First Supplement to Memorandum 83-59

Subject: Study L-810 - Probate Law and Procedure (Independent Administration of Decedent's Estate)

We have received nine letters commenting on the Commission's Tentative Recommendation Relating to Independent Administration of Decedent's Estate which is attached to the basic memorandum (Memorandum 83-59). These letters are attached to this supplement as Exhibits 1 through 9.

Exhibit 6 approves of the tentative recommendation without further change.

Two of the letters (Exhibits 2 and 7) purport to respond to the Commission's survey concerning probate sales of real property but offer comments that are pertinent to the Independent Administration of Estates Act. Exhibit 2 notes that "[w]e should be trying to reduce the intervention of the probate court as much as possible and give the personal representative as free a rein as possible." This is consistent with the Commission's proposal to expand the powers of the personal representative under the Independent Administration of Estates Act. Exhibit 7 supports the tentative recommendation as the "appropriate alternative" to existing procedures for probate sales of real property.

Exhibits 1, 3, 4, 5, and 8 make specific suggestions for improving the tentative recommendation. These suggestions are discussed below.

General Approach

Exhibit 1 expresses doubts about the usefulness of the Independent Administration of Estates Act and does not favor "tinkering" with it. Instead, Exhibit 1 recommends adoption of the UPC system of flexible administration in California.

Exhibit 5, from Professor Richard Wellman, Educational Director for the UPC, favors the tentative recommendation but would go beyond it and eliminate all mandatory court supervision from the Independent Administration of Estates Act by no longer requiring court supervision of allowance of executor's and administrator's commissions, attorney's fees, settlement of accountings, preliminary and final distributions, and discharge. The Commission has already decided to retain formal

opening and closing of the estate in any reform of probate administration. If this decision is to be adhered to, we must keep court approval of final distribution and discharge. Should the formal closing be required when no one wants to have a court approval and final discharge?

It may be desirable to accept the rest of Professor Wellman's suggestions and eliminate mandatory court supervision of allowance of executor's and administrator's commissions, attorney's fees, settlement of accountings, and preliminary distributions. Advice of proposed action would be required for each of these so that an objecting party could require court supervision, but if there were no objection the action could proceed without the arguably useless formality of court approval. What is the Commission's view?

Real Property Transactions

Exhibit 3, from the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, is generally supportive of the tentative recommendation. However, they suggest a clarifying revision to make clear that if there is an objection to the proposed action in the case of real property sales, then the sale should proceed under the general Probate Code provisions for court confirmation of sale and opportunity for overbid. This is the intent of the statute and could be made clearer by adding the following language to paragraph (1) of subdivision (a) of Section 591.5:

> (1) The person may apply to the court having jurisdiction over the proceeding for an order restraining the executor or administrator from taking the proposed action without court supervision under the provisions of this code dealing with the court supervision of such action, which order the court shall grant without requiring notice to the executor or administrator and without cause being shown therefor. . . .

Advice of Proposed Action

Exhibit 1 calls for reducing the number of people to whom advice of proposed action must be given. At present, the advice must be given to devisees and legatees whose interest in the estate is affected by the proposed action, to heirs of an intestate decedent, to the State of California if any portion of the estate is to escheat to it, and to all persons who have filed a request for special notice. Exhibit 1 would restrict the advice of proposed action to those who have requested special notice, since that would be consistent with notice generally

required in probate proceedings under Section 1200.5. Presumably, the State of California would object to this change, since the letter from Deputy Attorney General Lawrence Tapper (Exhibit 8) generally calls for more complete notice. The staff thinks that notice should not be cut back as suggested in Exhibit 1, since the only check on the executor or administrator under the Independent Administration of Estates Act with its minimal court supervision is for an objecting party to invoke court supervision. This requires notice to all affected persons, not merely the most diligent ones. On the other hand, should notice be required to be sent to someone who does not want to receive notice?

Exhibit 8, from Deputy Attorney General Lawrence Tapper, suggests expanding the contents of the advice of proposed action. Mr. Tapper suggests that the notice should include the phone number of the executor or administrator to facilitate informal negotiation. This seems like a good suggestion and could be accomplished by amending the second sentence of Section 591.4 to read:

> The advice of proposed action shall state the name ~~and~~ , mailing address , and telephone number of the executor or administrator and the action proposed to be taken, with a reasonably specific description of such action, and the date on or after which the proposed action is to be taken.

