to a person who has made a written objection under Section 10587 or has served a restraining order under Section 10588. Subdivision (c) requires that notice of hearing be given of the hearing on a petition for instructions, or a petition under Section 9684, for an order authorizing a proposed action described in subdivision (b) as well as of a hearing on a petition for court authorization or confirmation of a proposed action described in subdivision (a).

As to the application of this part where independent administration authority was granted under the repealed Probate Code, see Section 10406.

Background on Section 10589 of Repealed Code

Section 10589 was added by 1987 Cal. Stat. ch. 923 § 93. Subdivision (a) restated the first sentence of subdivision (b) of former Probate Code Section 591.5 (repealed by 1987 Cal. Stat. ch. 923 § 35) without substantive change. Subdivision (b) was new. Subdivision (c) restated subdivision (e) of former Section 591.5 (repealed by 1987 Cal. Stat. ch. 923 § 35) without substantive change. For background on the provisions of this part, see the Comment to this part under the part heading.

PART 7. COMPENSATION OF PERSONAL REPRESENTATIVE AND ESTATE ATTORNEY**Substitute Comment for Part 7**

Comment. This part supersedes Sections 900, 901, 902, 903, 904, 910, and 911 of the repealed Probate Code. For background, see *Recommendations Relating to Probate Law: Hiring and Paying Attorneys, Advisors, and Others; Compensation of Personal Representative*, 20 Cal. L. Revision Comm'n Reports 31 (1990); *Revised and Supplemental Comments to the New Probate Code*, 20 Cal. L. Revision Comm'n Reports 2001 (1990). See also the Comment to Section 900.

§ 10800. Compensation for ordinary services**Substitute Comment**

Comment. Subdivision (a) of Section 10800 restates a portion of the first sentence of Section 901 of the repealed Probate Code without substantive change. Subdivision (b) restates the first sentence of the second paragraph of Section 901 of the repealed Probate Code without substantive change.

Compensation is computed using the total amount of the appraisal of property in the inventory (see Sections 8800-8802, 8850, 8900), plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property. Property is appraised at its fair market value at the time of the decedent's death. See Section 8802. The amount of any liens or encumbrances on the property is not subtracted from the fair market value used for the purpose of computing the compensation under this section.

A court order allowing the compensation to the personal representative is required before the compensation may be paid, and the compensation allowed is paid out of funds of the estate. See Sections 10830, 10831. As to allowing a portion of the compensation of the personal representative (on account of services rendered up to the time of allowance), see Section 10830. See also Section 12205 (reduction of compensation for delay in closing estate administration).

As to the right of an attorney to receive dual compensation for services as personal representative and as estate attorney, see Section 10804.

Under the introductory clause of Section 10800, the section is subject to Section 10802. Section 10802 provides that, if the decedent's will makes provision for the compensation of the personal representative and the court does not relieve the personal representative from those provisions, the compensation provided by the will shall be the full and only compensation for the services of the personal representative. See also the discussion in the Comment to Section 10802.

As to the law applicable to a proceeding commenced before July 1, 1991, see Section 10850. As to the application of any amendments made after that date, see Section 3.

Section 10800 does not continue the last sentence of former Probate Code Section 901. Before 1965, the usual practice was to use gross value of real property to calculate the statutory fee unless the property was sold during probate, in which case only the decedent's equity in the property was used. Under the 1965 revision to former Probate Code Section 901 (amended 1965 Cal. Stat. ch. 115), gross value was used, whether or not a sale had taken place. See Review of Selected 1965 Code Legislation 222 (Cal. Cont. Ed. Bar 1965). Subdivision (b) of Section 10800 continues the substance of the 1965 revision. The last sentence of former Section 901 was included in 1965 to make clear that the former practice was being changed; it is no longer necessary to continue this sentence.

For background on the provisions of this part, see the Comment to this part under the part heading.

§ 10801. Additional compensation for extraordinary services

Substitute Comment

Comment. Section 10801 restates the first sentence of Section 902 of the repealed Probate Code without substantive change. See also Section 12205 (reduction of compensation for delay in closing estate administration). As to the law applicable to a proceeding commenced before July 1, 1991, see Section 10850. As to the application of any amendments made after that date, see Section 3.

Even though services are extraordinary, the court has discretion whether or not to award compensation for them. *Estate of Walker*, 221 Cal. App. 2d 792, 795-96, 34 Cal. Rptr. 832 (1963) (extraordinary services by executor and estate attorney).

The listing in Section 902 of the repealed Probate Code of examples of what constituted extraordinary services is not continued in Section

10801. The former list was incomplete. See *Estate of Buchman*, 138 Cal. App. 2d 228, 236, 291 P.2d 547 (1955) (special administrator and estate attorney). Omission of the list is not intended to change the law.

For background on the provisions of this part, see the Comment to this part under the part heading.

Under Sections 10800 and 10801, the following services by the personal representative may be considered as extraordinary:

(1) Sales or mortgages of real or personal property. *Estate of McSweeney*, 123 Cal. App. 2d 787, 798, 268 P.2d 107 (1954) (extraordinary fees of executor and estate attorney).

(2) Carrying on decedent's business. *Estate of King*, 19 Cal. 2d 354, 358-60, 121 P.2d 716 (1942) (extraordinary fees of executrix); *Estate of Scherer*, 58 Cal. App. 2d 133, 136 P.2d 103 (1943) (extraordinary fees of executor); *In re Estate of Allen*, 42 Cal. App. 2d 346, 353, 108 P.2d 973 (1941) (extraordinary fees of administratrix and estate attorney).

(3) Court proceedings to determine testator's intention concerning undisclosed beneficiaries. *Estate of Feldman*, 78 Cal. App. 2d 778, 793-94, 178 P.2d 498 (1947) (extraordinary fees of executor and estate attorney).

(4) Defense of personal representative's account (answering interrogatories; attending depositions; conferring with attorneys to prepare for depositions, interrogatories, and trial; attending trial). *Estate of Beach*, 15 Cal. 3d 623, 644-45, 542 P.2d 994, 125 Cal. Rptr. 570 (1975), cert. denied, 434 U.S. 1046 (1978) (extraordinary fees of executor and estate attorney).

(5) Securing a loan to pay debts of the estate. *In re Estate of O'Connor*, 200 Cal. 646, 651, 254 P. 269 (1927) (extraordinary fees of executor and estate attorney).

The foregoing is not an exhaustive list. Other extraordinary services are or may in the future be added to this list by case law or court rule. See generally Feinfield, *Fees and Commissions*, in 2 California Decedent Estate Practice § 20.28 (Cal. Cont. Ed. Bar, Feb. 1989); Los Angeles County Probate Policy Memorandum § 15.08, reprinted in California Local Probate Rules (10th ed. Cal. Cont. Ed. Bar 1989).

