

## Memorandum 91-33

Subject: Study L-812 - Independent Administration of Estates Act  
(Preliminary Distribution Without Court Supervision)

Attached is a staff draft of a *Tentative Recommendation relating to Preliminary Distribution Without Court Supervision Under the Independent Administration of Estates Act*. The Commission considered this draft at the last meeting. The draft is drawn from a suggestion by attorney Richard Hawkins of Grass Valley. It allows the personal representative to make limited preliminary distribution without a court order, after giving advice of proposed action. The time for claims must have expired, and there must be enough left in the estate after the distribution to pay claims, taxes, and expenses of administration.

The Executive Committee of the State Bar Probate Section suggested revising proposed Section 10520 in the staff draft as follows:

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

10520. ~~(a)~~ If the time for filing claims has expired and it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person, the personal representative has the power to do the following:

~~(1)~~ (a) To make preliminary distribution of ~~interest and~~ income received during administration to the persons entitled under Chapter 8 (commencing with Section 12000) of Part 10.

~~(2)~~ (b) To make preliminary distribution ~~to specific devisees of household furniture and furnishings, automobiles, clothing, jewelry, and personal effects~~ tangible articles of a personal nature to the devisees entitled to the property under the decedent's will, not to exceed a fair market value of fifty thousand dollars (\$50,000) to all devisees in the aggregate .

~~(3)~~ (c) To make preliminary distribution of cash to the general pecuniary devisees ~~entitled to it under the decedent's will~~ , not to exceed ten thousand dollars (\$10,000) to any one devisee.

~~(b) Notwithstanding subdivision (a), distribution may not be made under this section to the personal representative.~~

The Commission wanted to see both versions of Section 10520 -- the version in the attached staff draft and the revised version above. The staff has no problem with the proposed revisions shown above in subdivisions (a) and (b).

### Determination of Values

If the State Bar revisions are approved, how should the value of the property to be distributed be determined? Should the personal representative fix these values unilaterally without court review (subject to objection by a person given advice of proposed action)? The petition for probate estimates the value of estate property (Prob. Code § 8002), but one aggregate figure is given for the personal property. See Petition for Probate (Judicial Council Form DE-111, rev. July 1, 1989). Should the personal representative rely on the estate appraisal filed pursuant to Sections 8900-8980? The staff solicits the comments of the State Bar on this question.

### Personal Representative's Liability for Automobile Distributed

The Commission asked whether adding automobiles to the property that may be distributed might expose the personal representative to vicarious liability as owner for negligent operation of the automobile by someone else. A 1952 case suggests that the personal representative incurs no personal liability as owner. In *Fountain v. Bank of America*, 109 Cal. App. 2d 90, 95, 240 P.2d 414 (1952), the court said:

It is obvious that a personal representative, either in or out of possession of estate property, real or personal, is not the owner thereof within the scope of the ordinary meaning of that word nor does the personal representative come within the scope of the word "owner" as that term is defined in [the] Vehicle Code . . . .

The personal representative may protect the estate by filing with the Department of Motor Vehicles the same notice of transfer which transferors generally use to insulate themselves from owner's liability.

### Distribution to Personal Representative

Subdivision (b), proposed to be deleted by the State Bar, would require court approval for distribution to the personal representative. Subdivision (b) was not in the original proposal submitted by Mr. Hawkins, but was added by staff. Subdivision (b) is consistent with the provisions of the Independent Administration of Estates Act that require court approval for transactions involving the personal representative. See Prob. Code § 10501.

At the last meeting, the Commission had reservations about deleting subdivision (b). This deletion was suggested by Richard Kinyon. He said the personal representative will usually be an estate

beneficiary, such as one of the decedent's children. He asked why court approval should be required for distribution to a child who is personal representative, and not for distribution to the others. He thought the requirement of advice of proposed action is sufficient protection against abuse. Moreover, the value limits suggested in subdivision (b) will eliminate the biggest risks to the estate. On balance, the staff is persuaded by Mr. Kinyon's argument that the prohibition against distribution to the personal representative may safely be deleted.

Staff Recommendation

The staff recommends approving proposed Section 10520 with the revisions suggested above by the State Bar, and adding the sentence to the Comment set out above. As revised, the *Tentative Recommendation* should be distributed for comment.

