

Second Supplement to Memorandum 85-38

Subject: Study L-811 - Independent Administration

The staff has received communications from a number of persons who are concerned that questions raised concerning use of independent administration for real property sales may prevent the Commission recommended legislation from fully accomplishing its objective.

The concept of the legislation enacted last session is quite simple. The executor or administrator who has been granted independent administration authority can retain a realtor and can sell the real property for the best offer received on the property if none of the heirs or beneficiaries object after being given notice of the offer. If any heir or beneficiary objects, the property can be sold only under the court confirmation procedure. To make it easy to object and to thus require use of the court confirmation procedure, the procedure for objecting was expanded to permit an objection to be made merely by sending a written objection to the executor or administrator. Also, the prior procedure for obtaining a restraining order to restrain the proposed action was continued. But the executor or administrator must use the court confirmation procedure if there is an objection. Prior law that protects third persons relying in good faith on the authority of the executor or administrator (even where there is an objection or restraining order) was retained, so that the third person acting on good faith reliance is protected without a duty to investigate whether the notice of proposed action was given or an objection received. Attached as Exhibit 3 is background material that will indicate the general understanding persons involved in the legislative process had concerning the legislation.

A number of matters have been raised that may operate to defeat the simple objective outlined above:

(1) Attorney Edward Brennan of San Diego advises that the probate court in that county takes the view that the notice of sale of real

property must be published the same as in a court supervised sale. The letter from James A. Willett (attached as Exhibit 2) indicates that Ann Stodden and others take the same view. If one thing was clear during the legislative process on this proposal, it was that the requirement of publication was being eliminated for real property sales made under independent administration. See the materials attached as Exhibit 3. The staff believes that a clarifying provision is needed to make clear that publication is not required.

(2) A call from the representative of the California Association of Realtors indicates that one court takes the view that the commission to be paid to the realtor must be approved by the court when a sale is made pursuant to independent administration authority. We do not believe that this is required under the new statute, and the staff recommends that this be made clear in the clarifying provision.

(3) Some take the view that the 90-percent-of-appraised-value requirement as to the minimum amount for which real property may be sold is still relevant even in independent administration sales. We think that the statute is clear that this requirement is no longer relevant, but the staff recommends that this also be made clear in the clarifying provision.

(4) Some take the view that the executor or administrator can go ahead with the real property sale even if there is an objection. We think this is not a proper construction of the statute. We would make this clear by a clarifying provision. See the discussion in the First Supplement to Memorandum 85-38.

(5) The staff is advised that the Los Angeles court requires or is planning to require that the bond be in the amount of the value of the estate, including the real property, where independent administration authority is granted, since the real property could be sold under the independent administration authority and the proceeds should be covered by the bond. This is a reasonable requirement, but the staff recommends a clarifying provision that would include the value of real property in determining the amount of the bond "where the real property will be sold under [the Independent Administration of Estates Act]."

Attached as Exhibit 1 is a staff recommended draft of a clarifying provision.

If the Commission approves the attached provision, the language in the form attached to Memorandum 85-38 (at the bottom of page 1 of the blue sheets) should be revised to read:

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 and any commission for the services of an agent in connection with the transaction.

The staff suggests that the Commission approve the necessary clarifying provision for inclusion in Assembly Bill 196 (our comprehensive probate bill for this session) because the Assembly policy committee must act on the probate bill during May, and this change should be included in the bill that passes the Assembly so that there will not be an issue requiring another Assembly hearing if the provision is added in the Senate. Toward the end of the session, there are many bills and a bill is easily lost in the rush at the end of the session.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

Prob. Code § 591.9 (added). Sales of property

SEC. _____. Section 591.9 is added to the Probate Code, to read:

591.9. (a) Subject to Sections 591.3 to 591.5, inclusive, an executor or administrator who has been granted authority to administer the estate without court supervision under this article may sell property of the estate either at public auction or private sale, and with or without notice, for such price and upon such terms and conditions as the executor or administrator may determine, and need not obtain court approval of the compensation for the services to the estate of the agent, if any, used for the sale. This subdivision applies to any sale made under authority of this article on or after January 1, 1985.

(b) If an agent is used, the information in the advice of proposed action shall include the amount of the compensation for the services of the agent.