Under the introductory clause of Section 10801, the section is subject to the provisions of this part. Thus, for example, Section 10801 is subject to Section 10802. Section 10802 provides that, if the decedent's will makes provision for the compensation of the personal representative and the court does not relieve the personal representative from those provisions, the compensation provided by the will shall be the full and only compensation for the services of the personal representative. See

also the discussion in the Comment to Section 10802. Likewise, Section 10801 is subject to Section 10804. Section 10804 provides that, unless expressly authorized by the decedent's will, a personal representative who is an attorney may not receive compensation for services as estate attorney.

§ 10802. Compensation provided by decedent's will

Substitute Comment

Comment. Section 10802 is a new provision. Subdivision (a) restates a portion of Section 900 of the repealed Probate Code without substantive change. The remainder of the section supersedes the portions of Sections 900 and 901 of the repealed Probate Code that permitted the personal representative to renounce the compensation provided by the will. The former ability to renounce the compensation provided by the will has been replaced by a new requirement that court approval must be obtained for the personal representative to receive greater compensation than provided under the will.

Subdivision (a) gives the testator the ability to provide for alternative methods of compensation in the will. For example, the will can eliminate the distinction between ordinary and extraordinary services and substitute an hourly rate or rates for the various services to be provided by the personal representative. The statutory compensation provisions are thus default provisions that apply where the will does not make provision for the compensation of the personal representative. Subdivision (a) also permits the personal representative to receive a greater amount of compensation than the statutory compensation if the decedent's will makes provision for the greater amount of compensation. Cf. *Estate of Van Every*, 67 Cal. App. 2d 164, 153 P.2d 614 (1944) (\$4,000 bequest to attorney in lieu of \$1,696.33 statutory fee).

As to the law applicable to a proceeding commenced before July 1, 1991, see Section 10850. As to the application of any amendments made after that date, see Section 3.

For general provisions, see Sections 1000-1004 (rules of practice), 1020-1023 (petitions and other papers), 1040-1050 (hearings and orders). For general provisions relating to notice of hearing, see Sections 1200-1220. See also Sections 1206 (notice to known heirs or devisees), 1215-1217 (mailing in general), 1250-1252 (request for special notice), 1260-1265 (proof of giving notice). The court for good cause may dispense with the notice otherwise required to be given pursuant to this section. See Section 1220(c).

For background on the provisions of this part, see the Comment to this part under the part heading.

§ 10803. Agreement for higher compensation void**Substitute Comment**

Comment. Section 10803 restates Section 903 of the repealed Probate Code without substantive change. This section applies to compensation for both ordinary and extraordinary services. Nothing prevents the personal representative from waiving all compensation or agreeing to take less than the statutory compensation. See *In re Estate of Marshall*, 118 Cal. 379, 381, 50 P. 540 (1897) (statutory compensation allowed when evidence of alleged agreement for lower compensation was insufficient). See also Feinfeld, *Fees and Commissions*, in 2 California Decedent Estate Practice § 20.5 (Cal. Cont. Ed. Bar, Feb. 1989). As to the law applicable to a proceeding commenced before July 1, 1991, see Section 10850. As to the application of any amendments made after that date, see Section 3. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 10804. No compensation as estate attorney unless authorized by will or court order**Substitute Comment**

Comment. Section 10804 is a new provision that codifies the general case law rule that the personal representative cannot serve as the estate attorney and receive dual compensation. See *In re Estate of Parker*, 200 Cal. 132, 251 P. 907 (1926); *Estate of Downing*, 134 Cal. App. 3d 256, 184 Cal. Rptr. 511 (1982); *Estate of Haviside*, 102 Cal. App. 3d 365, 368-69, 162 Cal. Rptr. 393 (1980). The provision that dual compensation may be paid if expressly authorized by the decedent's will also codifies case law. See *Estate of Thompson*, 50 Cal. 2d 613, 328 P.2d 1 (1958); *Estate of Crouch*, 240 Cal. App. 2d 801, 49 Cal. Rptr. 926 (1966). See generally Feinfeld, *Fees and Commissions*, in 2 California Decedent Estate Practice §§ 20.10-20.12 (Cal. Cont. Ed. Bar, Feb. 1989).

The term "estate attorney" is to be given a broad meaning for the purposes of this section and includes the associates, partners, and attorneys of counsel with the law firm of the attorney retained by the personal representative as estate attorney, and also associates, partners, and attorneys of counsel with other law firms associated in the estate proceeding with the firm of the attorney retained by the personal representative as estate attorney, if the personal representative will share in the compensation that would be paid to the law firm. See also *In re Estate of Parker*, 200 Cal. 132, 251 P. 907 (1926). As to the law applicable to a proceeding commenced before July 1, 1991, see Section

10850. As to the application of any amendments made after that date, see Section 3.

For background on the provisions of this part, see the Comment to this part under the part heading.

§ 10805. Apportionment of compensation

Substitute Comment

Comment. Section 10805 restates the second sentence of Section 901 of the repealed Probate Code without substantive change, with the addition of the reference to an agreement between the personal representatives concerning apportionment of their compensation. The added language was drawn from Section 8547 (division of compensation between special administrator and general personal representative). For background on the provisions of this part, see the Comment to this part under the part heading. As to the law applicable to a proceeding commenced before July 1, 1991, see Section 10850. As to the application of any amendments made after that date, see Section 3.

§ 10810 (added). Compensation of estate attorney

1990 Addition

Comment. Section 10810, which was added to the new Probate Code by 1990 Cal. Stat. ch. [SB 1775] § 34, continues the substance of the language of Section 910 of the repealed Probate Code. As to the law applicable to a proceeding commenced before July 1, 1991, see Section 10850. As to the application of any amendments made after that date, see Section 3.

§ 10830 (amended). Partial allowance of compensation

Substitute Comment

Comment. Section 10830 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 35. The section as amended is drawn from Sections 904 and 911 of the repealed Probate Code. As originally enacted in the new Probate Code, Section 10830 had been revised to reflect the fact that Assembly Bill 831 of the 1989-1990 regular session would have substituted an agreed fee system for the statutory fee system for probate attorney fees. However, Assembly Bill 831 was not enacted, and Section 10830 was amended by 1990 Cal. Stat. ch. [SB 1775] § 35 to reflect this fact. See the Comment to Section 900.

As to the priority for payment, see Section 11420. As to the law applicable to a proceeding commenced before July 1, 1991, see Section

10850. As to the application of any amendments made after that date, see Section 3.

For general provisions, see Sections 1000-1004 (rules of practice), 1020-1023 (petitions and other papers), 1040-1050 (hearings and orders). For general provisions relating to notice of hearing, see Sections 1200-1220. See also Sections 1206 (notice to known heirs or devisees), 1215-1217 (mailing in general), 1250-1252 (request for special notice), 1260-1265 (proof of giving notice). The court for good cause may dispense with the notice otherwise required to be given to a person under Section 10830. See Section 1220(c). For a limitation on the court's authority to award a partial allowance of fees for extraordinary services, see Section 10832. See also Sections 8547 (compensation of special administrator), 10954(c) (final report to show compensation), 12205 (reduction of compensation for delay in closing estate administration). See also Section 52 (defining "letters").

