

#L-1020

3/27/85

Third Supplement to Memorandum 85-13

Subject: Study L-1020 - Probate Code (Powers and Duties of Personal
Representative--comments of Los Angeles County Bar
Association)

Attached to this memorandum are comments of the Executive Committee
of the Probate and Trust Law Section of the Los Angeles County Bar
Association relating to powers and duties of executors and administrators.
The staff will raise these points orally as we consider Memorandum 85-13
at the meeting.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

EXHIBIT 1

**Los Angeles County
Bar Association**

Probate and Trust Law Section

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March 11, 1985

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

Re: March Meeting

Dear Commissioners:

The Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association submits the following comments on various studies which are scheduled for discussion at your meeting, March 21-22, 1985.

Study L-1020 - Probate Code (Powers and Duties of Executors and Administrators)

Section 7552:

Subpart (a)(1) permits a personal representative to purchase property of the estate if written consent to purchase is signed by all devisees or heirs, as the case may be, and filed with the Court, and the Court approves the proposed purchase. This matter was considered at length by us and it was determined that the law as it is now, prohibiting purchases of estate property by personal representatives, is satisfactory and no change in the law is needed. We do not believe it is appropriate to promote self dealing with estate assets. In addition, the safeguards proposed by staff to avoid abuse are so combersome as to make the new section unworkable. Even in estates where a sale to a personal representative might

make sense, the requisite approval may be impossible. This may occur when the persons required to consent are minors, or when one out of a number of devisees refuses to consent, even when the sale would be to the benefit of the estate. The proposed standard would also include obtaining approval from persons not interested in the property to be purchased, such as those receiving specific bequests of other assets.

Section 7557:

This section continues former §582 and requires the personal representative to deliver possession of the real property to the heirs or devisees after the time to file or present claims has expired unless the income from the property or a sale of property is required for payment of debts of the decedent. We refer you to our comment on §581 at page five of our letter of December 27, 1984. At the very minimum, real property should be retained for its income or for purposes of sale to pay taxes due to the decedent's death or activities of the decedent's estate in addition to the debts of the decedent.

Section 7559:

Where an option to purchase is given by a Will and that option is exercised, the personal representative under this section must prove to the Court that the California Estate tax has been paid or that the State Controller has consented to the transfer. The role of the Court in supervising the payment of death taxes has been greatly diminished in recent years. If the Court is not going to have a general supervisory power, it should not have it in isolated instances. We believe that this condition on transfer should be removed. Ultimately, if it is not removed, it should be altered so that it reads that "the Court finds the California Estate Tax imposed by §13302 of the Revenue and Taxation Code has either been paid or provided for". In this manner, the Court can find that there are adequate funds in the estate to pay the tax without going to some authorized representative of the State Controller's office.

Subpart (a)(4) of §7559(a) restates the substance of present §854. Frequently, a Will grants an option for a period of time which may be longer than six months from the date Letters are issued. It now appears that the option may be exercised later than six months after the date of issuance, so long as the petition is filed within the statutory period. We suggest that further thought be given to reconciling the case law with the language of the statute so as to make the standard clear.

Section 7560:

Subpart (a) provides that where "there are two or more personal representatives, the act of a majority is valid". We do not understand why it was necessary to change the language found in §570 when "there are more than two [personal representatives] the act of a majority is valid". Subpart (b) provides that when two or more personal representatives have been appointed and one or more are absent from the state or legally disqualified from serving, the act of the other or others is effectual for our purposes. California law permits nonresident personal representatives. Does this section effectively preclude them from acting on behalf of the estate? This subpart could present numerous problems and should be reconsidered.

Section 7561:

We previously stated in our letter of December 27, 1984 at page six that we believe that the present version of Probate Code §588 which permits a petition by an executor or administrator for instruction only when no other or different procedure is provided by statute is satisfactory. We understand that the policy of the present law is to require persons to use the most appropriate procedure provided by law for resolution of a dispute or problem. Thus, for example, if a proceeding under Probate Code §851.5 is the appropriate course of action, the petitioner would first utilize that procedure rather than filing a petition for instructions. It is not in any way a limitation of the power of petitioner or the power of the Court, since in any case where no other statutory procedure is provided, a petition for instructions may be brought. The proposed section goes in the opposite direction and should be rewritten.

Section 7570:

We direct your attention to our comments contained in our letter of December 27, 1984 at page six regarding §585.

Sections 7620, et seq.:

This section continues a great portion of §§850, 851 and 851.5. We believe they should be expanded to include the provisions of current code §612. The interrelationship of current §612 with §851.5 is evident from both legislative history and practical necessity. The procedures for identifying property claimed to belong to a decedent or another person should coordinate with those compelling a conveyance or transfer of that property.

Section 7651:

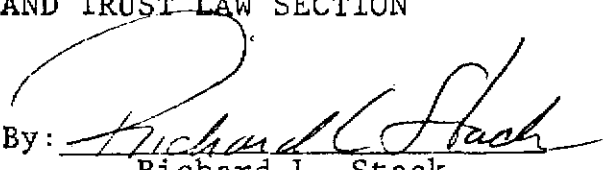
The requirement of publication of notice on a petition for court approval of a lease of estate property should be eliminated. By its nature, a lease is a negotiated contract containing dozens of terms with economic impact which make up an interrelated package. Rarely would it be reasonable to believe that overbids would be obtained in Court. It appears from proposed §7652(b) that this notice requirement is not jurisdictional. Was this intended? As a point of interest, the language of proposed §7652 tracks the language of present code §2553, but the provisions of the latter do not require published notice.

We trust that these comments will be useful in your work. If you require clarification on any points, please contact Richard L. Stack, Darling, Hall & Rae, 606 South Olive Street, Suite 1900, Los Angeles, California 90014; telephone (213) 627-8104.

Sincerely,

EXECUTIVE COMMITTEE, PROBATE
AND TRUST LAW SECTION

By:


Richard L. Stack

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