

Fourth Supplement to Memorandum 85-71

Subject: Study L-1028 - Estates and Trusts Code (Independent Administration)

The 1985 legislation relating to independent administration (enacted upon Commission recommendation) requires revision of Judicial Council forms.

The Committee that is responsible for Judicial Council forms has prepared revisions of three forms and a new form. These are attached and include the following:

- (1) Petition for Probate (Revised).
- (2) Order for Probate (Revised).
- (3) Letters (Revised).
- (4) Advice of Proposed Action (Objection--Consent) (New).

You may want to refer to these forms in connection with the Tentative Recommendation attached to Memorandum 85-71. Also you may be interested in the manner in which the 1985 legislation relating to independent administration is being implemented.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Please review these forms. Changes are indicated

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): <i>by asterisks. The Judicial Council acts on November 16.</i> <i>Call me if you see any problems. (415) 557-2582</i>		TELEPHONE NO.: <i>Ben McClinton</i>	FOR COURT USE ONLY
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		DRAFT - SUBJECT TO REVISION NOT FOR RELEASE	
ESTATE OF (NAME): DECEDENT			
PETITION FOR (For decedents dying after December 31, 1984) <input type="checkbox"/> Probate of Will and for Letters Testamentary <input type="checkbox"/> Probate of Will and for Letters of Administration with Will Annexed <input type="checkbox"/> Letters of Administration <input type="checkbox"/> Letters of Special Administration <input type="checkbox"/> Authorization to Administer Under The Independent Administration of Estates Act <input type="checkbox"/> with limited authority *		CASE NUMBER: HEARING DATE: DEPT.: TIME:	

1. Publication will be in (specify name of newspaper):

- a. ☐ Publication requested.
b. ☐ Publication to be arranged.

2. Petitioner (name of each):

requests that

- a. ☐ decedent's will and codicils, if any, be admitted to probate.

- b. ☐ (name):

be appointed (1) ☐ executor

(3) ☐ administrator

(2) ☐ administrator with will annexed

(4) ☐ special administrator

and Letters issue upon qualification.

- c. ☐ authority be granted to administer under The Independent Administration of Estates Act ☐ with full authority under the act ☐ without authority to sell, exchange, or grant an option to purchase real property (limited authority).

- d. ☐ bond not be required for the reasons stated in item 3d.

☐ \$ bond be fixed. It will be furnished by an authorized surety company or as otherwise provided by law (specify reasons if the amount is different from the minimum required by Probate Code, §541.)

☐ \$ in deposits in a blocked account be allowed. Receipts will be filed. (Specify institution and location):

3. a. Decedent died on (date):

at (place):

☐ a resident of the county named above.

☐ a nonresident of California and left an estate in the county named above located at (specify location permitting publication in the newspaper named in item 1):

- b. Street address, city, and county of decedent's residence at time of death:

- c. Character and estimated value of the property of the estate

Personal property: \$

Annual gross income from

☐ real property: \$

☐ personal property: \$

Total: \$

Real property: \$

- d. ☐ Will waives bond. ☐ Special administrator is the named executor and the will waives bond.
☐ All beneficiaries are adults and have waived bond, and the will does not require a bond (affix waiver as attachment 3d).
☐ All heirs at law are adults and have waived bond (affix waiver as attachment 3d).
☐ Sole personal representative is a corporate fiduciary.

(Continued on reverse)

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CASE NUMBER:

NOT FOR RELEASE

DECEDENT

3. ☐ Decedent died intestate. ☐ Copy of decedent's will dated: ☐ codicils dated: ☐ are affixed as attachment 3e.
☐ The will and all codicils are self-proving (Probate Code, § 329). *
- f. Appointment of personal representative (check all applicable boxes)
- (1) Appointment of executor or administrator with will annexed
- ☐ Proposed executor is named as executor in the will and consents to act.
☐ No executor is named in the will.
☐ Proposed personal representative is a nominee of a person entitled to Letters (affix nomination as attachment 3f(1)).
☐ Other named executors will not act because of ☐ death ☐ declination ☐ other reasons (specify in attachment 3f(1)).
- (2) Appointment of administrator
- ☐ Petitioner is a person entitled to Letters. (If necessary, explain priority in attachment 3f(2).)
☐ Petitioner is a nominee of a person entitled to Letters (affix nomination as attachment 3f(2)).
☐ Petitioner is related to the decedent as (specify):
- (3) ☐ Appointment of special administrator requested (specify grounds and requested powers in attachment 3f(3)).
- g. Proposed personal representative is a ☐ resident of California ☐ nonresident of California (affix statement of permanent address as attachment 3g) ☐ resident of the United States ☐ nonresident of the United States.
4. ☐ Decedent's will does not preclude administration of this estate under The Independent Administration of Estates Act.
5. a. (Complete in all cases) The decedent is survived by
- (1) ☐ spouse ☐ no spouse
(2) ☐ child as follows: ☐ natural or adopted ☐ natural adopted by a third party ☐ step ☐ foster
☐ no child
(3) ☐ issue of a predeceased child ☐ no issue of a predeceased child
- b. Petitioner ☐ has no ☐ has actual knowledge of facts reasonably giving rise to a parent-child relationship under Probate Code section 6408(b).
- c. ☐ All surviving children and issue of predeceased children have been listed in item 8.
6. (Complete if decedent was survived by (1) a spouse but no issue (only a or b apply); or (2) no spouse or issue. Check the first box that applies.)
- a. ☐ The decedent is survived by a parent or parents who are listed in item 8.
b. ☐ The decedent is survived by issue of deceased parents, all of whom are listed in item 8.
c. ☐ The decedent is survived by a grandparent or grandparents who are listed in item 8.
d. ☐ The decedent is survived by issue of grandparents, all of whom are listed in item 8.
e. ☐ The decedent is survived by issue of a predeceased spouse, all of whom are listed in item 8.
f. ☐ The decedent is survived by next of kin, all of whom are listed in item 8.
g. ☐ The decedent is survived by parents of a predeceased spouse or issue of those parents, if both are predeceased, all of whom are listed in item 8.
7. (Complete only if no spouse or issue survived the decedent.)
- ☐ The decedent had a predeceased spouse who died not more than 15 years before the decedent and who died owning an interest in real property. (Check only the first box that applies.)
- a. ☐ The decedent is survived by issue of a predeceased spouse, all of whom are listed in item 8.
b. ☐ The decedent is survived by a parent or parents of the predeceased spouse who are listed in item 8.
c. ☐ The decedent is survived by issue of a parent of the predeceased spouse, all of whom are listed in item 8.
d. ☐ The decedent is survived by next of kin of the decedent, all of whom are listed in item 8.
e. ☐ The decedent is survived by next of kin of the predeceased spouse, all of whom are listed in item 8.
8. Listed in attachment B are the names, relationships, ages, and residence or mailing addresses of all persons mentioned in decedent's will and codicils, whether living or deceased, and all persons checked in items 5, 6, and 7, so far as known to petitioner, including stepchild and foster child heirs, devisees, and legatees to whom notice is to be given under Probate Code section 1201.
9. ☐ Number of pages attached:

Date:

(SIGNATURE OF PETITIONER*)

(SIGNATURE OF PETITIONER*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER*)

*All petitioners must sign the petition. Only one need sign the declaration.

Use of existing supplies of this form will
be authorized if modified by the user in
appropriate cases (until 12/31/86)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): TELEPHONE NO.: FOR COURT USE ONLY	
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: ESTATE OF (NAME): DECEDENT	DRAFT - SUBJECT TO REVISION NOT FOR RELEASE
ORDER FOR PROBATE ORDER <input type="checkbox"/> Executor APPOINTING <input type="checkbox"/> Administrator with Will Annexed <input type="checkbox"/> Administrator <input type="checkbox"/> Special Administrator <input type="checkbox"/> Order Authorizing Independent Administration of Estate * <input type="checkbox"/> with full authority <input type="checkbox"/> with limited authority	CASE NUMBER:

1. Date of hearing: Time: Dept/Rm: Judge:

THE COURT FINDS

2. a. All notices required by law have been given.
b. Decedent died on (date):
(1) ☐ a resident of the California county named above
(2) ☐ a nonresident of California and left an estate in the county named above
c. Decedent died
(1) ☐ intestate
(2) ☐ testate and decedent's will dated:
and each codicil dated:
was admitted to probate by Minute Order on (date):

THE COURT ORDERS

3. (Name):
is appointed
a. ☐ Executor of the decedent's will
b. ☐ Administrator with will annexed
c. ☐ Administrator
d. ☐ Special Administrator
(1) ☐ with general powers
(2) ☐ with special powers as specified in attachment 3d
(3) ☐ without notice of hearing

and letters shall issue on qualification.

- * 4. a. ☐ Full: Authority is granted to administer the estate under The Independent Administration of Estates Act.
b. ☐ Limited: Authority is granted to administer the estate under The Independent Administration of Estates Act without authority to sell or exchange real property or to grant an option to purchase real property.
5. a. ☐ Bond is not required.
b. ☐ Bond is fixed at: \$ to be furnished by an authorized surety company or as otherwise provided by law.
c. ☐ Deposits of: \$ * are ordered to be placed in a blocked account at (specify institution and location):
and receipts shall be filed. No withdrawals shall be made without a court order.

6. ☐ (Name): is appointed probate referee.

Date:

JUDGE OF THE SUPERIOR COURT

☐ Signature follows last attachment.