For background on the provisions of this part, see the Comment to this part under the part heading.

§ 10831 (amended). Final compensation

Substitute Comment

Comment. Section 10831 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 36. As originally enacted in the new Probate Code, Section 10831 had been drafted to reflect the fact that Assembly Bill 831 of the 1989-1990 regular session would have substituted an agreed fee system for the statutory fee system for probate attorney fees. However, Assembly Bill 831 was not enacted, and Section 10831 was amended by 1990 Cal. Stat. ch. [SB 1775] § 36 to reflect this fact. See the Comment to Section 900.

Amended Section 10831 is a new provision drawn from Probate Code Section 10830 and is in accord with existing practice. See Feinfield, *Fees and Commissions*, in 2 California Decedent Estate Practice § 20.34 (Cal. Cont. Ed. Bar, Feb. 1989). Final compensation is not to be paid until there is a final account and a final distribution. As to the priority for payment, see Section 11420. As to the law applicable to a proceeding commenced before July 1, 1991, see Section 10850. As to the application of any amendments made after that date, see Section 3.

For general provisions, see Sections 1000-1004 (rules of practice), 1020-1023 (petitions and other papers), 1040-1050 (hearings and orders). For general provisions relating to notice of hearing, see Sections 1200-1220. See also Sections 1206 (notice to known heirs or devisees), 1215-1217 (mailing in general), 1250-1252 (request for special notice), 1260-

1265 (proof of giving notice). See also Sections 8547 (compensation of special administrator), 10954(c) (final report to show compensation), 12205 (reduction of compensation for delay in closing estate administration).

For background on the provisions of this part, see the Comment to this part under the part heading.

§ 10832. Limitation on allowance of compensation for extraordinary services

Substitute Comment

Comment. Section 10832 is a new provision drawn from local court rules. In some cases, present payment will benefit the estate. For example, compensation may be allowed near the end of a tax year to absorb estate income so that the income will not be taxable. Partial payment also may be allowed at any time during the year if good cause is shown. As to the law applicable to a proceeding commenced before July 1, 1991, see Section 10850. As to the application of any amendments made after that date, see Section 3. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 10850 (amended). Application of provisions of this part

Substitute Comment

Comment. Section 10850 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 37. The amended section limits the application of this part to proceedings commenced on or after July 1, 1991. Thus, for example, the allowance of compensation of the personal representative or the attorney for the personal representative in a proceeding commenced before July 1, 1991, is governed by the applicable law in effect before July 1, 1991. See former Prob. Code §§ 900, 901, 902, 903, 904, 910, and 911 (repealed by 1990 Cal. Stat. 79 § 13) (compensation of personal representative and attorney for personal representative). For background, see *Recommendations Relating to Probate Law: Hiring and Paying Attorneys, Advisors, and Others; Compensation of Personal Representative*, 20 Cal. L. Revision Comm'n Reports 31 (1990); *Revised and Supplemental Comments to the New Probate Code*, 20 Cal. L. Revision Comm'n Reports 2001 (1990).

PART 8. ACCOUNTS

Substitute Comment

Comment. This part supersedes Part 8 (commencing with Section 10900) of Division 7 of the repealed Probate Code. The superseded part was enacted upon recommendation of the California Law Revision Commission. See *Recommendation Relating to Accounts*, 19 Cal. L. Revision Comm'n Reports 877 (1988). See also *Communication from the California Law Revision Commission Concerning Assembly Bill 2841*, 19 Cal. L. Revision Comm'n Reports 1201, 1241-42 (1988); *Communication from the California Law Revision Commission Concerning Assembly Bill 158*, 20 Cal. L. Revision Comm'n Reports 235, 242 (1990).

§ 10900 (amended). Contents of account

Substitute Comment

Comment. Section 10900 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 38. As originally enacted in the new Probate Code, Section 10900 had been revised to reflect the fact that Assembly Bill 831 of the 1989-1990 regular session would have substituted an agreed fee system for the statutory fee system for probate attorney fees. However, Assembly Bill 831 was not enacted, and Section 10900 was amended by 1990 Cal. Stat. ch. [SB 1775] § 38 to reflect this fact. See the Comment to Section 900.

Section 10900 as amended continues Section 10900 of the repealed Probate Code without change. See also Sections 9657 (personal representative not to profit from increase, nor to suffer loss from decrease or destruction of estate without fault), 9839 (paying claim for less than its full amount), 10005 (sale for more or less than appraised value).

Subdivision (b) is based on concepts developed in Note, *California Probate Accounting Procedures*, 39 S. Cal. L. Rev. 316 (1966). In the financial statement, each schedule should contain a breakdown of the summary item into its component parts. For instance, the summary item of receipts might be broken down into the totals of interest income, dividend income, royalties received, and miscellaneous receipts. The exact breakdown will vary, depending on the nature of the estate. It would be unnecessary to show in the summary item more than the total amount of each component part making up the total. For illustrative material, see National Fiduciary Accounting Standards Project: Uniform

Fiduciary Accounting Principles and Model Accounting Formats, in 9 Probate Notes 224-47 (American College of Probate Counsel 1984).

Since the purpose of the report of administration (subdivisions (c) and (d)) is to provide a complete summary of the estate's administration, additional statements may be necessary in order to clarify certain events or circumstances and to permit interested persons to understand the report. In certain instances, the report of administration may include such information as a statement that cash was invested in interest-bearing accounts or other proper investments (Section 9652). If a final account is waived, the final report of administration must include the amount of the compensation paid or payable to the personal representative and the attorney for the personal representative and must set forth the basis for determining the amount of the compensation. See Section 10954(c). See also Section 10831 (request for compensation may be included in the final account).

Likewise, the financial statement must include the information required by this section. This section does not, however, preclude a financial statement from including any other relevant information, such as a separate statement of account as to specific gifts, allocation of principal and income, taxable income and distributable net income, and current values of property in the estate.

Background on Section 10900 of Repealed Code

Section 10900 was added by 1988 Cal. Stat. ch. 1199 § 91. The section superseded former Probate Code Section 920.3 and the first sentence of former Probate Code Section 921 (provisions repealed by 1988 Cal. Stat. ch. 1199 § 54.5). For background on the provisions of this part, see the Comment to this part under the part heading.

§ 10954 (amended). When account is not required

Substitute Comment

Comment. Section 10954 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 39. As originally enacted in the new Probate Code, Section 10954 had been revised to reflect the fact that Assembly Bill 831 of the 1989-1990 regular session would have substituted an agreed fee system for the statutory fee system for probate attorney fees. However, Assembly Bill 831 was not enacted, and Section 10954 was amended by 1990 Cal. Stat. ch. [SB 1775] § 39 to reflect this fact. See the Comment to Section 900.