(c) If the executor or administrator is otherwise required to file a bond and the court determines that real property of the estate will be sold without court supervision under this article, the court in its discretion may fix the amount of the bond at not less than the value of the personal property, the value of the real property that will be sold under this article, and the value of the probable annual gross income of all of the property belonging to the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

Comment. Subdivision (a) of Section 591.9 makes clear that a sale of property under this article is not subject to the provisions that apply to sales subject to court confirmation. The property may be sold either at public auction or private sale, and with or without notice, as the executor or administrator may determine. This provision is comparable to the provision governing the authority of the executor under Section 757 when property is directed by the will to be sold or authority is given in the will to sell property. One effect of this provision is to make clear that notice of sale need not

be published. The property may be sold at a price that the executor finds acceptable and on such terms and conditions as the executor determines if no person given advice of the proposed action objects. The 90-percent-of-appraised-value requirement for sales of real property that must be confirmed by the court does not apply to a sale under this article. The subdivision also makes clear that the executor or administrator need not obtain court approval of the commission for the services to the estate of the agent, if any, used for the sale. This is consistent with the provision of Section 591.2 that the sale may be made without obtaining judicial authorization, approval, confirmation, or instructions. The last sentence of subdivision (a) makes the subdivision applicable to any sale made under this article on or after January 1, 1985. This will eliminate any problem that might otherwise exist with respect to such a sale because of the uncertainty as to the possible applicability of various provisions relating to sales of real property.

When the advice of proposed action involves the sale or exchange of real property, Section 591.4 requires that the advice of proposed action "state the material terms of the transaction, including, if applicable, the sale price." Subdivision (b) of Section 591.9 makes clear that this information includes the amount of the compensation for the services of the agent selling the property of the estate. This gives persons having an interest in the estate information they need to determine whether they will object to the sale.

Subdivision (c) makes clear that, in cases where a bond is otherwise required (where, for example, the bond is not waived in the will or by the heirs or devisees), the court should include the value of the real property in fixing the amount of the bond if the real property is to be sold under this article. If the real property is not to be sold under this article, the bond is not to be increased.

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**

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February 26, 1985

JOHN H. DEMOULLY, ESQ.
California Law Revision
Commission
4000 Middlefield Road,
Room D-2
Palo Alto, CA 94303-4739

Re: Independent Administration of Estates
Act - Real Property Sales

Dear John:

When AB 2270 was being promulgated before the Legislature, the situation regarding published notice of sales of real property came up at least before the Senate Judiciary Committee. I recall some opposition to the bill because of elimination of some publication requirements. I had the distinct impression that we thought (and I thought that included you) that a sale under the Independent Administration of Estates Act of real property would allow such sale to occur without any notice of sale being published, even if no Will waives such notice.

I am now advised by Ann Stodden and others that the legislation does not do that since the provisions allowing real property sales to occur without published notice are only authorized when there is a power of sale in a Will (see Prob. Code

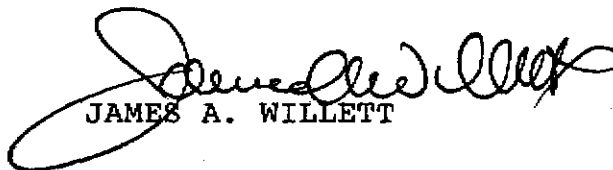
JOHN H. DeMOULLY, ESQ.
February 26, 1985
Page Two

§ 757). I am further advised that the 90% requirement as to minimum amounts still is relevant even in Independent Administration sales and, thus, the title company will insist upon the Inventory and Appraisement as to such property being filed so that it can be checked and so forth.

I question whether that was the intent of the legislation. I had thought that we were attempting to remove court supervision entirely from real property sales. If that is your thought as well, I would suggest that legislation to address these problems could be proposed.

This reflects my own personal attitude regarding the Independent Administration sales and not that of the Executive Committee. I do not know what the Executive Committee's attitude would be with respect to this matter since it hasn't considered it.

Very truly yours,



JAMES A. WILLETT

JAW:kt
cc: Kenneth M. Klug, Esq.



AMERICAN
ASSOCIATION
OF RETIRED
PERSONS

26 YEARS OF SERVICE

June 4, 1984

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

Dear John:

Attached is a copy of a letter sent by California AARP State Legislative Committee Chairperson Viola Thomas to Senator Ruben Ayala urging his favorable vote on AB. 2270. A similar letter was sent to all members of the state senate.

I hope Ken Carnine, our member in Sacramento, will help you on other probate bills.

