

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

Attached is a staff draft of a Tentative Recommendation Relating to Independent Administration. This staff draft is presented for Commission approval before it is sent out to interested persons and organizations for review and comment. The comments we are sent by interested persons and organizations will be reviewed by the Commission when the Commission determines the provisions to be included in the new code.

The Commission has not previously reviewed a draft of a tentative recommendation on this subject. Several earlier drafts were prepared, but the Commission did not consider them. In preparing this draft, we have made revisions in the text of the proposed legislation and in the Comments in response to suggestions made by Mr. Collier, a four member team of the Executive Committee of the Estate Planning, Trust and Probate Law Section, and the Probate and Estate Planning Subcommittee for Legislation of the San Diego County Bar Association.

In some cases, the comments received in response to an earlier draft of the tentative recommendation raised policy issues that are not dealt with in the tentative recommendation. These policy issues are identified in the "DRAFTSMAN'S NOTE" that is found under various sections of the draft.

At the meeting, we plan to go through the draft statute section by section. We urge you to read the entire Tentative Recommendation with care even though the preliminary portion of the tentative recommendation outlines the changes it would make in existing law.

The Exhibit attached to this Memorandum is relevant to one of the DRAFTSMAN'S NOTES found in the Tentative Recommendation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

PROBATE CODE SECTION 2545

§ 2545. Sale or other disposition of tangible personal property

(a) Subject to subdivisions (b) and (c) and to Section 2541, the guardian or conservator may sell or exchange tangible personal property of the estate without authorization, confirmation, or direction of the court.

(b) The aggregate of the sales or exchanges made during any calendar year under this section may not exceed five thousand dollars (\$5,000).

(c) A sale or exchange of personal effects or of furniture or furnishings used for personal, family, or household purposes may be made under this section only if:

(1) In the case of a guardianship, the ward is under the age of 14 or, if 14 years of age or over, consents to the sale or exchange.

(2) In the case of a conservatorship, the conservatee either (i) consents to the sale or exchange or (ii) the conservatee does not have legal capacity to give such consent.

(d) Failure of the guardian or conservator to observe the limitations of subdivision (b) or (c) does not invalidate the title of, or impose any liability upon, a third person who acts in good faith and without actual notice of the lack of authority of the guardian or conservator.

(e) Subdivision (b) of Section 2543 does not apply to sales under this section.

(Added by Stats.1979, c. 726, § 3.)

STATE OF CALIFORNIA

C A L I F O R N I A L A W
R E V I S I O N C O M M I S S I O N

STAFF DRAFT

(not approved by Commission)

TENTATIVE RECOMMENDATION

relating to

PROBATE LAW

(INDEPENDENT ADMINISTRATION OF ESTATES)

January 1986

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines the recommendation it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN MARCH 15, 1986.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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January 20, 1986

LETTER OF TRANSMITTAL

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The goal is to submit an entire new code to the Legislature for enactment in 1987. The Commission is sending drafts of portions of the new code to interested persons and organizations for review and comment.

This tentative recommendation sets forth the Commission's tentative conclusions concerning the portion of the new code relating to independent administration of estates (existing Prob. Code §§ 591-591.9).

The preliminary portion of the tentative recommendation indicates the principal substantive revisions the proposed legislation would make in existing law.

The proposed legislation is drafted as a part of the new code. In some cases, you will find a reference to other portions of the new code that are still being prepared and are not yet available for distribution for review and comment.

A Comment follows each section of the proposed legislation. The Comment gives the source of the section and indicates any changes the section would make in existing law.

Comments showing the disposition of each section of existing law that would be superseded by the proposed legislation can be found at the end of the tentative recommendation.

Provisions of the existing independent administration statute were affected by Assembly Bill 196 of the 1985 session. This bill was enacted as Chapter 982 of the Statutes of 1985. A copy of the sections as amended or added by Assembly Bill 196 can be found following this tentative recommendation.

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INDEPENDENT ADMINISTRATION

The Independent Administration of Estates Act,¹ enacted in 1974,² permits the court to authorize the personal representative to administer a decedent's estate with a minimum of supervision.³ The personal representative may petition the court for authority to administer the estate under the Act.⁴ The court must grant the authority unless good cause is shown why it should not be granted.⁵

If the authority is granted, many actions that otherwise would be taken under court supervision may be taken without court supervision.⁶ However, the personal representative must give prior

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1. Prob. Code §§ 591-591.9.
 2. 1974 Cal. Stat. ch. 961. For subsequent amendments and additions to the 1974 act, see 1977 Cal. Stat. ch. 243, 1978 Cal. Stat. ch. 298, 1980 Cal. Stat. ch. 955, 1982 Cal. Stat. ch. 1521, 1983 Cal. Stat. ch. 17, 1984 Cal. Stat. chs. 144, 451, 1017, 1985 Cal. Stat. chs. 359, 982.
 3. The enactment was a response to public criticism of the probate process as requiring too much court involvement and attorneys' time, and being too complex and costly. See Note, Probate Reform: California's Declaration of Independent Administration, 50 S. Cal. L. Rev. 155 (1976).
 4. Prob. Code § 591.1.
 5. Prob. Code § 591.1. See also Prob. Code § 591.7 (revocation of authority where good cause shown). Independent administration authority may not be granted if the decedent's will provides that the decedent's estate shall not be administered under the Act. Prob. Code § 591.1.
 6. Prob. Code § 591.6.

advice of many proposed actions to affected persons;⁷ and, if an interested person objects, the personal representative may take the proposed action only under court supervision.⁸

The Commission studied the Independent Administration of Estates Act during 1983-1985 and submitted recommendations proposing improvements in the Act.⁹ The enactment of these recommendations¹⁰ avoids the need to make further substantial changes in the Independent Administration of Estates Act. Accordingly, the new code merely reorganizes and restates and

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7. Prob. Code §§ 591.3-591.4, 591.8. Advice of the proposed action is required to be given to the devisees and legatees whose interest in the estate is affected by the proposed action; to the heirs of the decedent in intestate estates; to the State of California if any portion of the estate is to escheat to it; and to any persons who have filed a request for special notice pursuant to Probate Code Section 1202 (the persons who may request special notice include a creditor, a beneficiary under a trust, any other person interested in the estate, and the State Controller).

Advice of proposed action is required for the following actions: selling or exchanging real property, granting options to purchase real property, selling or exchanging personal property (with certain exceptions), leasing real property for more than a year, entering into any contract (other than a lease of real property) not to be performed within two years, selling, incorporating or operating for longer than six months an unincorporated business of the decedent, commencing payment of or increasing a family allowance or paying a family allowance for more than 12 months after the death of the decedent, investing funds of the estate (with certain exceptions), completing a contract of the decedent to convey real or personal property, borrowing money, executing a mortgage or deed of trust or giving other security, and determining specified claims to real or personal property. Prob. Code § 591.3.

8. Prob. Code § 591.5.

9. Recommendations Relating to Probate Law (Independent Administration of Decedent's Estate), 17 Cal. L. Revision Comm'n Reports 401, 405 (1984). See also 1985 Cal. Stat. chs. 359 and 982, enacted upon recommendation of California Law Revision Commission, 18 Cal. L. Revision Comm'n Reports ____ (1986).

10. 1984 Cal. Stat. ch. 451; 1985 Cal. Stat. chs. 359, 982.

generally continues the existing provisions of the Act with the changes noted below.¹¹

Special administrators. Under existing law, the independent administration statute does not apply to special administrators.¹² The new code permits independent administration authority to be granted to a special administrator if the special administrator is appointed with the powers of a general administrator.¹³ This new authority will be useful, for example, in an estate with a lengthy will contest where virtually all of the administration is handled by the special administrator, and the only act which occurs after the final resolution of the will contest is the distribution of the estate assets.