Section 10954 as amended continues Section 10954 of the repealed Probate Code with the following revisions:

(1) Paragraph (7) of subdivision (b) is added to recognize the authority of an attorney in fact to execute a waiver or acknowledgment under Section 10954.

(2) The phrase "fees and commissions" is changed to "compensation", consistent with the terminology used in Part 7 (commencing with Section 10800) (compensation of personal representative and estate attorney).

Section 10954 supersedes local court rules. The section applies notwithstanding any other provision of this part, including but not limited to Section 10950 (court-ordered account).

Under paragraph (2) of subdivision (b), a waiver may be made on behalf of a minor by the minor's parent or guardian of the estate. The minor's parent or guardian of the estate is the person authorized to receive money or property belonging to the minor. See Sections 3400-3402. If waiver is by the guardian of the estate of the minor, approval of the guardianship court is not required. Similarly, paragraph (3) of subdivision (b) permits a conservator of the estate to waive the account without approval of the conservatorship court. Paragraph (4) of subdivision (b) permits a trustee who has consented to act to waive the account on behalf of the trust.

A guardian, conservator, trustee, or personal representative who waives accounting under this section acts in a fiduciary capacity and is held to the same standard that applies to other actions taken in the fiduciary capacity.

Background on Section 10954 of Repealed Code

Section 10954 was added by 1988 Cal. Stat. ch. 1199 § 91. The section restated former Probate Code Section 933 (repealed by 1988 Cal. Stat. ch. 1199 § 54.5), but excluded from those whose waiver is required beneficiaries whose interest will be satisfied in full. The section also made clear that an unpaid creditor may seek to require an account notwithstanding a waiver by beneficiaries. In subdivision (b)(4) of Section 10954, a reference to the trustee's written acceptance of the trust replaced the former reference to a trustee's consent to act, and a provision excusing court approval was added for court-supervised trusts. See Section 15600 (acceptance of trust by trustee). Court approval was also excused in subdivision (b)(5) for waiver by the personal representative. Subdivision (b)(6) was substituted for the former provision precluding waiver if a person entitled to distribution is unascertained.

For background on the provisions of this part, see the Comment to this part under the part heading.

§ 11000 (amended). Notice of hearing

Substitute Comment

Comment. Section 11000 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 40. As originally enacted in the new Probate Code, Section 11000 revised Section 11000 of the repealed Probate Code to reflect the fact that Assembly Bill 831 of the 1989-1990 regular session would have

substituted an agreed fee system for the statutory fee system for probate attorney fees. However, Assembly Bill 831 was not enacted, and Section 11000 of the new Probate Code was amended by 1990 Cal. Stat. ch. [SB 1775] § 40 to reflect this fact. See the Comment to Section 900.

Section 11000 as amended continues Section 11000 of the repealed Probate Code without change. For general provisions relating to notice of hearing, see Sections 1200-1220. See also Sections 1206 (notice to known heirs or devisees), 1215-1217 (mailing in general), 1250-1252 (request for special notice), 1260-1265 (proof of giving notice).

Background on Section 11000 of Repealed Code

Section 11000 was added by 1988 Cal. Stat. ch. 1199 § 91. Subdivisions (a) and (b) restated subdivisions (b) and (c) of former Probate Code Section 926 (repealed by 1988 Cal. Stat. ch. 1199 § 54.5) without substantive change. Subdivisions (b)(4) and (c) were new. Subdivision (d) restated the first portion of the second sentence of subdivision (a) of former Probate Code Section 926 (repealed by 1988 Cal. Stat. ch. 1199 § 54.5) without substantive change. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 11003. Litigation expenses

Substitute Comment

Comment. Section 11003 continues Section 11003 of the repealed Probate Code without change. Litigation costs under Section 11003 include the costs of a referee appointed under Section 11002.

Background on Section 11003 of Repealed Code

Section 11003 was added by 1988 Cal. Stat. ch. 1199 § 91. Subdivision (a) superseded the second sentence of former Probate Code Section 927 (repealed by 1988 Cal. Stat. ch. 1199 § 54.5). Subdivision (b) was a new provision. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 11429 (amended). Unpaid creditor

1990 Amendment

Comment. Section 11429 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 14.1.

Subdivision (a) was amended to recognize the liability of distributees provided by Section 9392 (liability of distributee).

Subdivision (b) was amended to make specific reference to the statutory immunity of the personal representative for actions and omissions in notifying creditors. This amendment is not a change in law, but is intended for cross-referencing purposes only. The reference to the specific immunity provided in Section 9053 should not be construed to limit the availability of any other applicable defenses of the personal representative.

For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 11623 (amended). Distribution under Independent Administration of Estates Act

1990 Amendment

Comment. Section 11623 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 41 to add subdivision (b) to make clear that the section is not the exclusive means by which a personal representative with independent administration authority may make distribution. This is a clarification, not a change, of existing law.

§ 12205 (amended). Sanction for failure to timely close estate

Substitute Comment

Comment. Section 12205 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 42. As originally enacted, Section 12205 of the new Probate Code revised Section 12205 of the repealed Probate Code to reflect the fact that Assembly Bill 831 of the 1989-1990 regular session would have substituted an agreed fee system for the statutory fee system for probate attorney fees. However, Assembly Bill 831 was not enacted, and Section 12205 was amended by 1990 Cal. Stat. ch. [SB 1775] § 42 to reflect this fact. See the Comment to Section 900.

Section 12205 as amended continues Section 12205 of the repealed Probate Code without substantive change.

Background on Section 12205 of Repealed Code

Section 12205 was added by 1988 Cal. Stat. ch. 1199 § 93. The section restated the fourth paragraph of former Probate Code Section 1025.5 (repealed by 1988 Cal. Stat. ch. 1199 § 55.5), with the addition of a direction to the court to consider prior delays in setting sanctions. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 13109 (amended). Liability for decedent's unsecured debts

1990 Amendment

Comment. Section 13109 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 15.1 to make clear that the general one-year statute of limitations applicable to all causes of action against a decedent is applicable to liability for the decedent's debts under Section 13109. For background

on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 13156 (amended). Liability for decedent's unsecured debts

1990 Amendment

Comment. Section 13156 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 16.1 to make clear that the general one-year statute of limitations applicable to all causes of action against a decedent is applicable to liability for the decedent's debts under Section 13156. For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 13204 (amended). Liability for decedent's unsecured debts

1990 Amendment

Comment. Section 13204 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 17.1 to make clear that the general one-year statute of limitations applicable to all causes of action against a decedent is applicable to liability for the decedent's debts under Section 13204. For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 13554 (amended). Enforcement of liability

1990 Amendment

Comment. Section 13554 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. 140 § 18.1 to make clear that the general one-year statute of limitations applicable to all causes of action against a decedent is applicable to liability for the decedent's debts under Section 13554. Cf. former Code Civ. Proc. § 353.5 and Comment thereto. For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

§ 15003 (amended). Effect of division on constructive and resulting trusts, fiduciary relationships, and entities and relationships not included in definition of “trust”; substantive law of constructive and resulting trusts not affected

1990 Amendment

Comment. Section 15003 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 43. The 1990 amendment revised subdivision (a) to avoid any implication that this provision is a limitation on the jurisdiction of the superior court in proceedings under this division. This amendment is intended to reject dicta in *Estate of Mullins*, 206 Cal. App. 3d 924, 931, 255 Cal. Rptr. 430 (1988). For provisions governing jurisdiction in proceedings under this division, see Sections 17000, 17001, and 17004. For background on the 1990 amendment, see *Recommendation Relating to Jurisdiction of Superior Court in Trust Matters*, 20 Cal. L. Revision Comm'n Reports 2253 (1990).