Do you publish a legislative newsletter? If so, we'd like to get on your mailing list.

I am enclosing one of our fact sheets which lists our legislative priorities, names of our committee members, plus gives some background about our organization.

Sincerely,

A handwritten signature in cursive script that reads "Stan Cooper".

Stan Cooper
Legislative Representative

SC/sm

Enclosures

AMERICAN
ASSOCIATION
OF RETIRED
PERSONS

26 YEARS OF SERVICE

May 31, 1984

The Honorable Ruben Ayala
California State Senate
State Capitol Building
Sacramento, CA 95814

Dear Senator Ayala:

The California State Legislative Committee of the American Association of Retired Persons would appreciate your favorable vote on AB. 2270 when it comes up on the floor.

Our committee, which represents our 1.4 million members before the legislative and executive branches of state government, supports the bill because it would streamline probate proceedings and save older persons money and time.

AB. 2270 would eliminate costly newspaper publications and lessen court proceedings. If all parties are in agreement in the sale or exchange of property, publication in a newspaper would not be necessary. It would eliminate probate proceedings in the settlement of a small estate when the transfer of a title is needed on property valued at \$60,000 or less. The current threshold is \$30,000.

For many years AARP has been advocating changes in probate laws which would make it easier and less costly for our members and their families when an estate is probated.

On a personal note, I want to let you know how pleased I am with the excellent constituent services provided by your staff. Your San Bernardino office has been most helpful and responsive to all inquiries I have made.

Sincerely,

Viola J. Thomas

Viola J. Thomas, Chairperson
California AARP State Legislative Committee
156 West 49th Street
San Bernardino, CA 92407
(714) 882-2359

VJT/ck1

Vita R. Ostrander
AARP President

Cyril F. Brickfield
Executive Director

National Headquarters 1909 K Street NW Washington D C 20049 (202) 872-4700



AB 2270

CALIFORNIA ASSOCIATION OF REALTORS®

SACRAMENTO OFFICES • 1129 TENTH STREET • SACRAMENTO, CALIFORNIA 95814 • TELEPHONE (916) 444-2045

DUGALD GILLIES
Vice President
Governmental Relations

July 2, 1984

The Honorable George Deukmejian
Governor, State of California
State Capitol
Sacramento, California 95814

ATTENTION: Legislative Secretary

SUBJECT: AB 2270 (McAlister) -- Probate Sales

Dear Governor Deukmejian:

This bill has been forwarded to you for action by the Legislature, and the California Association of Realtors® requests your approval of it.

This measure, sponsored by the California Law Revision Commission, deals with a number of revisions to the law with respect to probate procedure. Our particular interest involves §591.2 and §591.3 of the Probate Code, which extend the provisions of the Independent Administration of Estates Act, to include within the procedures which may be undertaken without court supervision, sales and exchanges of real property and the grants of options to purchase real property.

The measure requires notice of any proposal to undertake these activities without court supervision, to all persons potentially affected by the action including all heirs or persons who have requested special notice, and allows any of those individuals to make a simple objection in writing whereupon court supervision would be reinstated.

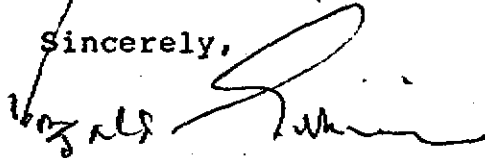
We believe that this procedure, with full notice, will reduce the costs and delays inherent in the existing procedure, and therefore be of direct benefit to the estate. Additionally, we believe that allowing the property to be sold or exchanged under free market conditions will encourage participation by larger numbers of brokers and others and will therefore tend to produce a higher price for the benefit of the heirs.

SUBJ: AB 2270 (McAlister)
Probate Sales

July 2, 1984
Page Two

May we respectfully request your signature of AB 2270
(McAlister).

Sincerely,



DUGALD GILLIES
Vice President
Governmental Relations

DG/dc

cc: The Honorable Alister McAlister
Member of the Assembly

Mr. John DeMouilly, Esq. ✓
California Law Revision Commission

California Newspaper Service Bureau, Inc.