Exhibit 8 also suggests that the advice of proposed action set forth the names and addresses not only of the executor or administrator, but also of all parties to the transaction. This does not seem to be essential information; indeed, the executor or administrator may not know who the parties to the proposed transaction will be. The staff therefore thinks this information ought not to be required.

Exhibit 8 suggests that the present provision of Section 591.4 that the proposed action be taken not earlier than 15 days after the personal delivery or mailing of the advice of proposed action be revised to provide for 20 days' notice when the advice is mailed. This is supported by Exhibit 9 which suggests that 15 days may be too short a time if the person given the advice of proposed action is on vacation. This suggestion has some appeal, and could be accomplished by revising the third sentence of Section 591.4 to read:

> Such date shall not be less than 15 days after the personal delivery, or not less than 20 days after the mailing, of the advice.

Procedure for Objecting to Proposed Action

Exhibit 4, from the Crocker Bank, approves of the tentative recommendation with two suggestions. First, Exhibit 4 suggests that the Commission's proposal to permit written objection to be made directly to the executor or administrator, or to the attorney for the executor or administrator, be revised to eliminate the option of objecting to the attorney. Exhibit 4 expresses concern that the attorney may receive the objection, yet be unable to communicate it to the executor or administrator in time to prevent the action from being taken. One possibility would be to permit the executor or administrator to specify in the advice of proposed action to whom the objection should be sent. What is the Commission's view?

Effect of Failure to Object to Proposed Action

The second suggestion in Exhibit 4 is that a person given advice of proposed action should be bound by failure to object only if the person receives actual notice. This is supported by Exhibit 9. This suggestion could be accomplished by revising proposed subdivision (d) of Section 591.5 to read as follows:

> (d) All persons described in Section 591.3 who have been given an advice of proposed action as provided in Section 591.4 may object only in the manner provided in this section ~~and the~~ . The failure to so object is a waiver of any right to have the court later review the action taken unless the person who fails to object establishes that he or she did not actually receive advice of the proposed action before the time to object expired. The court may, however, review actions of the executor or administrator on its own motion or on motion of an interested person who was not given an advice of proposed action.

One difficulty with this proposal is that it will likely result in executors and administrators who wish to send the advice of proposed action by mail to use return receipt requested with the attendant expense.

Exhibit 9 asks whether permitting court review of actions of the executor or administrator on its own motion or on motion of an interested person not given the advice makes meaningless the attempt to bind those given the advice who do not object. That may very well be its effect, but the staff and Commission thought that to preclude later review entirely would be too severe a limitation on the equitable powers of the probate court. Does the Commission still concur in this view?

Proceeding With Court Approval After Objection

Exhibit 9 asks whether it may be possible, following an objection to the proposed action, for the executor or administrator to obtain court approval for the proposed action ex parte but with notice of the court proceeding to the objector. The problem with this is that ex parte means no notice need be given. If notice is given, then the proceeding is not ex parte, although it may be an uncontested proceeding if the person given notice fails to appear. The staff would not make the proceeding for court approval an ex parte proceeding in the sense of not requiring notice. If the objector is opposed to the proposed action, the objector should have an opportunity to be heard at the hearing for court approval of the proposed action.

Protection of Bona Fide Purchaser

Exhibit 8 objects to the provision in subdivision (c) of Section 591.5 protecting a bona fide purchaser who obtains property from an executor or administrator who has acted improperly by taking the proposed action despite an objection or restraining order. However, this provision is found in existing law, and the staff thinks that this provision is essential to orderly functioning under the act. Without such a provision, no one would be able to deal safely with an executor or administrator who has been granted authority to proceed under the act, since a transaction might later be overturned to the prejudice of bona fide purchasers. Accordingly, the staff recommends that the provision protecting bona fide purchasers not be eliminated from the act.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

LAW OFFICES
THOMAS M. BROWNSCOMBE
DENNIS P. KEEGAN
MURPHY, BROWNSCOMBE & KEEGAN
GEORGE W. MURPHY
RETIRED 1975
200 E STREET
POST OFFICE BOX 1896
SANTA ROSA, CALIFORNIA 95402
TELEPHONE: (707) 542-6100

August 11, 1983

California Law Revision Commission
4000 Middlefield Road, Suite D2
Palo Alto, California 94306

Gentlemen:

Re: Independent Administration of Estates Act

This is in response to the invitation for comments on your tentative recommendation on this subject.