§ 15640. Resignation of trustee

Substitute Comment

Comment. Section 15640 continues Section 15640 of the repealed Probate Code with the following revisions:

(1) The section has been revised to make clear that court approval is not required to accomplish a resignation except under subdivision (d). This revision made explicit what was implicit under former law.

(2) The last two sentences have been added to subdivision (c) for consistency with Section 15660(c) (appointment of trustee to fill vacancy) and to make clear that a conservator may consent to the resignation without the need to obtain approval of the court in which the conservatorship is pending.

Subdivisions (a), (c), and (d) are similar to Section 106 of the Restatement (Second) of Trusts (1957), except that the class of persons whose consent is needed under subdivision (c) is more restricted. For a provision governing acceptance of the trust, see Section 15600. For provisions relating to consent by beneficiaries who lack capacity, see, e.g., Civil Code §§ 2450, 2467 (statutory form of durable power of attorney); Prob. Code §§ 1003 (guardian ad litem), 2580 (conservator).

Whether court approval is required under subdivision (a) depends on the terms of the trust. Subdivision (b) recognizes that the person holding the power to revoke a revocable trust has control over the trust rather than

the beneficiaries. See Section 15800. Under subdivision (d), the court has authority to accept a resignation regardless of whether the trust provides a manner of resignation.

For general provisions relating to petitions and other papers, see Sections 1020-1023, 17201; see also Sections 1021 (petition to be verified), 1041 (clerk to set petition for hearing). For general provisions relating to notice of hearing, see Sections 1200-1221, 15802-15804, 17100-17105, 17203-17205; see also Sections 1260-1265 (proof of giving notice). For general provisions relating to hearings and orders, see Sections 1040-1050, 17000-17006, 17201-17202, 17206-17207. See also Section 17200(b)(11) (petition to accept resignation of trustee).

Background on Section 15640 of Repealed Code

Section 15640 was added by 1986 Cal. Stat. ch. 820 § 40. Subdivision (a)(1) continued part of the second sentence of former Probate Code Section 1138.8 (repealed by 1986 Cal. Stat. ch. 820 § 31) without substantive change. Subdivision (a)(3) superseded former Civil Code Section 2282(d) (repealed by 1986 Cal. Stat. ch. 820 § 7) which permitted discharge from the trust with the consent of "the beneficiary, if the beneficiary has capacity to contract."

Subdivision (a)(4) restated authority of the court under prior law. See former Civil Code §§ 2282(e), 2283 (provisions repealed by 1986 Cal. Stat. ch. 820 § 7); former Prob. Code §§ 1125.1, 1138.1(a)(9), 1138.8 (provisions repealed by 1986 Cal. Stat. ch. 820 § 31). Under subdivision (a)(4), the court had authority to accept a resignation regardless of whether the trust provides a manner of resignation. Former Probate Code Section 1138.8 permitted the court to act where the trust was silent.

The provision in subdivision (b) that the trustee's resignation shall be accepted by the court restated part of the fifth sentence of former Probate Code Section 1125.1 and part of the third sentence of former Probate Code Section 1138.8 (provisions repealed by 1986 Cal. Stat. ch. 820 § 31). The authority in subdivision (b) for protective orders restated part of the last sentence of the first paragraph of former Probate Code Section 1125.1 and part of the third sentence of former Probate Code Section 1138.8 (provisions repealed by 1986 Cal. Stat. ch. 820 § 31). See also Section 17206 (general authority to make necessary orders).

For background on the provisions of this division, see the Comment to this division under the division heading. For background on the 1990 revision of this section, see *Recommendation Relating to Trustees' Fees*, 20 Cal. L. Revision Comm'n Reports 185 (1990).

§ 15642. Removal of trustee

Substitute Comment

Comment. Section 15642 continues Section 15642 of the repealed Probate Code with the following revisions:

(1) Subdivision (a) has been revised to give the settlor of an irrevocable living trust the right to petition for removal of a trustee.

(2) New paragraph (5) has been added to subdivision (b)—and former paragraph (5) has been redesignated to be paragraph (6)—to make clear that a trustee may be removed in the court's discretion where the trustee's

compensation is excessive under the circumstances. The addition of new paragraph (5) is a clarification of the law, rather than a new principle. For background on these revisions, see *Recommendation Relating to Trustees' Fees*, 20 Cal. L. Revision Comm'n Reports 185 (1990).

Subdivision (a) is the same in substance as Section 107 of the Restatement (Second) of Trusts (1957) except that it gives the settlor of an irrevocable living trust the right to petition for removal of a trustee. As to the rights of a settlor of a revocable trust, see Sections 15401 (revocation by settlor), 15402 (modification by settlor of revocable trust), 15800 (rights of person holding power of revocation). The right to petition for removal of a trustee does not give the settlor any other rights, such as the right to an account or to receive information concerning administration of the trust.

The statement of grounds for removal of the trustee by the court is drawn from the Texas Trust Code and the Restatement. See Tex. Prop. Code Ann. § 113.082(a) (Vernon 1984); Restatement (Second) of Trusts § 107 comments b-d (1957). As to the authority to remove as provided in the trust instrument, see Restatement (Second) of Trusts § 107 comment h (1957). If a trustee is removed, another trustee may be appointed to fill the vacancy as provided in Section 15660. See also Section 17206 (general authority to make necessary orders).

For general provisions relating to petitions and other papers, see Sections 1020-1023, 17201; see also Sections 1021 (petition to be verified), 1041 (clerk to set petition for hearing). For general provisions relating to notice of hearing, see Sections 1200-1221, 15802-15804, 17100-17105, 17203-17205; see also Sections 1260-1265 (proof of giving notice). For general provisions relating to hearings and orders, see Sections 1040-1050, 17000-17006, 17201-17202, 17206-17207. See also Section 17200(b)(10) (petition to remove trustee).