Use of independent administration procedure for proposed actions not requiring advice of proposed action. The new code includes a new procedure that permits the personal representative to give advice of a proposed action even though the independent administration statute does not require that advice of proposed action be given before taking that action. Failure to object to the proposed action has the same effect as failure to object to a proposed action for which advice of proposed action is required. This new procedure will permit the

11. Some minor changes are not noted below but are indicated in the Comment to the pertinent provision of the new code.

12. Prob. Code § 591.1.

13. The independent administration authority will be granted upon request unless (1) good cause is shown why the authority should not be granted or (2) the decedent's will provides that the decedent's estate shall not be administered under independent administration authority.

personal representative to determine whether an interested person objects to the proposed action and will protect the personal representative if no one objects. It will also encourage the personal representative to keep persons interested in the estate informed of proposed actions and will require court approval of the proposed action before it is taken if there is an objection.

Review of actions taken upon court's own motion. Under existing law, failure to object to a proposed action 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; but, even though there were no objections to the proposed action, the court on its own motion can review the action of the personal representative after the action is taken.¹⁴

The new code limits the court's power to review on its own motion to cases involving the interests of creditors and cases involving the interests of heirs and devisees who lack capacity or are unborn. The new code expands the rights of a person who fails to object to a proposed action to give the person a right to have the court later review the action taken if the person establishes by clear and convincing evidence that the personal representative violated an applicable fiduciary duty in taking the action. The purpose of the advice of proposed action is to bind persons who receive it if they

14. Prob. Code § 591.5(d).

fail to make a timely objection to the proposed action. Limiting the scope of review by the court on its own motion will further this purpose by protecting the personal administrator from a later objection to the action by a competent person who received the advice of proposed action and failed to make a timely objection to the proposed action.

Application to pending proceedings. Since the new independent administration provisions make only minor changes in existing law, the new provisions are made applicable to proceedings pending on the date the new code becomes operative.

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 6. INDEPENDENT ADMINISTRATION OF ESTATES

CHAPTER 1. GENERAL PROVISIONS

- § 10400. Citation of this part
- § 10401. "Court supervision" defined
- § 10402. This part not applicable if will so provides
- § 10403. Special administrator
- § 10404. Application of part

CHAPTER 2. GRANTING OR REVOKING INDEPENDENT
ADMINISTRATION AUTHORITY

- § 10450. Petition for order granting independent administration authority
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- § 10452. Hearing; order; endorsement on letters
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CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT
ADMINISTRATION AUTHORITY

- § 10500. Administration without court supervision
- § 10501. Matters requiring court supervision
- § 10502. Specific independent administration powers

CHAPTER 4. ADVICE OF PROPOSED ACTION

- § 10550. Giving advice of proposed action
- § 10551. Actions requiring advice of proposed action
- § 10552. Persons to whom advice of proposed action must be given
- § 10553. Consent to proposed action
- § 10554. Waiver of advice of proposed action
- § 10555. Form and contents of advice of proposed action
- § 10556. Delivery or mailing of advice of proposed action and copy of form for objecting to proposed action
- § 10557. Objection to proposed action
- § 10558. Restraining order
- § 10559. Court supervision and notice of hearing required if objection made
- § 10560. Effect of failure to object to proposed action
- § 10561. Protection of persons dealing in good faith with personal representative

CHAPTER 5. FORMS

- § 10600. Judicial Council form for advice of proposed action
- § 10601. Form for advice of proposed action
- § 10602. Judicial Council form for objecting to proposed action

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 6. INDEPENDENT ADMINISTRATION OF ESTATES

CHAPTER 1. GENERAL PROVISIONS

§ 10400. Citation of this part

10400. This part shall be known and may be cited as the Independent Administration of Estates Act.

Comment. Section 10400 continues former Section 591 without substantive change.

§ 10401. "Court supervision" defined

10401. As used in this part, "court supervision" includes judicial authorization, approval, confirmation, and instructions.

Comment. Section 10401 continues a portion of the second sentence of subdivision (a) of former Section 591.2 without substantive change. See also Section 10500(a)(2) (requirements applicable to court confirmation of sales of real property do not apply to sales under independent administration).

§ 10402. This part not applicable if will so provides

10402. The personal representative may not be granted authority to administer the estate under this part if the decedent's will provides that the estate shall not be administered under this part.

Comment. Section 10402 continues the second sentence of subdivision (a) of former Section 591.1 without substantive change. For purposes of Section 10402, a provision in the decedent's will that the estate shall not be administered under former Article 2 of Chapter 8 of Division 3 of the Probate Code (former Sections 591 through 591.9, inclusive), or under the Independent Administration of Estates Act, is a provision that the estate shall not be administered under this part. See also Section 10502 (introductory clause) (will may restrict powers exercisable under independent administration authority).

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

§ 10403. Special administrator

10403. A special administrator may not be granted authority to administer the estate under this part unless the special administrator is appointed with the powers of a general administrator.

Comment. Section 10403 replaces the third sentence of subdivision (a) of former Section 591.1. That sentence provided that the independent administration provisions did not apply to special administrators. Section 10403 permits independent administration authority to be granted to a special administrator if the special administrator is appointed with the powers of a general administrator. See Section [465]. This new authority will be useful, for example, in an estate with a lengthy will contest where virtually all of the administration is handled by the special administrator, and the only act which occurs after the final resolution of the will contest is the distribution of the estate assets. In such a case, the special administrator may obtain independent administration authority unless good cause is shown why the authority should not be granted.

An applicant for letters of special administration with powers of a general administrator can obtain independent administration authority only as provided in Sections 10450-10453, inclusive. The applicant must petition for the authority as provided in Section 10450; notice of the hearing must be given in compliance with the requirements of Section 10451; and the provisions of Sections 10452 and 10453 are applicable. If there is an urgent need for appointment of a special administrator, the petition for independent administration authority can be filed under Chapter 2 (commencing with Section 10450) after the special administrator has been appointed in order to avoid the delay that necessarily will result from the requirement that notice of hearing be given under Section 10451.

DRAFTSMAN'S NOTE. The staff has added the second paragraph to the Comment to Section 10403 to deal with a concern expressed by the four member team that an applicant for letters of special administration with powers of a general administrator might obtain independent administration authority without giving notice of hearing.

§ 10404. Application of part

10404. (a) This part applies to all of the following cases:

(1) Where authority to administer the estate is granted under this part.

(2) Where authority to administer the estate was granted under former Sections 591.1 to 591.9, inclusive, on a petition filed after January 1, 1985.

(3) Where authority was granted prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act and one of the following requirements is satisfied:

(A) A petition was filed under former Section 591.1 after January 1, 1985, requesting that the personal representative be granted the full authority that could be granted under the Independent Administration of Estates Act in effect at the time the petition was filed, and the petition was granted.

(B) A petition is filed under this part requesting that the personal representative be granted the full authority that can be granted under this part, and the petition is granted.

(b) Except as provided in paragraph (3) of subdivision (a), a personal representative who was granted authority prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act shall continue to administer the estate under the provisions of the Independent Administration of Estates Act that were applicable at the time the petition was granted.

Comment. Section 10404 is a new provision that makes clear that this part applies to a pending proceeding where independent administration authority was granted subsequent to January 1, 1985, under the former provisions that governed independent administration authority. Section 10404 also permits a personal representative who was granted independent administration authority prior to January 1, 1985, to exercise the authority granted by this part where a petition is filed under this part requesting such authority and the petition is granted.

CROSS-REFERENCES

Definitions

Personal representative § 58

DRAFTSMAN'S NOTE. To avoid the need for lawyers and judges to refer to the old law after the new code becomes operative, this part is made generally applicable to pending proceedings. The only exception to this general applicability is the case where the personal representative was granted independent administration authority prior to the time the independent administration authority was expanded to include real property transactions (January 1, 1985), and the personal representative did not thereafter obtain expanded independent administration authority.

Making this part generally applicable to pending proceedings appears to be justified because this part makes no significant revision in the prior law and giving the chapter broad application avoids the need to refer to two bodies of law after the operative date of the new code. (This part does permit the personal representative to give notice of a proposed action even though the independent administration statute does not require that notice be given (see Section 10550) and limits the power of the court to review matters on its own motion (see Section 10060), but these changes should not preclude the new statute from applying to pending proceedings.