Established 1934

120 WEST SECOND STREET
P.O. BOX 31
LOS ANGELES, CALIFORNIA 90053
PHONE (213) 825-2541

PUBLIC NOTICE ADVERTISING

May 11, 1984

LOS ANGELES—SACRAMENTO
SAN DIEGO
SAN FRANCISCO—SANTA ANA

Ms. Patricia Wynne
Staff
Senate Judiciary Committee
Room 2187, Capitol
Sacramento, California 95814

RE: AB 2270, Memorandum Regarding Sec. 4

Dear Ms. Wynne:

AB 2270 (McAlister) was introduced for the Law Revision Commission.

Sec. 4 amends Probate Code Section 591.2.

Section 591.2 is part of the Independent Administration of Estates Act which is Article 2, Chapter 8, Division 3 "Administration of Estates of Decedents" of the Probate Code (Sec. 591 et seq.)

The section provides that an executor or administrator given administration of an estate under the ACT, may do so without "court supervision"....

"... except that he shall be required to obtain court supervision in the manner provided in this code, for any of the following actions:

"(a) Sale or exchange of real property whether sold individually or as a unit with personal property."

AB 2270 amends Probate 591.2 to strike out the provisions of sub-paragraph (a) quoted above. The amendment removes these sales (termed "private sale of real property") from court supervision.

Court supervision requires that the administrator or executor give public notice three times in a newspaper of general circulation describing the real property to be sold, where bids may be submitted, and that the sale is subject to confirmation by the probate court (Probate Code Sec. 789 et seq.).

A private sale without court supervision, as the bill proposes, could be made on any terms the executor or administrator considers appropriate.

"The only Legal Advertising which is justifiable from the standpoint of true economy and the public interest, is that which reaches those who are affected by it."

Ms. Patricia Wynne
May 11, 1984
Page Two

Bids are taken by the administrator or executor, usually at the office of the attorney for the estate. On a day set by the court the best bid is taken to it for confirmation. There the judge conducts the sale, opening the bidding to the public. The publicity generated by the present, open process frequently brings a higher bid. It is not unusual for the price to be greatly increased, with commensurate increased benefit to the estate, its creditors and its heirs.

The sales are commissionable, ensuring the interest of real estate brokers. Their interest is created by the public notice advertising, without which advertising only parties privy to the estate's administration are likely to have knowledge.

A member of this firm, W. J. Valentine, has interviewed Judge Edward E. Rafeedie and Probate Commissioner Ann E. Stodden. Rafeedie was with the probate court of Los Angeles County for many years and is now on the federal bench in Los Angeles. Stodden is with the Los Angeles Superior Court and is a newly appointed member of the Law Revision Commission. Rafeedie and Stodden stated that it would be an error to remove these private sales of real property from court supervision. Both Rafeedie and Stodden give the reason that a sale conducted by the probate court ensures the highest price, and the highest price depends upon proper exposure to the market, which the law ensures through public notice and court supervised bidding.

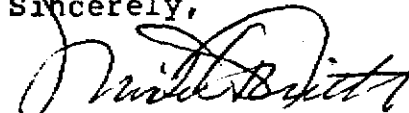
Judge Rafeedie stated that in his experience higher prices were obtained in "hundreds of cases" with added benefits sometimes amounting to "millions of dollars." Rafeedie went on to say that not bringing private sales before the court opened the procedure of administration of estates to sweetheart deals and fraud.

Judge Billy Mills of the Los Angeles County probate court told Mr. Valentine that it was historically true that bids were increased when sales of real property were made by the probate court.

The California Newspaper Service Bureau has served courts, attorneys, government agencies and private parties with their public notice advertising since 1934, working to ensure that such advertising is placed in the newspapers most likely to obtain the desired response.

If we can be of any assistance to the Judiciary Committee in its study of AB 2270, or in any other matter where public notice is an element, we will be most pleased to help.

Sincerely,



Michael D. Smith
General Manager

SENATE COMMITTEE ON JUDICIARY
Barry Keene, Chairman
1983-84 Regular Session

AB 2270 (McAlister)
As amended May 15
Probate Code
PAW

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PROBATE LAW
AND PROCEDURE

HISTORY

Source: California Law Revision Commission

Prior Legislation: None

Support: Estate Planning, Trust, and Probate Law
Section of the State Bar; Probate Law
and Trust Section of Los Angeles
County Bar Association

Opposition: California Newspaper Service Bureau,
Inc.; Petaluma Argus-Courier

Assembly floor vote: Ayes 61 - Noes 8

KEY ISSUE

SHOULD THE INDEPENDENT ADMINISTRATION OF ESTATES
PROCEDURES BE EXPANDED TO REDUCE THE NEED FOR
PROBATE OR ANY COURT SUPERVISION?