Background on Section 15642 of Repealed Code

Section 15642 was added by 1986 Cal. Stat. ch. 820 § 40. The authority of the court under Section 15642 to remove trustees continued authority found in former law. See former Civil Code §§ 2233, 2283 (provisions repealed by 1986 Cal. Stat. ch. 820 § 7); former Prob. Code §§ 1123.5, 1138.1(a)(10) (Probate Code provisions repealed by 1986 Cal. Stat. ch. 820 § 31). The authority for removal on the court's own motion was drawn from the third sentence of former Probate Code Section 1123.5 (repealed by 1986 Cal. Stat. ch. 820 § 31). Paragraphs (1) and (2) of subdivision (b) of Section 15642 superseded parts of former Civil Code Sections 2233 and 2283 and part of the first sentence of former Probate Code Section 1123.5 (repealed by 1986 Cal. Stat. ch. 820 § 31). The general language relating to a trustee being otherwise unfit to administer the trust subsumed the reference in former Probate Code Section 1126 (repealed by 1986 Cal. Stat. ch. 820 § 31) to a trustee who is incapable of acting. Paragraph (3) of subdivision (b) continued part of the second sentence of former Probate Code Section 1123.5 (repealed by 1986 Cal. Stat. ch. 820 § 31) without

substantive change, except that the reference to "ill feeling" was omitted as redundant with "hostility," and the word "continued" was omitted since the test is whether the administration of the trust is impaired. Paragraph (4) of subdivision (b) continued part of the first sentence of former Probate Code Section 1126 and part of the first sentence of former Probate Code Section 1138.9 (provisions repealed by 1986 Cal. Stat. ch. 820 § 31) without substantive change. Paragraph (5) of subdivision (b) continued authority found in former Probate Code Sections 1126 and 1138.9 (provisions repealed by 1986 Cal. Stat. ch. 820 § 31). Subdivision (c) continued former Probate Code Section 1138.2 (repealed by 1986 Cal. Stat. ch. 820 § 31) without substantive change and restated former Probate Code Section 1123.6 (repealed by 1986 Cal. Stat. ch. 820 § 31) without substantive change.

For background on the provisions of this division, see the Comment to this division under the division heading.

§ 15645. Costs and attorney's fees in proceedings for transfer of trust to successor trust company

Substitute Comment

Comment. Section 15645 is a new provision intended to encourage an out of court solution where the beneficiaries of a trust want to transfer administration of the trust to a successor corporate trustee. For provisions concerning consent to transfer of the trust to a successor trust company, see Sections 15640 (resignation of trustee) and 15660 (appointment to fill vacancy in office of trustee). For background on the section, see *Recommendation Relating to Trustees' Fees*, 20 Cal. L. Revision Comm'n Reports 185 (1990). For background on the provisions of this division, see the Comment to this division under the division heading.

Article 4. Appointment of Trustees

§ 15660. Appointment of trustee to fill vacancy

Substitute Comment

Comment. Section 15660 continues Section 15660 of the repealed Probate Code with the addition of new subdivision (c) and the redesignation of former subdivision (c) as subdivision (d). For a provision governing the occurrence of vacancies in the office of trustee, see Section 15643.

Subdivision (a) makes clear that the vacancy in the office of a cotrustee must be filled only if the trust so requires. If the vacancy in the office of cotrustee is not filled, the remaining cotrustees may continue to administer the trust under Section 15621, unless the trust instrument provides otherwise.

Subdivision (c) was added to permit a vacancy in the office of trustee to be filled, without the need for court approval, by a trust company

selected by agreement of the adult beneficiaries of the trust. For background on subdivision (c), see *Recommendation Relating to Trustees' Fees*, 20 Cal. L. Revision Comm'n Reports 185 (1990). The persons who must agree to the new trustee under subdivision (c) are the same as those who must consent to a resignation under subdivision (c) of Section 15640. A vacancy may be filled under subdivision (c) whether or not the former trustee was a trust company. If the trustee resigns pursuant to subdivision (c) of Section 15640, the trust may be transferred to a trust company pursuant to subdivision (c) of Section 15660, all without court approval.

Subdivision (d) gives the court discretion to fill a vacancy in a case where the trust does not name a successor who is willing to accept the trust, where the trust does not provide a practical method of appointment, or where the trust does not require the vacancy to be filled. For a limitation on the rights of certain beneficiaries of revocable trusts, see Section 15800.

The provision in subdivision (d) requiring the court to give consideration to the wishes of the beneficiaries is consistent with the Restatement rule. See Restatement (Second) of Trusts § 108 comments d, i (1957).

For general provisions relating to petitions and other papers, see Sections 1020-1023, 17201; see also Sections 1021 (petition to be verified), 1041 (clerk to set petition for hearing). For general provisions relating to notice of hearing, see Sections 1200-1221, 15802-15804, 17100-17105, 17203-17205; see also Sections 1260-1265 (proof of giving notice). For general provisions relating to hearings and orders, see Sections 1040-1050, 17000-17006, 17201-17202, 17206-17207. See also Section 17200(b)(10) (petition to appoint trustee).

Background on Section 15660 of Repealed Code

Section 15660 was added by 1986 Cal. Stat. ch. 820 § 40.

Section 15660 superseded the following provisions:

(1) Former Civil Code Sections 2287 and 2289 (provisions repealed by 1986 Cal. Stat. ch. 820 § 7).

(2) Former Probate Code Sections 1125, 1126, and 1138.9 (provisions repealed by 1986 Cal. Stat. ch. 820 § 31).

The provision in subdivision (b) of Section 15660 relating to a "practical" method of appointing a trustee continued language found in former Civil Code Section 2287 and superseded part of former Probate Code Section 1138.9 (repealed by 1986 Cal. Stat. ch. 820 § 31).

The authority of the court to appoint the same or a lesser number of trustees in subdivision (d) of Section 15660 continued the second sentence of former Civil Code Section 2289 without substantive change. The provision in subdivision (d) requiring the court to give consideration to the wishes of the beneficiaries superseded the second sentence of former Civil Code Section 2287.

For background on the provisions of this division, see the Comment to this division under the division heading.

§ 15686. Notice of increased trustee's fee

Substitute Comment

Comment. Section 15686 is a new provision. For background on the section, see *Recommendation Relating to Trustees' Fees*, 20 Cal. L. Revision Comm'n Reports 185 (1990). See also Section 16060 (duty of the trustee to keep beneficiaries of trust reasonably informed of the trust and its administration).

§ 17001 (amended). Full-power court

1990 Amendment

Comment. Section 17001 (enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was amended by 1990 Cal. Stat. ch. [SB 1775] § 44. The 1990 amendment deletes unnecessary language from which a negative implication could be drawn, i.e., that the court would not have "all the powers of the superior court" when exercising concurrent jurisdiction, as well as exclusive jurisdiction. This amendment is needed to reject dicta in recent cases as to limitations on the power and jurisdiction of the court in proceedings properly commenced under this division. See *Estate of Mullins*, 206 Cal. App. 3d 924, 930-31, 255 Cal. Rptr. 430 (1988); *Johnson v. Tate*, 215 Cal. App. 3d 1282, 1285-87, 264 Cal. Rptr. 68 (1989). This amendment also reaffirms the original intent of this section, along with Sections 17000 and 17004, to eliminate any limitations on the power of the court hearing matters under this division, whether or not it is called the "probate court," to exercise jurisdiction over all parties constitutionally before it and completely dispose of the dispute. This section, along with Sections 17000 and 17004, is intended to eliminate any notion that the "probate court" is one of limited power or that it cannot dispose of matters properly brought before it, while preserving the power of the superior court in a particular county to organize itself into divisions for the efficient conduct of judicial business. If a court determines that it is not the appropriate forum or division of the court to hear a case, the court should transfer the matter to the appropriate court or division. See Code Civ. Proc. § 396. For background on the 1990 amendment, see *Recommendation Relating to Jurisdiction of Superior Court in Trust Matters*, 20 Cal. L. Revision Comm'n Reports 2253 (1990).