Concerning this section, Mr. Collier commented: "I agree that the changes in the law are minimal at this time and should apply to existing estates whenever the power to proceed under independent administration was granted on or after January 1, 1985."

CHAPTER 2. GRANTING OR REVOKING INDEPENDENT ADMINISTRATION AUTHORITY

§ 10450. Petition for order granting independent administration authority

10450. (a) To obtain authority to administer the estate under this part, the personal representative shall petition the court for that authority either in the petition for his or her appointment or in a separate petition filed in the estate proceedings.

(b) A petition under this part may request either of the following:

(1) Authority to administer the estate under this part.

(2) Authority to administer the estate under this part without authority to do either of the following under the authority of this part:

(A) Sell or exchange real property.

(B) Grant an option to purchase real property.

Comment. Subdivision (a) of Section 10450 continues the first sentence of subdivision (a) of former Section 591.1 without substantive change. Subdivision (b) continues subdivision (b) of former Section 591.1 without substantive change.

Subdivision (b) of Section 10450 permits the petitioner either (1) to request authority to administer the estate under this part

(this authority permits the personal representative to administer the estate using the full authority that may be granted under this part) or (2) to request authority to administer the estate under this part without independent administration authority with respect to the real property transactions listed in subdivision (b)(2). The petitioner might request the limited authority that excludes real property transactions in order to avoid the need for an increased bond to cover the estimated net proceeds of real property transactions (see Section 10453). Or the petitioner may request the limited authority because no real property transactions will take place in the course of administration of the estate.

The personal representative, despite the grant of independent administration authority, may seek court supervision of the transaction. See Section 10500(b). Hence, for example, even though the personal representative has been granted independent administration authority that encompasses real property transactions, the personal representative may sell real property under the statutory provisions that govern real property sales when independent administration authority has not been granted. Likewise, the personal representative may decide to seek court approval or instructions concerning a transaction rather than using independent administration authority because there is a lack of agreement as to the desirability of the transaction among the persons interested in the estate or because some of the heirs or devisees who would receive an advice of proposed action lack the capacity to object to the proposed action (see subdivision (d) of Section 10560) or for some other reason.

Authority to administer the estate under this part may not be granted where the decedent's will provides that the estate shall not be administered under this part. See Section 10402. Likewise, the authority of the personal representative to exercise particular powers under the Independent Administration of Estates Act may be restricted by the decedent's will. See Section 10502 (introductory clause). A special administrator may not be granted independent administration authority unless the special administrator is appointed with the powers of a general administrator. See Section 10403 and the Comment to that section.

CROSS-REFERENCES

Definitions

Personal representative § 58

Real property § 68

Verification of petition § 7203

§ 10451. Notice of hearing

10451. (a) If the authority to administer the estate under this part is requested in the petition for appointment of the personal representative, notice of the hearing on the petition shall be given

to the persons and in the manner prescribed in Chapter 2 (commencing with Section 7230) of Part 2 of Division 7 and shall be included in the notice of hearing required by that chapter.

(b) Where proceedings for the administration of the estate are pending at the time a petition is filed under Section 10450, notice of the hearing on the petition shall be given for the period and in the manner required by Section [1200]. At least 10 days before the date set for hearing of the petition by the court, the petitioner shall cause notice of the hearing to be mailed to all devisees and to all known heirs of the decedent and to all persons who have requested notice as provided in Section [1202].

(c) The notice of hearing of the petition for authority to administer the estate under this part, whether included in the petition for appointment or in a separate petition, shall include the substance of the following statement: "The petition requests authority to administer the estate under the Independent Administration of Estates Act."

Comment. Subdivision (a) of Section 10451 continues subdivision (c) of former Section 591.1 without substantive change. Subdivision (b) continues subdivision (d) of former Section 591.1 without substantive change. Subdivision (c) restates subdivision (e) of former Section 591.1 without substantive change.

CROSS-REFERENCES

Clerk to set petition for hearing § 7202

Definitions

Devisee § 34

Heirs § 44

Personal representative § 58

DRAFTSMAN'S NOTE. At the March 1985 meeting, one Commissioner asked the staff to consider whether the existing statement in subdivision (c) of Section 10451 should be expanded. The staff is not aware of any problems with the existing statement and does not recommend any addition to the statement. However, if the commission wishes to expand on the existing language, the following might be added at the end of subdivision (c): "This authority would permit estate transactions

without the judicial supervision that would otherwise be required. The petition will be granted unless good cause is shown why it should not be." This notice is one that is published as well as sent to specified persons.

§ 10452. Hearing; order; endorsement on letters

10452. (a) Any interested person may appear and object to the granting of authority to administer the estate under this part by filing at or before the hearing a written statement setting forth the objection.

(b) Unless the court determines that the objecting party has shown good cause why the authority requested in the petition should not be granted, the court shall grant the requested authority.

(c) The letters testamentary or of administration shall be endorsed to the effect that the letters are issued under this part and, if the authority granted does not include authority to sell or exchange real property or grant options to purchase real property under this part, that limitation shall be included in the endorsement.

Comment. Section 10452 continues subdivisions (f) and (g) of former Section 591.1 without substantive change. The phrase "at or before the hearing" has been added in subdivision (a). Subdivision (c) recognizes that independent administration authority may exclude real property transactions. See Section 10450(b)(2).

CROSS-REFERENCES

Definitions

Interested person § 48

Real property § 68

Limited independent administration authority § 10450(b)(2)

§ 10453. Increase in amount of bond

10453. If the personal representative is otherwise required to file a bond and is authorized to sell real property of the estate without court supervision under this part, the court, in its discretion, may fix the amount of the bond at not less than the estimated value of the personal property, the estimated net proceeds of the real property authorized to be sold under this part, and the

estimated value of the probable annual gross income of all 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. Section 10453 continues subdivision (b) of Section 591.9 without substantive change.

CROSS-REFERENCES

Definitions

Court supervision § 10401

Personal property § 57

Personal representative § 58

Property § 62

Real property § 68

Limited independent administration authority §§ 10450(b)(2), 10452(c)

DRAFTSMAN'S NOTE. A four member team of the Estate Planning, Trust and Probate Law Section suggests that Section 10453 might be compiled with other sections dealing with the bond of the personal representative and would make a cross-reference to the this section (compiled with the other bond provisions) in the Comment to Section 10452. The Probate and Estate Planning Subcommittee for Legislation of the San Diego County Bar Association "tended to agree" with the staff draft that compiles Section 10453 with the independent administration provisions of the new code, with a textual cross-reference from the general bond provisions to this specific bond provision.

The staff believes that Section 10453 is appropriately compiled in the independent administration statute. The section applies only when independent administration authority is sought. The existing statute includes the section in the independent administration statute. It would be easy for the lawyer or court to overlook the section if it were compiled apart from the independent administration statute. The staff will be sure to included in the statute text of the general bond provisions a reference to this section if it is continued in the new code as a part of the independent administration statute.

§ 10454. Revocation of independent administration authority

10454. (a) Any interested person who objects to continued administration of the estate under this part may file a petition setting forth the basis for revoking the authority of the personal representative to continue administration of the estate under this part.

(b) Notice of the hearing on the petition shall be served on the personal representative in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

(c) If the court determines that good cause has been shown, the court shall make an order revoking the authority of the personal representative to continue administration of the estate under this part.

(d) Upon the making of an order under this section, new letters testamentary or letters of administration shall be issued without the endorsement described in subdivision (c) of Section 10452.

Comment. Section 10454 continues former Section 591.7 without substantive change.

CROSS-REFERENCES

Clerk sets petition for hearing § 7202

Definitions

Interested person § 48

Personal representative § 58

Verification of petition § 7203

CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT ADMINISTRATION AUTHORITY

§ 10500. Administration without court supervision

10500. (a) Except as provided in this chapter, and subject to Chapter 4 (commencing with Section 10550) and the applicable fiduciary duties, a personal representative who has been granted authority to administer the estate under this part may:

(1) Administer the estate without court supervision as provided in this part, but in all other respects the personal representative shall administer the estate in the same manner as a personal

representative who has not been granted authority to administer the estate under this part.