(More)

SHOULD THE DECEDENT'S BENEFICIARIES BE PERMITTED
TO AGREE TO WAIVE THE BOND AND ACCOUNTING IN
PROBATE PROCEEDINGS?

PURPOSE

Existing law provides for the expedited transfer of a decedent's property to the persons entitled to the property without the need for probate administration; the petition of the court for authority to administer an estate with a minimum amount of court supervision; and the court's discretion to order a bond even if all the beneficiaries or heirs agree to waive the bond.

This bill would revise certain provisions for the distribution of estates without administration and for the independent administration of estates and would authorize a waiver of bonds and accounting in probate proceedings, as specified.

The purpose of this bill is to reduce the need for probate and thus reduce the associated costs and delays.

COMMENT

1. Highlights of analysis

--There are only two controversial sections to this probate revision bill: the provision dealing with court supervision of the sale of real property (see Comment 2); and the provision pertaining to the requirements for the posting of bonds (see Comment 3).

(More)

--This bill would make numerous changes in order to streamline probate procedures in estates that are small and uncontested (see Comments 3, 4, 5, and 6).

--This bill would provide for a court review of an appraisal of real property (see Comment 7).

2. Court-supervised sale of real property

According to the California Newspaper Service Bureau, which is opposed to this bill, the court supervision of the sale of real property requires that the administrator of an estate give public notice 3 times in a newspaper of general circulation. The Bureau believes that this public notice insures a fair price and informs the public of sales of property. Without this requirement, the administrator could take advantage of her position of trust and sell the property at less than fair value.

Proponents of this bill claim that published notice would continue to be utilized in most estate sales. However, if the administrator arranged for a private sale with the approval of all heirs and beneficiaries, the costs and delays of public notice of sale should not be required.

3. Bonds for personal representatives

(a) For executors or administrators

Existing law is intended to permit the testator or all the beneficiaries or heirs

(More)

of an estate to avoid the cost of a bond. The bond operates as a security in the form of a promise by a surety to pay if there is a breach of trust by the decedent's personal representative. Unless otherwise required by the will, the bond may be waived by all of the decedent's beneficiaries or heirs, whereupon the court may direct that no bond be filed. However, the court, upon its own motion or upon petition or any interested person, may nevertheless require a bond for good cause.

(b) For special administrators

A special administrator is immediately appointed by the court in order to preserve the assets of an estate; although the appointment is an interim one, the person may become the permanent administrator. If the special administrator remains the administrator and if the will waives the bond or all heirs are beneficiaries waive the bond, then the bond may be waived by the court.

(c) Effect of this bill

This bill would clarify existing provisions to make it clear that, absent a showing of good cause, if all heirs and beneficiaries agree in writing to waive the bond requirement, then the court would have to waive the bond.

(More)

One or more surety companies may express opposition to this provision.

4. Independent administration of decedents estate

Existing law provides that an executor or administrator may petition the court for authority to administer a decedent's estate with a minimum of court supervision. The court must grant the authority unless good cause is shown why it should not be granted. If the authority is granted, many actions that otherwise would be under court supervision may be taken without court supervision. However, the executor or administrator must give prior notice of many proposed actions to affected persons; and, upon the request of an affected person, the court must grant an ex parte order restraining the executor or administrator from taking the proposed action without court supervision.

This bill would:

- extend the independent administrator procedures to sales and exchanges of real property, and to grants of options to purchase real property;
- allow an objection to be made by merely delivering or mailing a written objection to the executor or administrator; and
- require a person receiving notice of proposed action to object within a specified time or waive the right to later seek court review of the action taken.

(More)

5. Distribution of estates without administration

(a) Property to surviving spouse

This bill would expand the procedure for passage of community and quasi-community property to a surviving spouse without administration by including the passage of separate property to the surviving spouse by will or intestate succession.

(b) Property of small estates

The bill would also expand the affidavit procedure under the Probate Code for the collection of personal property of a small estate without probate to increase its usefulness.

--The maximum estate value of the affidavit procedure would be increased from \$30,000 to \$60,000. The language of the statute would be revised to make clear that the value would be determined by the "gross value" of the property (not gross value less liens and encumbrances on the property).