§ 17102 (repealed). Manner of notice where address is unknown**Substitute Comment**

Comment. Former Section 17102 enacted as a part of the new Probate Code by 1990 Cal. Stat. ch. 79 § 14) was repealed by 1990 Cal. Stat. ch. [SB 1775] § 45. The repealed section is generalized in Section 1212 (manner of mailing notice where address is unknown). See Section 17100 (general notice provision apply to Trust Law). For background on this repeal, see *Recommendation Relating to Notice in Probate Where Address Unknown*, 20 Cal. L. Revision Comm'n Reports 2245 (1990).

§ 17200. Petitioners; grounds for petition**Substitute Comment**

Comment. Section 17200 continues Section 17200 of the repealed Probate Code with the revision of subdivision (b)(9) to make clear that the reasonableness of the trustee's compensation is subject to review on petition under this section. This revision is a clarification of prior law and not a substantive change. For background on this revision, see *Recommendation Relating to Trustees' Fees*, 20 Cal. L. Revision Comm'n Reports 185 (1990).

The introductory clause of subdivision (a) has the effect of giving the right to petition concerning the internal affairs of a revocable living trust to the settlor (or other person holding the power to revoke) instead of the beneficiaries during the time that the settlor (or other person holding the power to revoke) is competent. See Section 15800 and the Comment thereto.

The list of grounds for a petition concerning the internal affairs of a trust under subdivision (b) is not exclusive and is not intended to preclude a petition for any other purpose that can be characterized as an internal affair of the trust. Paragraphs (1) and (2) of subdivision (b) are drawn from Section 7-201(a) of the Uniform Probate Code (1987). As to the construction of provisions drawn from uniform acts, see Section 2.

Various provisions elsewhere in this division relate to proceedings under this chapter. For limitations on the right of a beneficiary to compel the trustee to account or report under paragraph (7), see Sections 15800 and 16060-16064. As to granting powers to the trustee under paragraph (8), see Section 16201. As to the trustee's compensation under paragraph (9), see Sections 15680-15683; see also Section 15645 (costs and attorney's fees in proceedings for transfer of trust to successor trust

company). As to breaches of trust involved in paragraph (12), see Sections 16400-16462. As to modification and termination of trusts under paragraph (13), see Sections 15400-15410. As to combining or dividing trusts under paragraph (14), see Sections 15411 and 15412. As to transfers of trusts under paragraph (16), see Sections 17400-17405 and 17450-17457. As to transfers of certain testamentary trusts within California under paragraph (17), see Section 17304. As to removal of certain testamentary trusts from continuing court jurisdiction under paragraph (18), see Section 17352.

The procedure provided in this chapter is available to determine matters concerning the administration of trusts notwithstanding a purported limitation or exclusion in the trust instrument. The provision in subdivision (b) of former Section 1138.1 of the repealed Probate Code (repealed by 1986 Cal. Stat. ch. 820 § 31) to the effect that the trust could restrict the availability of remedies is not continued.

See also Sections 24 ("beneficiary" defined), 82 ("trust" defined), 17005 (venue).

Background on Section 17200 of Repealed Code

Section 17200 was added by 1986 Cal. Stat. ch. 820 § 40. The section restated the substance of subdivision (a) of former Probate Code Section 1138.1 and superseded parts of former Probate Code Section 1120 (provisions repealed by 1986 Cal. Stat. ch. 820 § 31). The reference to determining the existence of a trust in subdivision (a) was new. Subdivision (a) also restated without substantive change part of former Probate Code Section 1139.1 and the first sentence of former Probate Code Section 1139.2 (petition for transfer of trust to another jurisdiction) and part of former Probate Code Section 1139.12 (petition for transfer to California) (provisions repealed by 1986 Cal. Stat. ch. 820 § 31). The introductory clause of subdivision (a) (referring to Section 15800) was new.

Paragraphs (1), (2), and (3) of subdivision (b) were new. Paragraph (5) restated parts of subdivisions (b) and (d) of former Civil Code Section 2269 (repealed by 1986 Cal. Stat. ch. 820 § 7) (review of exercise of discretionary powers) without substantive change. See Sections 16080-16081 (duties with regard to discretionary powers). Paragraph (9) superseded the last sentence of former Civil Code Section 2274 (repealed by 1986 Cal. Stat. ch. 820 § 7).

For background on the provisions of this division, see the Comment to this division under the division heading.

PART 7. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

Comment. Part 7 (commencing with Section 18500) was added to Division 9 of the new Probate Code by 1990 Cal. Stat. ch. [SB 2649] § 4. For background on this part, see *Recommendation Relating to Uniform Management of Institutional Funds Act*, 20 Cal. L. Revision Comm'n Reports 2265 (1990).

§ 18500 (added). Short title**1990 Addition**

Comment. Section 18500 (added to the new Probate Code by 1990 Cal. Stat. ch. [SB 2649] § 4) continues Education Code Section 94600 without change. The Uniform Management of Institutional Funds Act has been relocated from the Education Code, where it applied only to certain private institutions of higher education. See Section 18501(e) and its Comment. As to the construction of provisions drawn from uniform acts, see Section 2. See also Section 11 (severability). For background on the provisions of this part, see the Comment to this part under the part heading.

§ 18501 (added). Definitions**1990 Addition**

Comment. Section 18501 (added to the new Probate Code by 1990 Cal. Stat. ch. [SB 2649] § 4) restates former Education Code Section 94601 without substantive change, except that the definition of “institution” has been substantially expanded. As revised, the definition of “institution” is the same as that provided in Section 1(1) of the Uniform Management of Institutional Funds Act (1972). Former Education Code Section 94601(a) defined “institution” as a “private incorporated or unincorporated organization organized and operated exclusively for educational purposes and accredited by the Association of Western Colleges and Universities to the extent that it holds funds exclusively for any of such purposes.”

Section 18501 lists the definitions in alphabetical order, unlike former Education Code Section 94601. The definition of “historic dollar value” in subdivision (d) has been revised by adding “endowment” preceding “fund” in the second and third clauses.