(2) 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 personal representative may determine, and the requirements applicable to court confirmation of sales of real property, including publication of notice of sale, court approval of agents' and brokers' commissions, and sale at not less than 90 percent of appraised value, do not apply to sales made under authority granted under this part. This paragraph applies to any sale made under authority of this part on or after January 1, 1985.

(b) Notwithstanding subdivision (a), the personal representative may obtain court supervision as provided in this code of any action to be taken by the personal representative during administration of the estate.

(c) All publications of notice required by this code shall continue to be given except when no hearing is required because the personal representative does not seek court supervision of an action or proposed action.

Comment. Subdivision (a) of Section 10500 continues the first sentence and the first portion of the second sentence of former Section 591.2 and subdivision (a) of former Section 591.9 without substantive change. See also Section 10401 (defining "court supervision"). Paragraph (2) of subdivision (a) is designed to make clear that sales under independent administration authority are not subject to the statutory requirements that apply to sales made under court supervision. Thus, for example, the commission of the realtor who lists or obtains the purchaser of real property sold under independent administration authority is not subject to the approval of the court. Nor does the 90-percent-of-appraised-value requirement apply when a sale is under independent administration authority. Publication of notice of sale is not required where there will be no court hearing because the sale is made under independent administration authority.

Subdivision (b) of Section 10500 continues the first sentence of subdivision (b) of former Section 591.2 without substantive change. Subdivision (c) continues the second sentence of subdivision (b) of former Section 591.2 without substantive change.

As the introductory clause of Section 10500 recognizes, a personal representative who has been granted only limited authority under this part may not exercise authority with respect to matters not included within the scope of the authority granted. See Section 10501(e). See also Sections 10450(b)(2) and 10452(c) (limited

independent administration authority). The introductory clause also recognizes that independent administration authority must be exercised in compliance with the provisions of this part. See Chapter 4 (commencing with Section 10550) (giving advice of proposed action). And the exercise of the authority under this part is subject to the requirement that the personal representative act in a fiduciary capacity in exercising the authority. See Sections 10500 (introductory clause), 10560 (review of action taken on motion of person who failed to object to action where there is clear and convincing proof that the personal representative violated an applicable fiduciary duty in taking the action). See also Section _____ (fiduciary duty of personal representative).

CROSS-REFERENCES

Definitions

Court supervision § 10401

Personal representative § 58

Property §

Real property §

Limited independent administration authority §§ 10450(b)(2), 10452(c)

DRAFTSMAN'S NOTE. Concerning subdivision (c) of Section 10500, a four member team of the Estate Planning, Trust and Probate Law Section comments: "We wonder why this subsection is needed. It seems obvious that if the personal representative does not take advantage of independent administration, he is back to the normal procedure. If this subsection is to remain, the Comment should explain why it is there." This is a good point; subdivision (c) is unnecessary and adds nothing. The staff had continued the provision because it deals with a sensitive matter--newspaper publication--and we thought that it was easier to include the provision than it would be to explain to representatives of the newspapers that the provision is unnecessary. The staff would have some difficulty in explaining why the provision is in the statute other than merely stating that it continues a provision found in the existing statute.

If subdivision (c) is deleted from Section 10500, we would revise the Comment to repealed Section 591.2 to read in part: "The second sentence of subdivision (b) is omitted as unnecessary. If the personal representative does not take a proposed action under independent administration authority, the action is taken under the

procedures that apply where the personal representative does not have independent administration authority and the publication requirements of the applicable procedures must be satisfied."

§ 10501. Matters requiring court supervision

10501. Notwithstanding any other provision of this part, a personal representative who has obtained authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

- (a) Allowance of commissions of the personal representative
- (b) Allowance of attorney's fees.
- (c) Settlement of accountings.
- (d) Preliminary and final distributions and discharge.

(e) Sale or exchange of real property and grant of an option to purchase real property if the authority of the personal representative granted under this part specifically excludes the authority to take such action under the authority of this part.

Comment. Section 10501 continues the last portion of the second sentence of subdivision (a) of former Section 591.2 without substantive change. In connection with subdivision (e) of Section 10501, see Sections 10450(b)(2) and 10452(c) (limited independent administration authority). See also Section 10502 (introductory clause) (will may restrict powers exercisable under independent administration authority).

CROSS-REFERENCES

Definitions

Court supervision § 10401

Personal representative § 58

Real property § 68

Limited independent administration authority §§ 10450(b)(2), 10452(c)

§ 10502. Specific independent administration powers

10502. Unless restricted by the will and subject to Section 10501, a personal representative who has been granted authority to administer the estate under this part has all of the following powers, in addition to any other powers granted to a personal representative

by this code, which powers can be exercised in the manner provided in this part:

(a) To manage, control, convey, divide, exchange, partition, and to sell for cash or on credit; to lease for any purpose, including exploration for and removal of gas, oil, or other minerals; to enter into community oil leases; and to grant options to purchase real property for a period within or beyond the administration of the estate.

(b) To invest and reinvest money of the estate in any one or more of the following:

(1) Deposits in banks and in accounts in insured savings and loan associations.

(2) Eligible securities for the investment of surplus state moneys as provided for in Section 16430 of the Government Code.

(3) Units of a common trust fund described in Section [585.1].

(4) Mutual funds which are comprised of (A) direct obligations of the United States maturing not later than one year from the date of investment or reinvestment or (B) repurchase agreements with respect to direct obligations of the United States, regardless of maturity, in which the fund is authorized to invest.

(c) Invest and reinvest any surplus moneys in his or her hands in any manner provided by the will.

(d) To borrow; and to place, replace, renew or extend any encumbrance upon any property in the estate.

(e) To abandon worthless assets or any interest therein.

(f) To make ordinary or extraordinary repairs or alterations in buildings or other property.

(g) To vote a security, in person or by general or limited proxy.

(h) To sell or exercise stock subscription or conversion rights.

(i) To hold a security in the name of a nominee or in any other form without disclosure of the estate, so that title to the security may pass by delivery, but the personal representative is liable for any act of the nominee in connection with the security so held.

(j) To insure the assets of the estate against damage or loss and to insure the personal representative against liability with respect to third persons.

(k) To allow, pay, reject, contest, or compromise any claim by or against the estate; to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible; and to institute, compromise, and defend actions and proceedings.

(l) To pay taxes, assessments, and other expenses incurred in the collection, care, and administration of the estate.

(m) To continue the operation of the decedent's business to the extent the personal representative determines that to be for the best interest of the estate and those interested therein.

(n) To pay a reasonable family allowance.

(o) To make a disclaimer.

(p) To grant an exclusive right to sell property, for a period not to exceed 90 days, where the personal representative determines that to be necessary and advantageous to the estate.

Comment. Section 10502 continues former Section 591.6 without substantive change, but paragraphs (3) and (4) have been added to subdivision (b) of Section 10502 to conform Section 10502 to subdivision (h) of Section 10551.

The words "by compromise," which appeared at the end of the first clause of subdivision (j) of former Section 591.6, are omitted at the end of the first clause of subdivision (k) of Section 10502 because these words are as unnecessary and their omission does not make a substantive change in the meaning of the provision.

The personal representative must exercise the powers listed in Section 10502 in the manner provided in this part. Accordingly, if the action to be taken is one listed in Section 10551, the personal representative can take the action only if the requirements of Chapter 4 (commencing with Section 10550) (advice of proposed action) are satisfied. See Section 10550. The powers listed in this section are subject to any limitations on the powers granted to the personal representative to administer the estate under this part. See Section 10501(e) (real property transactions). See also Sections 10450(b)(2), 10452(c) (limited independent administration authority). The introductory clause of Section 10502 recognizes that the decedent's will may restrict powers otherwise exercisable under independent administration authority. The personal representative must also comply with the applicable fiduciary duties in exercising independent administration powers. See Section ____.