7. ☐ Number of pages attached:

Use of existing supplies of this form will be authorized until 12/31/86 if altered by the user in appropriate cases.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): TELEPHONE NO.: FOR COURT USE ONLY	
DRAFT - SUBJECT TO REVISION NOT FOR RELEASE	
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF (NAME): DECEDENT	
CASE NUMBER:	
LETTERS <input type="checkbox"/> TESTAMENTARY <input type="checkbox"/> OF ADMINISTRATION WITH WILL ANNEXED <input type="checkbox"/> OF ADMINISTRATION <input type="checkbox"/> OF SPECIAL ADMINISTRATION	

LETTERS

1. ☐ The last will of the decedent named above having been proved, the court appoints (name):

- a. ☐ Executor
b. ☐ Administrator with will annexed

2. ☐ The court appoints (name):

- a. ☐ Administrator of the decedent's estate
b. ☐ Special administrator of decedent's estate
(1) ☐ with the special powers specified in the Order for Probate
(2) ☐ with the powers of a general administrator

3. ☐ The personal representative is authorized to administer the estate under The Independent Administration of Estates Act

☐ with full authority ☐ without authority to sell or exchange real property or to grant an option to purchase real property.

WITNESS, clerk of the court, with seal of the court affixed,

Date:

Clerk, by _____, Deputy

(SEAL)

AFFIRMATION

I solemnly affirm that I will perform the duties of personal representative according to law.

Executed on (date):

at (place): _____, California.

(PERSONAL REPRESENTATIVE)

CERTIFICATION

I certify that this document is a correct copy of the original on file in my office and that the letters issued the personal representative appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

Date:

Clerk, by _____, Deputy

(SEAL)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):		TELEPHONE NO.:	FOR COURT USE ONLY DRAFT - SUBJECT TO REVISION NOT FOR RELEASE
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF			
STREET ADDRESS:			
MAILING ADDRESS:			
CITY AND ZIP CODE:			
BRANCH NAME:			
ESTATE OF (NAME):		DECEDENT	
ADVICE OF PROPOSED ACTION		CASE NUMBER:	

NOTICE: If you do not object in writing or obtain a court order preventing the action proposed below, you will be treated as if you consented to the proposed action and you may not object after the proposed action has been taken. An objection form is on the reverse.

1. The executor or administrator of the estate of the deceased is (names):
2. The executor or administrator has authority to administer the estate without court supervision under The Independent Administration of Estates Act (Probate Code sections 591-591.9)
 - ☐ with full authority under the act.
 - ☐ without authority to sell or exchange real property or to grant an option to purchase real property.
3. On or after (date): , the executor or administrator will take the following action (describe in specific terms here or in attachment 3):
 - ☐ Action is described in an attachment labeled attachment 3.

4. ☐ Real property transactions only (Complete if the proposed action involves a sale or exchange or an option to purchase real property.)
 - a. The material terms of the transaction are specified in item 3, including any sale price and the amount of or method of calculating any compensation to an agent or broker.
 - b. \$ is the value of the subject property in the probate inventory, if any.

NOTICE: A sale of real property without court supervision means that the sale will not be presented to the court for confirmation at a hearing at which higher bids for the property may be presented and the property sold to the highest bidder.

(Continued on reverse)

DRAFT - SUBJECT TO REVISION

ESTATE OF (NAME):

FILE NUMBER:

NOT FOR RELEASE

DECEDENT

5. If you object to the proposed action

- a. Sign the objection form below and deliver or mail it to the executor or administrator at the following address (*specify name and address*):

-OR-

- b. Apply to the court for an order preventing the executor or administrator from taking the proposed action without court supervision.

- c. **Note:** Your written objection or the court order must be received by the executor or administrator before the date in the box in item 3, 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.

6. If you approve the proposed action, you may sign the consent form below and return it to the address in item 5. If you do not object in writing or obtain a court order, you will be treated as if you consented to the proposed action.

7. If you need more information, call (*name*):
(*telephone*): ()

Date:

.....
(TYPE OR PRINT NAME)

.....
(SIGNATURE OF EXECUTOR OR ADMINISTRATOR OR ATTORNEY)

OBJECTION TO PROPOSED ACTION

☐ I object to the action proposed above.

NOTICE: Sign and return this form to the address in item 5. It must be received before the date in the box in item 3, or before the proposed action is taken, whichever is later. (*You may want to make a copy for your records.*)

Date:

.....
(TYPE OR PRINT NAME)

.....
(SIGNATURE OF OBJECTOR)

CONSENT TO PROPOSED ACTION

☐ I consent to the action proposed above.

NOTICE: You may indicate your consent by signing and returning this form to the address in item 5. If you do not object in writing or obtain a court order, you will be treated as if you consented to the proposed action.

Date:

.....
(TYPE OR PRINT NAME)

.....
(SIGNATURE OF CONSENTER)

ADVICE OF PROPOSED ACTION
Objection - Consent