I have practiced law in this county for 57 years, served as inheritance tax appraiser for 33 years, and have been a member of the American College of Probate Counsel for 14 years.

I do not share your sanguine views about the efficacy of the Act. In my judgment it has not "significantly streamlined the probate process."

Upon undertaking a revision of this area of law one should first of all decide how much "streamlining" he believes is appropriate. If he is a traditionalist he will want to leave procedure pretty much as it is; complex, time-consuming, expensive and closely supervised. If he is avant-garde he will probably vote for the Civil Law system of succession without administration. See Edward C. Halbach, Jr., Death, Taxes and Family Property, 175 et seq. (1977).

To most laymen probate is an anathema. Insofar as they give attention to the subject they do their best to avoid probate, and consequently will substitutes pass most property at death. Therefore, if one pays attention to what the public obviously wants he will opt for simplicity.

It seems to me that a compromise in accord with public interest and wishes is to be found in UPC Article III which gives the interested parties a choice of systems, a formal supervised procedure, or an unsupervised procedure providing ready access to a court for resolution of uncertainties or disputes; in effect the best of both worlds. As the Commission is no doubt aware, in 1979

the state of Maine, after several years of careful deliberation by a legislative commission, adopted a Probate Code closely following the UPC.

I do not favor tinkering with the IAEA. It is worded in a most confusing fashion. Several years ago in an attempt to make some order out of this chaos, I prepared a chart, a copy of which is enclosed. It was included in a program handout by a CEB panel in its discussion of the subject. It reveals the lack of a guiding principle in the selection of the types of action included in the several kinds of procedure prescribed. With respect to administrative steps necessary in all or many estates, the "independent" representative has no independence at all. On the other hand, with respect to steps for which the prudent representative might wish court sanction, e.g. compromising a wrongful death claim, a debt owed the estate, or a claim by or against the estate, or conveying property to a government agency, the venturesome one is free to act on his own.

The provisions for giving notice of proposed action are redundant. The notice currently given on initiation of an administration proceeding advises interested persons that they may file a request for special notice. If they do not care enough to take advantage of this right there is no reason to burden the representative with giving additional notice to them.

It may be that the Commission regards as futile a patchwork job where basic reform is indicated, but is being realistic by taking small steps in order to avoid opposition from a few influential members of the Bar and others who for years have opposed meaningful probate reform. If so, I for one would prefer that it be more aggressive.

Very truly yours,

Thomas M. Brownscombe

THOMAS M. BROWNSCOMBE

TMB:bl
Enclosure

1st supp Memo 83-59 **Exhibit 2**

IAN D. MCPHAIL
ATTORNEY AT LAW
331 SOQUEL AVENUE
SANTA CRUZ, CALIFORNIA 95062
TELEPHONE (408) 427-2363

August 29, 1983

California Law Revision Commission
4000 Middlefield Road - Room D-2
Palo Alto, CA 94306

RE: Survey of views concerning law relating to probate sales of real property

John L. McDonnell, Jr., chairman of the Estate Planning, Trust and Probate Law Section of the State Bar, has forwarded to me a copy of your memo dated July 22, 1983 concerning the above matter.

In this regard, I am enclosing copy of my letter dated August 9, 1983 to Mr. McDonnell, indicating my concern with the inadequacy of current legislation concerning the confirmation of sales of real property in light of current market situations.

I feel that the suggestion outlined in your July 22 memo is a good one. However, why limit the authority of the executor or administrator to sell the property for no less than 90% of the appraised value to a period of four months? Why not give the authority for up to the one year period during which an appraisal must be updated for a probate sale to be effective.

I am sure we overlook in this country that, even in conservative England, once the executor/administrator receives a "grant of probate", he or she is entitled to manage and distribute the probate estate with complete discretion, subject only to the right of any interested party to object in court. We should be trying to reduce the intervention of the probate court as much as possible and give the personal representative as free a rein as possible. This will enable probate proceedings to proceed as quickly as possible and will ultimately reduce the costs of probate.

However, if giving the personal representative this much discretion is not acceptable to the Legislature, I suggest revisions to Probate Code Sections 785 and 785.1 along the lines of my letter dated August 9, 1983.

Very truly yours,

IAN D. McPHAIL

IDM:kd

Enclosure

cc: John L. McDonnell, Jr., Esq.