CROSS-REFERENCES

Definitions

Account in insured savings and loan association § 27.3
Person § 56
Personal representative § 58
Property § 62
Real property § 68
Security § 70
Will § 88

DRAFTSMAN'S NOTE. Note that the listing of powers in Section 10502 is intended to supplement the other powers granted a personal representative by the code. It does not appear to be necessary to list powers that the personal representative is given by the code. The listing of the powers in Section 10502 perhaps should be limited to those powers that the personal representative is not given by the code, that is powers that the personal representative can obtain by petitioning the court for authority to exercise the particular power. Also, when the staff reviews the provisions relating the powers and duties of personal representatives in the estate management provisions, we will check to see whether all the powers listed in Section 10502 are ones that the personal representative has or may obtain upon petition to the court.

CHAPTER 4. ADVICE OF PROPOSED ACTION

§ 10550. Giving advice of proposed action

10550. (a) Prior to the consummation of any of the actions described in Section 10551 without court supervision, a personal representative who has been granted authority to administer the estate under this part shall give advice of proposed action as provided in this chapter. Nothing in this subdivision authorizes a personal representative to take an action under this part if the personal representative does not have the power under Section 10502 to take the action under this part.

(b) A personal representative who has been granted authority to administer the estate under this part may, but need not, give advice of proposed action prior to taking an action that is not described in Section 10551. Nothing in this subdivision authorizes a personal representative to take any action the personal representative is not otherwise authorized to take.

Comment. Subdivision (a) of Section 10550 continues paragraph (1) of subdivision (a) of former Section 591.3 without substantive change.

The second sentence of subdivision (a) is new. This new sentence is merely clarifying and makes no substantive change in prior law. The sentence makes clear that if the powers of the personal representative do not include authority with respect to sales and exchanges of real property and grants of options to purchase real property (see subdivision (e) of Section 10501), the mere fact that the power is listed in Section 10551 gives the personal representative no right or authority to exercise the power using the procedure provided in this chapter. In such a case, the power may be exercised only pursuant to the provisions relating to court supervision of the sale or exchange of the real property or the grant of the option to purchase the real property, as the case may be, and the provisions of this part have no application to the transaction.

Subdivision (b) of Section 10550 is a new provision that permits a personal representative to use the procedure provided in this chapter with respect to an action that the personal representative proposes to take even though the action is not one for which advice of proposed action is required. For example, the personal representative may want to proceed under subdivision (b) where the proposed action is the compromise of a claim by or against the estate (see Section 10502(k)). This action is one that ordinarily does not require an advice of proposed action. See Section 10551 (actions requiring advice of proposed action). If the procedure provided by this chapter is used with respect to the proposed action, the person who fails to object to the proposed action waives the right to have the court later review the action taken unless one of the exceptions to the waiver provision is applicable in the particular case. See Section 10560. See also Section 10559(b) and the Comment to that section. Use of the advice of proposed action procedure avoids the need to petition the court for instructions on the proposed compromise in order to preclude a later challenge to the accounts of the personal representative.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10551. Actions requiring advice of proposed action

10551. The actions requiring advice of proposed action are all of the following:

(a) Selling or exchanging real property.

(b) Granting options to purchase real property.

(c) Selling or exchanging personal property, except for securities sold upon an established stock or bond exchange and other assets referred to in [Sections 770 and 771.5] when sold for cash.

(d) Leasing real property for a term in excess of one year.

(e) Entering into any contract, other than a lease of real property, not to be performed within two years.

(f) Continuing for a period of more than six months from the date of appointment of the personal representative of an unincorporated business or venture in which the decedent was engaged or which was wholly or partly owned by the decedent at the time of the decedent's death, or the sale or incorporation of such a business.

(g) The first payment, the first payment for a period commencing 12 months after the death of the decedent, and any increase in the payments, of a family allowance.

(h) Investing funds of the estate, except depositing funds (1) in banks and in accounts in insured savings and loan associations, (2) in units of a common trust fund described in Section [585.1], (3) in direct obligations of the United States maturing not later than one year from the date of investment or reinvestment, and (4) in mutual funds which are comprised of (A) direct obligations of the United States maturing not later than one year from the date of investment or reinvestment or (B) repurchase agreements with respect to direct obligations of the United States, regardless of maturity, in which the fund is authorized to invest.

(i) Completing a contract entered into by the decedent to convey real or personal property.

(j) Borrowing money or executing a mortgage or deed of trust or giving other security.

(k) Determining third-party claims to real and personal property if the decedent died in possession of, or holding title to, the property, or determining the decedent's claim to real or personal property title to or possession of which is held by another.

Comment. Section 10551 continues subdivision (b) of former Section 591.3 without substantive change except that the last portion of subdivision (h) of Section 10551 substitutes "direct obligations of the United States" for "any obligation" to make this provision reflect the apparent legislative intent in enacting the provision.

If the personal representative is not authorized to sell or exchange real property or grant options to purchase real property under this part (see subdivision (e) of Section 10501), those power

can be exercised only under the provisions relating to court supervision and the provisions of this part have no application to the transaction. See also the Comment to Section 10550.

CROSS-REFERENCES

Definitions

Account in insured savings and loan association § 27.3
Personal property § 57
Personal representative § 58
Real property § 68
Security § 70

DRAFTSMAN'S NOTE. The four member team of the Estate Planning, Trust and Probate Law Section comments: We suggest that an exception be made to the requirement of giving advice of proposed action, for selling or exchanging tangible personal property, where the property in question is of minimal value (perhaps \$2,000). Despite spirited discussion, the San Diego Subcommittee was unable to arrive at a consensus with respect to this question.

There is precedent for providing an exception for sales of personal property of minimal value. Probate Code Section 2545 (text set out in Exhibit 1 attached to Memorandum 85-112) permits sale or exchange of tangible personal property of a guardianship or conservatorship estate without authorization, confirmation, or direction of the court if the aggregate of the sales or exchanges made during any calendar year under this authority do not exceed \$5,000.

If independent administration authority like that proposed by the four member team is to be adopted, the Commission might adopt the \$5,000 limit provided in the guardianship-conservatorship law (instead of the \$2,000 limit mentioned by the four member team) but apply that limit for the entire period of administration (rather than one year) and use the value as determined by the probate referee's appraisal in applying the provision (rather than the value the items bring on sale or exchange).

Paragraphs (4) of subdivision (b) (relating to mutual funds and repurchase agreements) will be conformed to the provisions that the Commission includes in the provisions of the estate management portion of the new code relating to powers and duties of personal representatives. See Memorandum 85-110.

§ 10552. Persons to whom advice of proposed action must be given

10552. Except as provided in Sections 10553 and 10554, advice of proposed action shall be given to all of the following:

(a) Each devisee whose interest in the estate is affected by the proposed action.

(b) Each heir of the decedent if the estate is an intestate estate.

(c) Each person who has filed a request for special notice pursuant to Section [1202].

(d) The State of California if any portion of the estate is to escheat to it.

Comment. Section 10552 continues the introductory clause and paragraph (2) of subdivision (a) of former Section 591.3 without substantive change.

CROSS-REFERENCES

Consent to proposed action § 10553

Definitions

Devisee § 34

Heirs § 44

Person § 56

Waiver of right to receive advice of proposed action § 10554

§ 10553. Consent to proposed action

10553. Advice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

Comment. Section 10553 continues subdivision (c) of former Section 591.3 without substantive change. Section 10553 provides a method that can be used to avoid the delay that otherwise would result from the requirement that a person given advice of proposed action be allowed a specified period of time--see Section 10556(b) and (c) and Section 10557--within which to object to the proposed action.

CROSS-REFERENCES

Definitions

Person § 56

§ 10554. Waiver of advice of proposed action

10554. The advice of proposed action need not be given to any person who, in writing, waives the right to the advice of proposed action with respect to the particular proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver shall describe the particular proposed action and may waive particular aspects of the advice, such as the delivery, mailing, or time requirements of Section 10556, or the giving of the advice in its entirety for the particular proposed action.