--The affidavit procedure would be allowed to be used for personal property even if the state included a real property interest of a gross value of \$10,000 or less.

--The category of relatives of the decedent who could use the procedure would be expanded to include a grandparent of the decedent.

(More)

6. Waiver of accounting

Some local court rules make provision for waiver of the requirement that the executor or administrator file an account, but there is no provision in existing statutes providing for such a waiver.

This bill would provide that the executor or administrator would not be required to render an account when all persons entitled to distribution had filed a written waiver of the accounting.

The bill would also provide the court with more discretion to make an order that a guardian need not present accounts otherwise required in small estates.

7. Objections to appraisement

This bill would permit an interested person to obtain a court review of an appraisement of estate property.

(More)

AB 2270 (McAlister) As amended 02/08/84

SUBJECT

This bill would (1) revise certain provisions for the distribution of estates without administration and for the independent administration of estates and (2) authorize a waiver of bonds and accountings in probate proceedings, as specified.

DIGEST

1. Distribution of Estates Without Administration
(Sections 8-19)

Existing law provides for the expedited transfer of a decedent's property to the persons entitled to the property without the need for probate administration.

This bill would make the following changes regarding the distribution of estates without administration:

- (a) The procedure for transfer of a decedent's community and quasi-community property to a surviving spouse without administration would be extended to cover separate property passing to the surviving spouse by will or intestate succession. [Proposed Probate Code Sections 649.1(b), 649.4, 650, 653, and 655]
- (b) The procedure for collection of a decedent's personal property by affidavit without the need for administration would apply to estates in which the gross value of real and personal property does not exceed \$60,000, provided however that the gross value of any California real property in the estate is \$10,000 or less. "Gross value" would mean the value of the property including liens or encumbrances. The bill would expressly state that the collection by affidavit procedure would not apply to real property or an interest in real property.

The class of the decedent's relatives who may use this procedure would be expanded to include a grandparent of the decedent.

[Proposed Probate Code Section 630]

(CONTINUED)

(Currently, the collection by affidavit procedure applies only to estates whose total value does not exceed \$30,000 and in which the decedent owned no real property. The decedent's surviving spouse, children, parents, siblings, and issue of deceased children or siblings are the relatives who may use this collection procedure.)

This bill would apply only to cases in which the decedent died after December 31, 1984.

2. Independent Administration of Estates (Sections 4-7)

Existing law provides that an executor or administrator may petition the court for authority to administer a decedent's estate with a minimum of court supervision. The court must grant the authority unless good cause is shown why it should not be granted. If the authority is granted, many actions that otherwise would be under court supervision may be taken without court supervision. However, the executor or administrator must give prior advice of many proposed actions to affected persons; and, upon the request of an affected person, the court must grant an ex parte order restraining the executor or administrator from taking the proposed action without court supervision.

This bill would make the following changes regarding the independent administration of estates:

- (a) In addition to applying for a restraining order, a recipient of the advice of proposed action may object by merely delivering or mailing a written objection to the executor or administrator so that the objection is received before the date on or after which the proposed action is to be taken or before the proposed action is actually taken, whichever is later. [Proposed Probate Code Section 591.5(a)(2)]

(Currently, a person objecting to a proposed action may obtain a restraining order against the executor or administrator. The order may be issued without notice to the executor or administrator and without cause being shown.)

- (b) A person would have to object to the proposed action in the manner and within the time allowed by statute. Failure to object would be a waiver of any right to later judicial review of the action taken, unless the person establishes that he or she did not actually receive advice of the proposed action before the time to object expired. The court, however, may review actions

(CONTINUED)

of the executor or administrator on its own motion.
[Proposed Probate Code Section 591.5(d)]

(Currently, a recipient of the advice of proposed action who fails to object before the action is taken may still have a court later review the action.)

- (c) Independent administration of estate procedures would be extended to real property transactions. When the proposed action involves the sale or exchange of real property or the grant of an option to purchase real property, the advice of proposed action would state the material terms of the transaction. [Proposed Probate Code Sections 591.2, 591.3, and 591.4]

(Currently, court supervision is required for the sale or exchange of real property or the grant of an option to purchase real property.)

This bill would not automatically apply if the executor or administrator was granted authority prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act. However, an executor or administrator who was granted such authority prior to January 1, 1985, may file a petition for authority after January 1, 1985, to administer the estate pursuant to the changes made by this bill.