Los Angeles County Bar Association

Probate and Trust Law Section

617 South Olive Street
Los Angeles, California 90014
213 627-2727

Mailing address:
P.O. Box 55020
Los Angeles, California 90055

September 6, 1983

Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94306

Re: Tentative Recommendations L-641, L-651, L-653, L-810 and L-826; July 22, 1983 Request for Survey of Views

Dear Sirs:

Speaking on behalf of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, we wish to comment on these Tentative Recommendations and respond to the Request for Survey of Views as follows:

L-810, Independent Administration of Decedent's Estate

Basically, the proposed amendments to the Independent Administration of Estates Act are sound amendments which would greatly facilitate the operation of independent administration. It is desirable to place a duty upon the person who receives an Advice of Proposed Action to object, and to protect the personal representative who acts in accordance with an Advice of Proposed Action without hearing any objection thereto from later court review. It is also an improvement to allow a less formal method of objecting to proposed actions than going to court for a restraining order. Written objections submitted to a personal representative will facilitate a timely objection.

It is our understanding that the Estate Planing, Trust and Probate Law Section of the State Bar supported conducting real property sales under the Independent Administration of Estates Act, subject only to an Advice of Proposed Action, from the time the Act was enacted in 1974. We join in approving this change, subject to one reservation set forth below. The majority of sales of estate real property could be completed more quickly, and with less expenditure of court time and taxpayer money. Court supervision would remain as an option for estates not granted independent administration or for those sales where an interested party objects to the Advice of Proposed Action. This

appears to be an appropriate demarcation. Our one reservation is that it should be clear that the normal confirmation of sale proceedings (with the overbidding process) apply if there is any objection to the advice of proposed action regarding the sale of real property.

We would like you to carefully examine our comments when revising your recommendations. Our comments represent the practical experience of probate practitioners who regularly deal with the probate courts. We support those changes we believe to be true improvements. We can not support those changes we believe would adversely affect the rights of estate beneficiaries or that would make the probate process worse rather than better.

Executive Committee

By_____
Valerie J. Merritt
Secretary - Treasurer

The Crocker Bank

August 22, 1983

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94306

Re: L-810: Independent Administration of Decedent's Estate

Gentlemen:

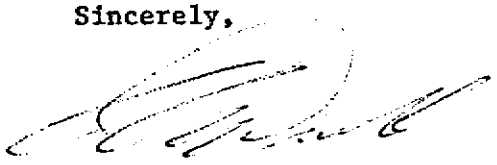
Your tentative recommendation relating to the above subject meets with my approval with two minor exceptions.

I am concerned that a person given an advice of proposed action may be away from home and not receive the advice until after the action has been taken. As I read proposed Probate Code Section 591.5 (d) this person's failure to object is a waiver of any right to have the court later review the action taken. Some provision should be made to protect the rights of a person who does not actually see the advice of proposed action until after the action has been taken.

The proposed Probate Code Section provides in (a) (2) that a person may deliver or mail a written objection to the attorney for the executor or administrator. I believe this language should be deleted and that the objection should go directly to the executor or administrator. I am concerned with the problem of the attorney receiving the objection and not being able to communicate it to the executor or administrator in time to prevent the action being taken. Since the executor or administrator is the party required to advise of the proposed action, I feel the executor or administrator should be the sole recipient of an objection to the action (other than the obtaining of a court order).

In all other respects I concur with your recommendation.

Sincerely,



Crocker National Bank
San Francisco Private Capital Banking Center
111 Sutter Street
San Francisco, CA 94104

Joint Editorial Board for the Uniform Probate Code

American Bar Association Section of Real Property, Probate and Trust Law
American College of Probate Counsel
National Conference of Commissioners on Uniform State Laws

August 12, 1983

Mr. John DeMoully, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Dear John,

This letter concerns #L-810 dated 8/3/83, the Commission's tentative recommendation relating to Independent Administration of Decedents' Estates.

I am, as you might guess, very much in favor of the proposed expansion of the Independent Administration of Decedent's Estate Act. I urge, however, that you expand your proposed revision sufficiently to give Californians a genuine form of independent administration.

You could accomplish this by striking the proposed language of 591.2 beginning with "except". The effect would be to remove the language which continues the requirement of court supervision of "payment of . . . commissions . . . and attorney's fees," "settlement of accountings," and "preliminary and final distributions . . ."

I would then insert the matters deleted as exceptions to 591.2 in the list of matters which require an "advice of proposed action."