Comment. Section 10554 continues subdivision (d) of former Section 591.3 without substantive change. The section permits a person entitled to advice of proposed action to execute a written waiver that would, for example, permit notice of a proposed action to be given to the person by telephone so that the proposed action can be expeditiously completed if the person does not object. In such a case, if the person is agreeable to the sale of real property of the estate, the waiver could be drafted in terms that would permit the personal representative to call the person on the telephone to advise the person of an offer to buy the property and to permit the sale of the property at the price and on the terms offered if the person called is agreeable or at a price and on the terms of a counter-offer that is agreeable to the person called.

CROSS-REFERENCES

Advice of proposed action, delivery or mailing requirement § 10556

Definitions

Person § 56

§ 10555. Form and contents of advice of proposed action

10555. (a) The advice of proposed action shall be in a form that satisfies the requirements of Chapter 5 (commencing with Section 10600).

(b) The advice of proposed action shall contain the information required by Chapter 5 (commencing with Section 10600).

Comment. Section 10555 supersedes the third and fifth sentences of former Section 591.4. Section 10555 makes no substantive change in the form and contents requirements for an advice of proposed action, but the requirement that the advice satisfy the form and information requirements of Chapter 5 (see the Comment to Section 10600) is substituted in Section 10555 for the duplicative and somewhat incomplete statement of the required contents that appeared in former Section 591.4.

CROSS-REFERENCES

Form for advice of proposed action §§ 10600, 10601
Time for mailing or delivery of advice § 10556

§ 10556. Delivery or mailing of advice of proposed action and copy of form for objecting to proposed action

10556. (a) The advice of proposed action shall be delivered personally to each person required to be given advice of proposed action or be sent by first-class mail to the person at the person's last known address. If the advice of proposed action is mailed to a person who resides outside the United States, it shall be sent by air mail.

(b) If the advice of proposed action is delivered personally, it shall be delivered to the person not less than 15 days before the date specified in the advice of proposed action on or after which the proposed action is to be taken.

(c) If the advice of proposed action is sent by mail, it shall be deposited in the mail not less than 20 days before the date specified in the advice of proposed action on or after which the proposed action is to be taken.

(d) A copy of the form prepared by the Judicial Council for objecting to a proposed action shall accompany or be a part of the advice of proposed action.

Comment. Subdivision (a) of Section 10556 continues the first sentence of former Section 591.4 without substantive change. Subdivisions (b) and (c) restate the fourth sentence of former Section 591.4 without substantive change. Subdivision (d) continues the second sentence of former Section 591.4 without substantive change.

CROSS-REFERENCES

Consent to proposed action § 10553
Definitions
Person § 56
Form for objecting to proposed action § 10602
Waiver of advice of proposed action § 10554

§ 10557. Objection to proposed action

10557. A person given advice of proposed action who desires to object to the proposed action may deliver or mail a written objection to the personal representative at the address stated in the advice of proposed action, so that the objection is received before the date specified in the advice of proposed action on or after which the proposed action is to be taken, or before the proposed action is actually taken, whichever is the later time.

Comment. Section 10557 continues subdivision (a)(2) of former Section 591.5 without substantive change, except that Section 10557 makes clear that only a person given advice of proposed action can object in the manner provided in Section 10557. Section 10558, on the other hand, permits a person to obtain a court order restraining the taking of a proposed action without court supervision whether or not the person has been given advice of proposed action.

Section 10557 applies whether the the advice of proposed action is given pursuant to subdivision (a) of Section 10550 (giving of advice mandatory) or under subdivision (b) of that section (giving of advice permissive). See also Section 10560 (effect of failure to object).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Mailing §§ _____

DRAFTSMAN'S NOTE. The four member team comments: "We are not entirely happy with the 15-20 day notice periods for the advice of proposed action. If it is possible to institute probate proceedings on ten days' notice, and to notice hearings within the probate proceeding for only ten days, we wonder why it is necessary to give 15-20 days notice on an advice of proposed action."

The San Diego Subcommittee takes the opposite view. Although the Subcommittee believes that the notice period should be standardized at 10 days to the extent consistent with giving adequate notice, the subcommittee objects to shortening the notice period under Section 10556 to 10 days as suggested by the State Bar four member team.

There is some merit to the suggestion of the State Bar four member team. Formerly, it was necessary to obtain a restraining order to stop a proposed action. The law has been changed so that a

proposed action can be effectively prevented by delivering or mailing a simple form (see form for objecting to a proposed action--prepared by Judicial Council and included with advice of proposed action). On the other hand, the statute now permits the personal representative to obtain a waiver of the requirement that advice of proposed action be given or to obtain a consent to the proposed action. This will permit the personal representative to take the proposed action without the 15-20 days delay if all persons entitled to receive an advice of proposed action either waive the advice of proposed action or consent to the proposed action. In that case, there need be no delay in taking the proposed action.

§ 10558. Restraining order

10558. If a proposed action would require court supervision if the personal representative had not been granted authority to administer the estate under this part and a person described in Section 10552 objects to the taking of the proposed action without court supervision, the person may apply to the court having jurisdiction over the proceeding for an order restraining the personal representative from taking the proposed action without court supervision under the provisions of this code dealing with court supervision of such action. The court shall grant the requested order without requiring notice to the personal representative and without cause being shown for the order. The person who obtained the order may serve it upon the personal representative in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in the manner authorized by the court.

Comment. Section 10558 continues subdivision (a)(1) of former Section 591.5 without substantive change.

With respect to a particular action, the person objecting to the action may:

(1) Mail or deliver a written objection to the proposed action under Section 10557 if the person has been given advice of proposed action.

(2) Apply for a restraining order under Section 10558, whether or not the person has been given advice of proposed action.

CROSS-REFERENCES

Definitions

Court supervision § 10401

Person § 56

Personal representative § 58

§ 10559. Court supervision and notice of hearing required if objection made

10559. (a) If the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate under this part and the personal representative has notice of a written objection made under Section 10557 or a restraining order issued under Section 10558, the personal representative shall, if the personal representative desires to take the proposed action, submit the proposed action to the court for approval following the provisions of this code dealing with court supervision of that kind of action and may take the proposed action only under such order as may be entered by the court.

(b) If the proposed action is one that would not require court supervision even if the personal representative had not been granted authority to administer the estate under this part but the personal representative has given advice of the proposed action and has notice of a written objection made under Section 10557 to the proposed action, the personal representative shall, if he or she desires to take the proposed action, request instructions from the court concerning the proposed action and may take the proposed action only under such order as may be entered by the court.

(c) A person who objects to a proposed action as provided in Section 10557 or serves a restraining order issued under Section 10558 in the manner provided in that section shall be given notice of any hearing on a petition for court authorization or confirmation of the proposed action.

(d) Failure of the personal representative to comply with this section is a violation of his or her fiduciary duties and is grounds for removal from office.

Comment. Subdivisions (a) and (d) of Section 10559 continue subdivision (b) of former Section 591.5 without substantive change.

Where advice of proposed action is required, subdivision (a) requires that the proposed action be taken only under court supervision if the personal representative has notice of a written objection or a restraining order with respect to the proposed action. In this respect, subdivision (a) continues prior law.

Subdivisions (a) and (b) of Section 10559 implement subdivision (b) of Section 10550. Subdivision (b) of Section 10550 is a new provision that permits a personal representative who has been granted independent administration authority to give advice of proposed action with respect to a proposed action that could be taken without giving advice of proposed action. The personal representative may give advice of proposed action (although not required to do so) in order that the person receiving the advice will waive the right to object to the proposed action if the person fails to object within the time allowed after receipt of the advice. See Section 10560.

Subdivision (a) of Section 10559 applies to not only to a case where notice of proposed action is required but also to a case where advice of proposed action is not required to be given for a proposed action that would require court supervision if independent administration authority had not been granted. If the personal representative elects to give advice of proposed action in such a case, even though not required, subdivision (a) permits the personal representative to take the proposed action only under court supervision if the personal representative has notice of an objection to the proposed action or of a restraining order issued with respect to the proposed action.

Subdivision (b) of Section 10559 applies where the personal representative determines to give advice of proposed action in a case where the personal representative would be authorized to take the proposed action without court supervision even if the personal representative had not been granted independent administration authority. In such a case, subdivision (b) requires that the proposed action be taken only after court authorization on a petition for instructions if the personal representative has notice of a written objection to the proposed action.