Section 18501 is the same in substance as Section 1 of the Uniform Management of Institutional Funds Act (1972), except for the omission of the provision in Section 2(5) of the uniform act making conclusive a good faith determination of historic dollar value. As to the construction of provisions drawn from uniform acts, see Section 2.

For background on the provisions of this part, see the Comment to this part under the part heading.

§ 18502 (added). Expenditure of asset net appreciation for current use**1990 Addition**

Comment. Section 18502 (added to the new Probate Code by 1990 Cal. Stat. ch. [SB 2649] § 4) is the same in substance as Section 2 of the Uniform Management of Institutional Funds Act (1972). As to the construction of provisions drawn from uniform acts, see Section 2.

The provision in the first sentence permitting the appropriation of net appreciation, whether realized or unrealized, supersedes the first sentence of former Education Code Section 94602. The second sentence of Section 18502 continues the third sentence of former Education Code Section 94602 without change. The second sentence of former Education Code Section 94602, which provided a rolling five-year averaging rule, is not continued. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 18503 (added). Construction of gift instrument**1990 Addition**

Comment. Section 18503 was added to the new Probate Code by 1990 Cal. Stat. ch. [SB 2649] § 4. Subdivision (a) restates former Education Code Section 94603(a) without substantive change. Subdivisions (b) and (c)(1) restate former Education Code Section 94603(b) without substantive change. Subdivision (c)(2) applies a consistent rule of construction to institutions (as defined in Section 18501(e)) that were not covered by the former law. See the Comment to Section 18501.

Subdivisions (a) and (b) are the same in substance as the first two sentences of Section 3 of the Uniform Management of Institutional Funds Act (1972). As to the construction of provisions drawn from uniform acts, see Section 2.

For background on the provisions of this part, see the Comment to this part under the part heading.

§ 18504 (added). Investment authority**1990 Addition**

Comment. Section 18504 (added to the new Probate Code by 1990 Cal. Stat. ch. [SB 2649] § 4) continues former Education Code Section 94604 without change, except that in subdivision (a) a reference to deeds of trust has been added and an unnecessary comma following the word "associations" has been omitted. The forms of investment listed in subdivisions (a) and (d) following the word "including" are illustrations

and not limitations on the general authority provided in these subdivisions. As to the construction of provisions drawn from uniform acts, see Section 2. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 18505 (added). Delegation of investment management

1990 Addition

Comment. Section 18505 (added to the new Probate Code by 1990 Cal. Stat. ch. [SB 2649] § 4) continues former Education Code Section 94605 without change. This section is the same in substance as Section 5 of the Uniform Management of Institutional Funds Act (1972). As to the construction of provisions drawn from uniform acts, see Section 2. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 18506 (added). Standard of care

1990 Addition

Comment. Section 18506 (added to the new Probate Code by 1990 Cal. Stat. ch. [SB 2649] § 4) restates former Education Code Section 94606 without substantive change. See the Comment to Section 18500. The standard of care in subdivision (a) is consistent with the general standard of care provided by Section 16040. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 18507 (added). Release of restriction in gift instrument

1990 Addition

Comment. Section 18507 (added to the new Probate Code by 1990 Cal. Stat. ch. [SB 2649] § 4) restates former Education Code Section 94607 without substantive change. In the second sentence of subdivision (b), the phrase "release a restriction on" has been substituted for the phrase "modify any use of" in former Education Code Section 94607(b) for consistency with the remainder of this section. Section 18507 is the same in substance as Section 7 of the Uniform Management of Institutional Funds Act (1972), except for some variations in subdivision (b). As to the construction of provisions drawn from uniform acts, see Section 2. For background on the provisions of this part, see the Comment to this part under the part heading.

§ 18508 (added). Status of governing boards**1990 Addition**

Comment. Section 18508 (added to the new Probate Code by 1990 Cal. Stat. ch. [SB 2649] § 4) continues former Education Code Section 94610 without change, except that the language relating to duties and liabilities of directors is new. The purpose of the new language is to make clear that the duties and liabilities of directors of incorporated institutions are governed by the relevant statute and not by this part. See, e.g., Corp. Code §§ 5231-5231.5 (directors of nonprofit public benefit corporations), 7231-7231.5 (directors of nonprofit mutual benefit corporations), 9240-9241 (directors of nonprofit religious corporations). For background on the provisions of this part, see the Comment to this part under the part heading.

§ 18509 (added). Laws relating to expenditure of public funds**1990 Addition**

Comment. Section 18509 (added to the new Probate Code by 1990 Cal. Stat. ch. [SB 2649] § 4) is a new provision that makes clear the relation of the Uniform Management of Institutional Funds Act to any other law concerning expenditure of public funds. See, e.g., Gov't Code § 53601. Thus, under Section 18509, if other law provides greater limitations on the expenditure of public funds, that law prevails over any provision of this part that might otherwise have been applicable. For background on the provisions of this part, see the Comment to this part under the part heading.

COMMENTS TO PROVISIONS IN OTHER CODES

Code of Civil Procedure § 353 (amended). Statute of limitations

1990 Amendment

Comment. Subdivision (b) of Section 353 was amended by 1990 Cal. Stat. ch. 140 § 1 to impose a new statute of limitations on all actions against a decedent on which the statute of limitations otherwise applicable has not run at the time of death. The new statute of limitations is one year after the death of the decedent, regardless of whether the statute otherwise applicable would have expired before or after the one-year period.

If a general personal representative is appointed during the one-year period, the personal representative must notify known creditors, and the filing of a claim tolls the statute. Prob. Code §§ 9050 (notice required), 9352 (tolling of statute of limitations). If the creditor is concerned that the decedent's beneficiaries may not have a general personal representative appointed during the one-year period, the creditor may petition for appointment during that time. Prob. Code §§ 8000 (petition), 8461 (priority for appointment); see also Prob. Code § 48 ("interested person" defined).

The reference to the decedent's "representatives" is also deleted from subdivision (b). The reference could be read to imply that the one-year limitation is only applicable in actions against the decedent's personal representative. However, the one-year statute of limitations is intended to apply in any action on a debt of the decedent, whether against the personal representative under Probate Code Sections 9350-9354 (claim on cause of action), or against another person, such as a distributee under Probate Code Section 9392 (liability of distributee), a person who takes the decedent's property and is liable for the decedent's debts under Sections 13109 (affidavit procedure for collection or transfer of personal property), 13156 (court order determining succession to real property), 13204 (affidavit procedure for real property of small value), and 13554 (passage of property to surviving spouse without administration), or a trustee.

For background on the 1990 amendment, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).

**Code of Civil Procedure § 353.5 (repealed). Limitation on
action against spouse of decedent**

1990 Repeal

Comment. Section 353.5 was repealed by 1990 Cal. Stat. ch. 140 § 2 because the section conflicted with Section 353 (general one-year statute of limitations). For background on the repeal of Section 353.5, see *Recommendation Relating to Notice to Creditors in Estate Administration*, 20 Cal. L. Revision Comm'n Reports 507 (1990).