My suggestion runs counter to the insistence of State Bar spokespersons that every estate administration be concluded by adjudicated account settlement, order of distribution and discharge. The position of the State Bar on this point is without support in national trends or good sense. Among others, the important non-UPC states of Illinois, New York and Texas have evolved procedures for allowing estates of unlimited size and whether testate or intestate to

escape mandatory judicial accountings and adjudicated distributions.

My suggestion does not go as far as my earlier suggestion to the effect that provisions modelled after UPC Article III be added, side by side, with California's existing supervised administration provision. Thus, I am not here advocating addition of broad powers for probate fiduciaries and other statutes that combine to produce UPC's smooth-working, independent administration.

All I am urging is that you use the format already established by the Independent Administration of Estates Act to give California executors and administrators a way of settling and distributing estates that does not involve court review of the events occurring after opening. I am certain that the opportunity would be helpful in many situations, and widely used. Mandatory court orders settling accounts and approving proposed distributions are anomolous in a system of independent administration. What is accomplished by relieving an executor of a requirement of an interim order, if upon final accounting, the court, on its own motion in an unavoidable proceeding, can penalize the fiduciary for a move that is then adjudged to be wrongful for some reason?

Have you and your staff given thought to something like this suggestion?

Sincerely,

Richard V. Wellman
Educational Director

RVW/khb

*Sorry, I forgot that the Illinois legislature added a $150,000 "cap." This was done against objections of committees of the Chicago and Illinois Bar Associations responsible for the 1979 reform legislation. Efforts are under way to remove the cap.

HENRY ANGERBAUER, CPA
4401 WILLOW GLEN CT.
CONCORD, CA 94521

8/22/83

California Land Reform Commission

Gentlemen:

I have reviewed your proposal on Independent Administration of Decedents Estate and agree with your recommendations and conclusion and suggest you implement the proposal.

Thank you for letting me make my views known.

Best Regards

Henry Angerbauer, CPA

1st Supp Memo 83-59 Exhibit 7

HUGH W. DARLING
DONALD KEITH HALL
MATTHEW S. RAE, JR.
RICHARD L. STACK
WM. JOHN KENNEDY
JUDITH CHIRLIN HOWARD
OF COUNSEL
LEROY J. KOOS

LAW OFFICES
DARLING, HALL & RAE
400 PACIFIC MUTUAL BUILDING
523 WEST SIXTH STREET
LOS ANGELES, CALIFORNIA 90014-1068

AREA CODE 213
627-8104

September 8, 1983

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Probate Sales of Real Property
Your Inquiry of July 22, 1983

Gentlemen:

The undersigned, a retired Los Angeles County Superior Court Judge who served as presiding Judge of the Probate Department, and an Advisor to the State Bar Estate Planning, Probate and Trust Law Section with more than 25 years practice devoted almost exclusively to those fields, respond to your inquiry by stating that an anticipatory Order for sale of real property is not a desirable alternative to existing probate sale procedures.

The suggestion goes contrary to the efforts of the Commission, and the State Bar Section to simplify probate procedures and minimize Court involvement. It would supplant the personal representative's judgment as to a proper sale price with that of the Court, contrary to the basic rule that the Court will not exercise the personal representative's discretion. The Court is not in as good a position as the personal representative to determine an adequate sale price, and the Court time required for the presentation of evidence to enable the Court to make such a determination is unjustified. As a practical matter, the suggestion overlooks recent volatility in the real estate market, which could return with inflation or deflation, and is not realistic. The potential for multiple petitions as market conditions, including financing availability, change threatens a substantial burden upon already overcrowded court calendars.

Sale under Independent Administration, as sought by the State Bar Section for some 15 years and as now

proposed by the Commission's Tentative Recommendation in Study #L-810, is the appropriate alternative to the present Court confirmation. The purchaser receives the benefit of his bargain without overbidding. The responsibility is upon the personal representative, where it belongs, and not the Court. The Court is not involved except in case of dispute. Most other administrative procedures now have the benefit of Independent Administration. There is no longer any reason for the sale of real property to be excluded.

Respectfully submitted,

Arthur K. Marshall, Judge
Superior Court, Retired

Matthew S. Rae, Jr.

cc: Harley J. Spitler, Esq.