The benefit of the new procedure under subdivision (b) of Section 10550 and subdivisions (a) and (b) of Section 10559 is that the new procedure permits a court review of the proposed action before it is taken if the personal representative has notice of an objection rather than having the objection first made after the action has been taken. For further discussion, see the Comment to Section 10550.

Subdivision (c) of Section 10559 continues subdivision (e) of former Section 591.5 without substantive change. This subdivision requires that notice of hearing be given to a person who has made a written objection under Section 10557 or has served a restraining order under Section 10558. See Section 10560(a). Subdivision (c) requires that notice of hearing be given of the hearing of a petition for instructions authorizing a proposed action described in subdivision (b) as well as of a hearing on a petition for court authorization or confirmation of a proposed action described in subdivision (a).

CROSS-REFERENCES

Definitions

Court supervision § 10401

Personal representative § 58

§ 10560. Effect of failure to object to proposed action

10560. (a) A person who has been given advice of proposed action as provided in Sections 10550 to 10556, inclusive, may object to the proposed action only by one or both of the following methods:

(1) Delivering or mailing a written objection as provided in Section 10557.

(2) Serving a restraining order obtained under Section 10558 before the date specified in the advice of proposed action on or after which the proposed action is to be taken, or before the proposed action is actually taken, whichever is the later time.

(b) Except as provided in subdivisions (c) and (d), the failure to object as provided in subdivision (a) is a waiver of any right to have the court later review the proposed action after it has been taken.

(c) The court may review the action taken upon motion of a person who (1) establishes that he or she did not actually receive the advice of proposed action before the time to object expired or (2) establishes by clear and convincing evidence that the personal representative violated an applicable fiduciary duty in taking the action.

(d) The court may review the action of the personal representative on its own motion where necessary to protect the interests of creditors of the estate or the interests of an heir or devisee who, at the time the advice was given, lacked capacity to object to the proposed action or was a minor or was unborn.

Comment. Subdivision (a) of Section 10560 continues the substantive effect of the first sentence of subdivision (d) of former Section 591.5.

Subdivisions (b) and (c) continue the second sentence of subdivision (d) of former Section 591.5 with the addition of the provision in subdivision (c) that permits a person who has failed to object to have the court later review the action if the person establishes by clear and convincing evidence that the personal

representative violated an applicable fiduciary duty in taking the proposed action. Thus, for example, the person could obtain court review if the person establishes by clear and convincing evidence that the personal representative violated Section [583] (purchase by personal representative of property of, or claim against, estate) in taking the action.

Subdivision (b) applies only where the advice of proposed action was given as provided in Sections 10550-10556. The advice must contain the information required by Chapter 5 (commencing with Section 10600), including a description of the proposed action in reasonably specific terms, with additional information if the proposed action involves a sale or exchange of real property or an option to purchase real property. See Sections 10555 and 10601.

Subdivision (d) supersedes the last sentence of subdivision (d) of former Section 591.5. Subdivision (d) narrows the situations where the court can review the action of the personal representative on its own motion to cases where necessary to protect the interests of creditors of the estate or an heir or devisee who lacked capacity to object to the proposed action or was unborn. As to the right of a person who failed to object to the action to obtain court review, see subdivision (c). The court is not authorized to review the proposed action on motion of a person who consented to the proposed action (Section 10553) or waived the advice of proposed action (Section 10554). See the Comments to Sections 10553 and 10554.

CROSS-REFERENCES

Definitions

Devisee § 34

Heirs § 44

Person § 56

Personal representative § 58

DRAFTSMAN'S NOTE. The four member team of the State Bar Section objected to cutting off the right of the court to review upon its own motion an action taken under independent administration authority. The staff has revised subdivision (c) to permit a person who failed to object to obtain review of an action if the person "establishes by clear and convincing evidence that the personal representative violated an applicable fiduciary duty in taking the proposed action." The San Diego Subcommittee appears to support this approach. In a survey of the Estate Planning, Trust and Probate Law Section, the question was asked: "Make advice of proposed action binding on all who receive advice and don't object within 15 days." Of the responses, 1,002 approved making the advice of proposed action binding, and 240 disapproved. The revised section appears to be a reasonable compromise of the various viewpoints expressed on this matter.

§ 10561. Protection of persons dealing in good faith with personal representative

10561. (a) The failure of the personal representative to comply with subdivision (a) of Section 10550, with Sections 10552, 10555, 10556, and 10559, and with Chapter 5 (commencing with Section 10600), and the taking of the action by the personal representative without such compliance, does not affect the validity of the action so taken or the title to any property conveyed or transferred to bona fide purchasers or the rights of third persons dealing in good faith with the personal representative who changed their position in reliance upon the action, conveyance, or transfer without actual notice of the failure of the personal representative to comply with those provisions.

(b) No person dealing with the personal representative has any duty to inquire or investigate whether or not the personal representative has complied with the provisions listed in subdivision (a).

Comment. Section 10561 continues subdivision (b) of former Section 591.4 and subdivision (c) of former Section 591.5 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

CHAPTER 5. FORMS

§ 10600. Judicial Council form for advice of proposed action

10600. If the Judicial Council prescribes a form for advice of proposed action, the form prescribed by the Judicial Council shall be used to give advice of proposed action.

Comment. Section 10600 is new. If the Judicial Council has not prescribed a form for advice of proposed action, the form prescribed by Section 10601 must be used.

§ 10601. Form for advice of proposed action.

10601. Unless the Judicial Council prescribes a form for advice of proposed action, the advice of proposed action shall be in substantially the following form and shall contain the information required by the following form:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF _____

Estate of _____

No. _____

deceased

ADVICE OF PROPOSED ACTION
(Probate Code Section 10601)

1. The personal representative of the estate of the deceased is:

(Name(s))

2. The personal representative has authority to administer the estate without court supervision under the Independent Administration of Estates Act (California Probate Code Sections 10400-10602).

3. On or after _____, 19__, the personal representative will take the following action:

[Enter the date on or after which the proposed action is to be taken. (The advice of proposed action must be delivered not less than 15 days before this date if it is personally delivered or must be deposited in the mail not less than 20 days before this date if it is sent by mail.)]

[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, (1) state the material terms of the transaction, including any sale price and the amount of or method of calculating any compensation paid or to be paid to an agent or broker in connection with the transaction, (2) state the amount of any probate inventory valuation of the property on file with the court, and (3) set forth the following statement: "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."].

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

(Name)

(Telephone number)

5. If you object to the proposed action:

(a) Sign the enclosed objection form and deliver or mail it to the personal representative at the following address: [specify name and address]

OR

(b) Apply to the court for an order preventing the personal representative from taking the proposed action without court supervision.

6. Your written objection or the court order must be received by the personal representative before the date specified above, or before the proposed action is taken, whichever is later. If you object, the personal representative may take the proposed action only under court supervision.

7. IF YOU DO NOT OBJECT IN WRITING OR OBTAIN A COURT ORDER PREVENTING THE PROPOSED ACTION, YOU WILL BE TREATED AS IF YOU CONSENTED TO THE PROPOSED ACTION AND YOU MAY NOT OBJECT AFTER THE PROPOSED ACTION HAS BEEN TAKEN.

Dated: _____

(Signature of personal representative or
attorney for personal representative)

Comment. Section 10601 continues subdivision (a) of former Section 591.8 with the addition of an informational statement in the form concerning the time for delivery or mailing of the advice of proposed action. The form is designed to provide the person receiving an advice of proposed action with the information the person needs in order to react to the advice. The form prescribed by this section may be superseded by a Judicial Council form. If the Judicial Council has prescribed a form for advice of proposed action, the Judicial Council form must be used instead of the form prescribed by this section. See Section 10600.

CROSS-REFERENCES

Definitions

Court supervision § 10401

Personal representative § 58

Real property § 68

DRAFTSMAN'S NOTE. Does the Commission wish the statutory form set out all of the instructions under item 3 in the form?