3. Bonds for Personal Representatives (Sections 1-3)

Existing law is intended to permit the testator or all the beneficiaries or heirs of an estate to avoid the cost of a bond. The bond operates as a security in the form of a promise by a surety to pay if there is a breach of trust by the decedent's personal representative. Unless otherwise required by the will, the bond may be waived by all of the decedent's beneficiaries or heirs, whereupon the court may direct that no bond be filed. However, the court, upon its own motion or upon petition of any interested person, may nevertheless require a bond for good cause.

This bill would clarify that the court must direct that no bond be filed when all the decedent's beneficiaries or heirs waive the filing of the bond. However, the court would still be able to require a bond for good cause regardless of the waiver. The nonresidence of an executor or administrator would not itself be good cause for requiring a bond or increasing its amount.

Existing law provides that a special administrator may be immediately appointed to take over a decedent's estate in order to preserve the assets. The special administrator must give bond in the amount directed by the court.

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This bill would specify that, upon waiver of the filing of the bond by all the decedent's beneficiaries or heirs, the court must direct that no bond be filed, unless otherwise required in the will or good cause for a bond is shown. If the will waives the bond requirement and the person named as executor in the will is appointed special administrator, the court must direct that no bond be filed, unless good cause for a bond is shown.

4. Accounting by Personal Representatives (Section 20)

Existing statute does not provide for a waiver of the requirement that the executor or administrator file an account. Some local court rules make such provision.

This bill would provide that the executor or administrator is not required to render an account when all the persons entitled to distribution of the estate have executed and filed either a written waiver of accounting or a written acknowledgment of receipt of the share to which the person is entitled. If any beneficiaries of the estate are unascertained, an accounting would not be waivable.

The bill would also provide that the executor or administrator would have to file a report at the time the account would otherwise have been required showing the amount of and the basis for fees or commission paid or payable to himself and to his attorneys.

The bill would specify the persons authorized to execute the waiver or acknowledgment on behalf of a distributee.

STAFF COMMENTS

1. This bill, which is sponsored by the California Law Revision Commission, seeks to reduce the cost and delay of probate. It would make numerous changes in order to improve existing procedures that cut back on court-involvement, attorney time, and the complexities and expense of probating a decedent's estate. In addition, the bill would clarify existing law which allows the court to direct an executor or administrator to file a bond even if all the decedent's beneficiaries or heirs have waived the bond requirement. Finally, it would establish a provision allowing the persons entitled to distribution of the estate to waive the accounting by the executor or administrator.
2. This bill would relax the requirements that must be met before a decedent's personal property may be collected by affidavit without administration. Pursuant to Probate Code Section 630, the person entitled to the decedent's property

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presents an affidavit to the third-party holder of the property showing that the person is entitled to the property under the decedent's will or by intestate succession. The transfer does not preclude the administration of the estate when necessary to enforce payment of the decedent's debts. The affidavit procedure can be used only when the decedent leaves no interest in California real property and the value of the estate, excluding certain property, does not exceed \$30,000.

This bill would allow the affidavit procedure to be used to collect the decedent's personal property even if the decedent owned real property, provided however that its "gross value" does not exceed \$10,000. The bill would also raise the limit on the value of the estate from \$30,000 to a "gross value" of \$60,000. According to the source of the bill, estates of less than \$60,000 are too small to justify the expense and delay of the probate process when there are no unpaid creditors and no disagreement among the persons who take the decedent's property. The source also claims that the affidavit procedure should not be prohibited when the decedent owned real property of nominal or small value, such as a desert lot or an oil lease producing little or no income.

The State Bar Estate Planning, Trust and Probate Law Section objects to the proposed increase in the maximum value of estates which are subject to collection by affidavit. The Section points out that the affidavit procedure traditionally has been intended to allow the transfer of assets at a minimal cost in small estates. Consequently, the Section suggests that \$50,000 is the appropriate maximum, based on inflation and the minimal tax problems existing in an estate of \$50,000 or less.

Note: Probate Code Section 630 has been repeatedly amended in recent years to increase the maximum dollar amount of estates covered by the statute - from \$1,000 to \$2,000 in 1961, to \$3,000 in 1967, to \$5,000 in 1972, to \$10,000 in 1974, to \$20,000 in 1976, to the present \$30,000 in 1979. The source of this bill claims that the affidavit procedure is currently used in about 20 percent of the estates in California.