1st Supp Memo 83-59 Exhibit 8
Lawrence R. Tapper, Deputy Attorney General

No. L-810 (Independent Administration of Decedent's Estate)

Under current law a person interested in an estate under independent administration who receives a notice of a proposed action has 15 days or less (if it was mailed) in which to (1) obtain necessary facts and information, (2) complete various analyses including a legal analysis, (3) obtain a temporary restraining order, and (4) serve such upon an executor. I agree that this procedure is absurd. Unfortunately, I do not believe that your proposal goes far enough in correcting the situation. It is indeed helpful that an interested person be permitted to object directly to the executor who must thereupon initiate the appropriate proceedings. On the other hand, having received scores of notices both in probate administration and under the new nonprofit corporation law, I can assure you that such notices never include the information I deem necessary to adjudge the proposed action and determine what our position should be. Rather than commit to a position of objection at that point, I believe the preferred course is to seek further information and discuss the matter with the executor or his attorney as the case may be; but given a limited period of 15 days there seems little an interested person can do other than file proforma objections which will buy the time required in order to achieve sufficient understanding to permit a more accurate and perhaps even different response to the transaction. I have a few minor suggestions in connection with your amending probate code section 591.4 which are: (1) in addition to the mailing address of the executor or administrator, the notice should also include his or her phone number; (2) if the interested party is to be given 15 days after personal delivery of an advice of proposed action, then the period should be 20 days if the advice is mailed. A not so minor point: I am very much bothered by subparagraph (c) in section 591.5 which in effect permits the executor to cut off the rights of the interested party by going ahead and dealing with a b.f.p. notwithstanding having received a notice of objection. If we are talking about the disposition of a control block of stock, that can mean that the control of a company passes from a charitable foundation to a third party, a circumstance for which damages can never restore the injured party. Moreover, how is the interested person to protect himself by giving notice to such third party unless the law requires that the advice of a proposed action set forth the names and addresses not only of the executor but of all parties to the transaction. The independent administration of a decedent's estate is a matter of great importance to the Attorney General in light of the large number of estates containing charitable gifts. Since we share this responsibility with probate judges and commissioners, I would welcome the opportunity of engaging in multi-level dialogue concerning this important legislation.

Exhibit 9

CRABTREE & GOODWIN
ATTORNEYS AT LAW
SUITE 402, CRABTREE BUILDING
303 "A" STREET
SAN DIEGO, CALIFORNIA 92101

BROOKS CRABTREE
JAMES GOODWIN
DANIEL B. CRABTREE

AREA CODE 619
TELEPHONE 239-6161

September 13, 1983

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94306

Re: Comments on Tenative Recommendation to Independant Administration of Decedent's Estate

Dear California Law Revision Commission:

As a member of the San Diego County Bar Association Subcommittee on Estate Planning and Probate Legislation, it was my assignment to report to our subcommittee on the recommendation relating to Independent Administration of Decedent's Estate and lead the discussion on that particular recommendation. After examining the Recommendation and discussing it at length with the other members of the Subcommittee, the following observations and comments are for your consideration in this proposed legislation:

1. After an objection to a proposed action, the executor or administrator decides whether to proceed with the proposed action by obtaining Court approval. Is it possible, with notice to the objector, for the executor or administrator to obtain that Court approval for a proposed action via an ex parte appearance?

2. I believe you may have some problem with the effect on the failure to object to proposed action within the time allowed of fifteen days. If an interested party who receives notice of proposed action happens to be on vacation for a period exceeding fifteen days, that person would still be barred at a later Court hearing from reviewing the action of executor or administrator. This result appears to be rather harsh.

3. When an interested party receives notice of proposed action and fails to object to proposed action then that party waives the right to object to the action at a later time. The Court on its own motion, may consider or review the actions of the executor or administrator at a later time. It is really of much substance to have the waiver when said party who waives could bring up the problem despite the waiver and hope the Court would proceed on its own motion. I would think many Courts would review actions of the executor or administrator, if a problem is addressed, no matter who addressed the problem.

4. The recommendations to add sales or exchanges of real property to the list of independent administration actions is an excellent proposal.

My concern is with the effect of failure to object to proposed action which, as specified above, may be an unworkable idea or at best an idea with very little practical application in streamlining the objections procedure. I hope these comments will be helpful and I would certainly appreciate remaining on any mailing list concerning this and other recommendations by the California Law Revision Commission.

Very truly yours,

Daniel B. Crabtree

Daniel B. Crabtree

DBC:ljp