

Memorandum 85-38

Subject: Study L-811 - Probate (Form for Advice of Proposed Action)

A person exercising independent administration authority is required to give advice of proposed action to interested persons. The person given the advice must object with the time allowed by statute or the right to object is waived.

Last year the Commission prepared the legislation relating to independent administration of estates. At that time, there was general agreement that a form should be provided for the advice of proposed action. The form should be phrased in nonlegal language that advises the recipient of the effect of failure to object and how to object.

Our consultant, Professor Susan F. French, suggested that a staff draft of the form might be reviewed by one of her colleagues at Davis to make it more easily understood. Professor French has returned the staff draft with a few suggested revisions made by Margaret Johns, Professor French's colleague. We have attached to this memorandum draft legislation using the revised form.

The staff suggests that the draft legislation be approved for inclusion in the probate bill the Commission has recommended to the 1985 legislative session, so that the form will become available for use on and after January 1, 1986. We think the form is useful, and we would not want to delay providing it until after we have completed the drafting of a new Probate Code.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Probate Code § 591.4 (amended). Advice of proposed action

SEC. _____. Section 591.4 of the Probate Code is amended to read:

591.4. (a) The advice of proposed action shall be delivered personally or sent by first-class mail, or sent by airmail to any person residing outside the jurisdiction of the United States, to each person described in Section 591.3 at his or her last known address. The advice of proposed action be in substantially the form set out in Section 591.8 and shall state the name and mailing address of the executor or administrator, the person and telephone number to call to get additional information, 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. 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. When the proposed action involves the sale or exchange of real property, or the granting of an option to purchase real property, the advice of proposed action shall state the material terms of the transaction, including, if applicable, the sale price.

(b) The failure of the executor or administrator to comply with the provisions of this section shall not affect the validity of the action so taken or the title to any property conveyed or transferred to bona fide purchasers and to third persons dealing in good faith with the executor or administrator who changed their position in reliance on the action, conveyance, or transfer without actual notice of the failure of the executor or administrator to comply with such provisions. No person dealing with the executor or administrator shall have any duty to inquire or investigate whether or not the executor or administrator has complied with the provisions of this section.

Comment. Section 591.4 is amended to add a reference to Section 591.8 which sets out the form for advice of proposed action.

Probate Code § 591.8 (added). Form for advice of proposed action

SEC. _____. Section 591.8 is added to the Probate Code, to read:

591.8. Unless the Judicial Council prescribes a form for advice of proposed action, the advice of proposed action shall be in substantially the following form:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF _____

Estate of _____

No. _____

_____ deceased

ADVICE OF PROPOSED ACTION
(Probate Code Sections 591.3, 591.4)

1. The executor or administrator of the estate of the deceased is:

(Name)

(Street or post office box)

(City, state, ZIP)

2. The executor or administrator has authority to administer the estate without court supervision under the Independent Administration of Estates Act (California Probate Code Sections 591-591.8).

3. On or after _____, 19____, the executor or administrator will take the following action:

[Describe proposed action in reasonably specific terms. If the proposed action involves a sale or exchange of real property or an option to purchase real property, include the material terms of the transaction, including any sale price.]

4. If you need more information, you may call:

(Name)

(Telephone number)

5. If you object to the proposed action, you may deliver or mail written objection to the executor or administrator at the address stated above. Your objection can be simply stated. All you need to do is state that you object to the proposed action (specifying the action you object to) and sign your name.

6. Your objection must be received before the date specified above, or before the proposed action is taken, whichever is later. If you object, the executor or administrator may take the proposed action only under court supervision. This may cause delay and expense to the estate.

7. If you do not object, you will be treated as if you consented to the proposed action. You may not object after the proposed action is taken.

Dated: _____
(Signature of executor or administrator or attorney for executor or administrator)

Comment. Section 591.8 is added to prescribed the form for advice of proposed action. See Section 591.4 (requirement that advice of proposed action be given).