Respectfully submitted,

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1/31/91

TENTATIVE RECOMMENDATION  
relating to  
PRELIMINARY DISTRIBUTION WITHOUT COURT SUPERVISION  
UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

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

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

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

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

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

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

But the preliminary distribution may be so small that a petition, notice, hearing, and an authorizing court order would involve too much time and expense in relation to the importance of the transaction. It may be appropriate to distribute to specific devisees under the decedent's will items of modest value -- such as household furniture and furnishings, clothing, jewelry, and personal effects -- and moderate amounts of cash. It may also be desirable to distribute interest or income earned on estate property during administration in order to reduce or eliminate income taxation on the estate.<sup>7</sup>

The Independent Administration of Estates Act should permit these kinds of preliminary distributions of estate property without requiring a court proceeding. Affected persons would be protected by requiring the personal representative to give them notice of the proposed action.<sup>8</sup> A person given notice can object and thereby prevent the personal representative from making distributions without court approval.<sup>9</sup>

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

6. See Prob. Code § 11621.

7. See Anderson & Elliott, *Income Taxation of Decedent, Estate, and Beneficiaries*, in 2 California Decedent Estate Practice §§ 14.2, 14.78-14.94 (Cal. Cont. Ed. Bar, 1990).

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

9. Prob. Code §§ 10587, 10589.

The Commission recommends that a provision be added to the Independent Administration of Estates Act to permit the personal representative, after giving notice of proposed action, to make preliminary distribution as follows:

(1) Household furniture and furnishings, clothing, jewelry, and personal effects to the persons entitled to it under the decedent's will.

(2) Cash in an amount not to exceed \$10,000 to the persons entitled to it under the decedent's will.

(3) Interest and income on estate property to the persons entitled to it under the applicable statute.<sup>10</sup>

This distribution would be authorized only if the time for creditors to file claims has expired<sup>11</sup> and distribution may be made without loss to creditors or injury to the estate or any interested person.<sup>12</sup> Other distributions under the Independent Administration of Estates Act would be made under the provisions for court supervision now applicable.

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

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

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

PROPOSED LEGISLATION

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

Prob. Code § 10501 (amended). Matters requiring court supervision

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

- (1) Allowance of the personal representative's compensation.
- (2) Allowance of compensation of the attorney for the personal representative.
- (3) Settlement of accounts.
- (4) Preliminary Subject to Section 10520, preliminary and final distributions and discharge.
- (5) Sale of property of the estate to the personal representative or to the attorney for the personal representative.
- (6) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative.
- (7) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.
- (8) Allowance, payment, or compromise of a claim of the personal representative, or the attorney for the personal representative, against the estate.
- (9) Compromise or settlement of a claim, action, or proceeding by the estate against the personal representative or against the attorney for the personal representative.
- (10) Extension, renewal, or modification of the terms of a debt or other obligation of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate.

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

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

(c) Paragraphs (5) to (10), inclusive, of subdivision (a) do not apply to a transaction between the personal representative as such and the personal representative as an individual where all of the following requirements are satisfied:

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

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

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

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

Comment. Paragraph (4) of subdivision (a) of Section 10501 is amended to make it subject to Section 10520 (preliminary distribution using notice of proposed action procedure).

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

10520. (a) If the time for filing claims has expired and it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person, the personal representative has the power to do the following:

(1) To make preliminary distribution of interest and income received during administration to the persons entitled under Chapter 8 (commencing with Section 12000) of Part 10.

(2) To make preliminary distribution to specific devisees of household furniture and furnishings, clothing, jewelry, and personal effects.

(3) To make preliminary distribution of cash to the devisees entitled to it under the decedent's will, not to exceed \$10,000 to any one devisee.

(b) Notwithstanding subdivision (a), distribution may not be made under this section to the personal representative.

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

The effect of subdivision (b) is that distribution may be made to the personal representative only with court approval. See Section 10501.

Section 10520 is permissive. See Section 10510. The personal representative may seek court approval if the personal representative so desires. Section 10500(b). If the personal representative seeks court approval of a preliminary distribution, the personal representative may proceed under Section 11623 which requires less notice than the general provision for a court-supervised distribution (Section 11601).