3. Existing law provides that a decedent's property may be sold to pay his debts or to carry out the intent of his will. In general, sales of real property must be reported to and confirmed by the court before title to the property passes. In a noticed hearing, the court examines all aspects of the sale, including additional offers (overbids) to buy the property, and fixes reasonable compensation for the services of real estate agents.

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This bill would give the executor or administrator authority to conduct real property transactions under the Independent Administration of Estates Act. Any sale under independent administration would not be subject to the court overbidding procedure. This change would help persons interested in the estate to avoid cumbersome, expensive, and time-consuming court-supervised procedures required by the Probate Code. Instead, the executor or administrator would give an advice of proposed action to the affected persons, any of whom could object and require the transaction to proceed only under court supervision. The source of this bill claims that this scheme would maintain the protective features of court supervision when any affected person desires such protection but will not impose court supervision when all the affected persons agree to the proposed method of handling the matter. The bill, by incorporating existing law, would also protect bona fide purchasers of the real property and third parties who detrimentally relied on the personal representative even if the personal representative failed to comply with the requirements of independent administration.

4. Under this bill, a decedent's separate property may pass to a surviving spouse by will or intestate succession without the need of administration. A surviving spouse currently may take the decedent's community and quasi-community property without administration; however, if the estate includes separate property of the decedent, only that property must be administered. The surviving spouse, unless he or she elects to have the property administered, may obtain a court order confirming that the decedent's share of the community and quasi-community property belongs to the surviving spouse. In such case, creditors are protected by imposing on the surviving spouse personal liability for the decedent's debts chargeable against the community.

The source of the bill claims that this change will avoid the need for administration of the decedent's separate property which passes to the surviving spouse and the need for any administration at all where the surviving spouse takes the entire estate. In addition, the source expects the bill to avoid unnecessary time and resources being expended to classify as separate or as community or quasi-community the property that passes to the surviving spouse.

5. This bill would permit a recipient of an advice of proposed action under the Independent Administration of Estates Act to object to the proposed action by merely delivering or mailing a written objection to the executor or administrator. The change would provide a less expensive and more expeditious method for objecting to a proposed action than the current procedure of obtaining a restraining order against the executor or administrator.

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Existing law provides that when the executor or administrator gives an advice of proposed action, the advice must state a date - not earlier than 15 days after delivery or mailing of the advice - on or after which the proposed action is to be taken. The source of the bill argues that the current procedure does not allow adequate time for the recipient of the advice to consult an attorney and for the attorney to obtain a restraining order. Moreover, the requirement that a restraining order be obtained places a significant financial burden on the recipient of the advice who ordinarily must retain an attorney to secure the order.

6. This bill would require persons given an advice of proposed action to object to the proposed action within the time allowed and that failure to object would constitute a waiver of the right to have the court later review the action taken, unless the objector establishes that he did not actually receive timely advice of the proposed action. The court could still review the action on its own motion or the motion of any interested person who was not given an advice. According to the source of this bill, this change would correct a serious defect in the Independent Administration of Estates Act. Currently, the executor or administrator who takes an action after giving an advice runs the risk that a person may later challenge the action even though the person did not object before it was taken. This change, the source argues, would not only protect executors and administrators but also would encourage prompt objections.
7. This bill would clarify that a bond cannot be required if all the beneficiaries or heirs waive bond, unless the court determines that there is good cause to require a bond. The clarification responds to reports that some courts require a bond without a showing of good cause even if all the beneficiaries or heirs have waived the bond. For related reasons, the bill would also expressly provide that, absent good cause, the bond requirement may be waived for special administrators when the will waives the bond and the person named as executor is appointed special administrator or when all heirs have waived the bond.

Probate Code Section 541 was recently amended in order to give the court discretion to direct the filing of the bond even if all beneficiaries or heirs have waived the bond. [AB 3676 (Johnson), Chapter 442, Statutes of 1982] At that time, supporters of AB 3676 argued that the then mandatory waiver by the court created many problems as to identification of heirs and stripped the court of authority to ensure proper administration and protection of creditors.

SOURCE

California Law Revision Commission

SUPPORT

Probate Law and Trust Section of the Los Angeles County
Bar Association

OPPOSITION

Estate Planning, Trust and Probate Law Section, State
Bar of California (opposed to only Section 9 of the bill)