§ 10602. Judicial Council form for objecting to proposed action

10602. (a) The Judicial Council shall prepare a form that a person may use to object to a proposed action pursuant to Section 10557.

(b) A person who wishes to object to a proposed action either may use the Judicial Council form or may make the objection in any other writing that satisfies the requirements of this part.

Comment. Section 10602 continues subdivision (b) of former Section 591.8 without substantive change.

CROSS-REFERENCES

Sending form for objecting with or as a part of advice of proposed
action § 10556

DISPOSITION OF REPEALED PROBATE CODE SECTIONS

Probate Code § 591 (repealed). Short title

Comment. Former Section 591 is continued without substantive change in Section 10400.

Probate Code § 591.1 (repealed). Petition for independent administration authority

Comment. The first sentence of subdivision (a) of former Section 591.1 is continued in Section 10450(a) without substantive change. The second sentence is continued in Section 10402 without substantive change. The third sentence is replaced by Section 10403. See the Comment to Section 10403. The requirement that the clerk set the petition for hearing is continued in Section 7202, which is a general provision.

Subdivision (b) is continued without substantive change in subdivision (b) of Section 10450. Subdivisions (c) and (d) are continued without substantive change in subdivisions (a) and (b), respectively, of Section 10451. Subdivision (e) is continued without substantive change in subdivision (c) of Section 10451. Subdivision (f) is continued without substantive change in subdivision (a) of Section 10452. Subdivision (g) is continued without substantive change in subdivisions (b) and (c) of Section 10452.

Probate Code § 591.2 (repealed). Manner of administration; court supervision

Comment. The first two sentences of subdivision (a) of former Section 591.2 are continued without substantive change in paragraph (1) of subdivision (a) of Section 10500 except that the portion of the second sentence defining "court supervision" is continued without substantive change in Section 10401. The portion of subdivision (a) stating the matters that require court supervision is continued in Section 10501 without substantive change. The first sentence of subdivision (b) is continued in subdivision (b) of Section 10500 without substantive change. The second sentence of subdivision (b) is continued without substantive change in subdivision (c) of Section 10500. See the Comment to Section 10500.

Probate Code § 591.3 (repealed). Advice of proposed action

Comment. Paragraph (1) of subdivision (a) of former Section 591.3 is continued in subdivision (a) of Section 10550 without substantive change. The portion of paragraph (2) of subdivision (a) defining "advice of proposed action" is omitted as unnecessary since the term "advice of proposed action" is uniformly used in the new

statutory provisions. The remainder of paragraph (2) of subdivision (a) and the introductory clause of subdivision (a) are continued in Section 10552 without substantive change. Subdivision (b) of former Section 591.3 is continued in Section 10551 without substantive change. Subdivision (c) of former Section 591.3 is continued in Section 10553 without substantive change. Subdivision (d) is continued in Section 10554 without substantive change.

Probate Code § 591.4 (repealed). Notice of proposed action

Comment. The first sentence of former Section 591.4 is restated without substantive change in subdivision (a) of Section 10556. The second sentence is continued without substantive change in subdivision (d) of Section 10556. The third and fifth sentences are replaced by Section 10555. See the Comment to Section 10555. The fourth sentence is restated without substantive change in subdivisions (b) and (c) of Section 10556. Subdivision (b) of former Section 591.4 is continued without substantive change in Section 10561.

Probate Code § 591.5 (repealed). Objection to proposed action

Comment. Subdivision (a)(1) of former Section 591.5 is continued in Section 10558 without substantive change. Subdivision (a)(2) is continued without substantive change in Section 10557, but the former provision is made applicable to any case where advice of proposed action is given, whether or not the proposed action is one for which advice of proposed action is required. Subdivision (b) is continued without substantive change in subdivisions (a) and (d) of Section 10559. Subdivision (c) is continued in Section 10561 without substantive change. The substantive effect of the first sentence of subdivision (d) is continued in subdivision (a) of Section 10560. The remainder of subdivision (d) is replaced by subdivisions (b), (c), and (d) of Section 10560. See the Comment to Section 10560. Subdivision (e) is continued without substantive change in subdivision (c) of Section 10559.

Probate Code § 591.6 (repealed). Independent administration powers

Comment. Former Section 591.6 is continued in substance in Section 10502 with clarifying revisions. See the Comment to Section 10502.

Probate Code § 591.7 (repealed). Revocation of independent administration authority

Comment. Former Section 591.7 is continued in Section 10454 without substantive change. The provision of former Section 591.7

requiring that the clerk set the petition for hearing is continued in Section 7202 which is a general provision.

Probate Code Section 591.8 (repealed). Form of advice of proposed action.

Comment. Subdivision (a) of former Section 591.8 is continued in substance in Section 10601 with some additions and revisions. See the Comment to Section 10601. Subdivision (b) is continued in Section 10602 without substantive change.

Probate Code Section 591.9 (repealed). Sales of property.

Comment. Subdivision (a) of former Section 591.9 is continued without substantive change in Section 10500(a)(2). Subdivision (b) is continued in Section 10453 without substantive change.

PROVISIONS OF EXISTING INDEPENDENT ADMINISTRATION
OF ESTATES ACT AFFECTED BY ASSEMBLY BILL 196

Probate Code § 591.1 (repealed and added). Petition for independent administration

591.1. (a) To obtain authority to administer the estate under this article, the executor or administrator shall petition the court for that authority either in the petition for his or her appointment or in a separate petition. The executor or administrator may not be authorized to administer the estate under this article if the decedent's will provides that the estate shall not be administered under this article. The provisions of this article do not apply to a special administrator.

(b) A petition under this section may request either of the following:

(1) Authority to administer the estate under this article.

(2) Authority to administer the estate under this article without authority to do either of the following

under the authority of this article:

(A) Sell or exchange real property.

(B) Grant an option to purchase real property.

(c) If the authority is requested in a petition for appointment, notice of the hearing of the petition shall be given for the period and in the manner applicable to the petition for appointment.

(d) If the authority is requested in a separate petition, the clerk shall set the petition for hearing by the court and give notice thereof for the period and in the manner required by Section 1200. At least 10 days before the date set for hearing of the petition by the court, the petitioner shall cause notice of the hearing to be mailed to all legatees and devisees and to all known heirs of the decedent and to all persons who have requested notice as provided in Section 1202.

(e) The notice of the hearing of the petition for authority to administer the estate under this article, whether included in the petition for appointment, or in a separate petition, shall specify that authority to administer the estate under the Independent Administration of Estates Act is being requested.

(f) Any person interested in the estate may appear and object to the granting of authority to administer the estate under this article by filing a written statement setting forth the person's objections.

(g) Unless the court determines that the objecting party has shown good cause why the authority requested in the petition should not be granted, the court shall grant the requested authority, and the letters testamentary or of administration shall be endorsed to the effect that the letters are issued pursuant to this article and, if the authority granted does not include the authority to sell or exchange real property or grant options to purchase real property under this article, that limitation shall be included in the endorsement.

Probate Code § 591.2 (amended). Matters for which court supervision required

591.2. (a) Upon obtaining authority to administer the estate under this article, the executor or administrator shall proceed to administer the estate in the same manner as provided in this code with respect to executors or administrators who have not been granted such authority. However, the executor or administrator is not required to obtain judicial authorization, approval, confirmation, or instructions, which shall be known and referred to in this article as "court supervision," with respect to any actions during the course of the administration of the estate, except that the executor or administrator is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(1) Allowance of executor's and administrator's commissions and attorney's fees.

(2) Settlement of accountings.

(3) Preliminary and final distributions and discharge.

(4) Sale or exchange of real property and grant of options to purchase real property if the authority of the executor or administrator granted under this article specifically excludes the authority to take those actions under the authority of this article.

(b) Notwithstanding subdivision (a), the executor or administrator may obtain court supervision as provided in this code of any action taken by him or her during the administration of the estate. All publications of notice required by this code shall continue to be given except when no hearing is required because the executor or administrator does not seek court supervision of an action or proposed action.

Probate Code § 591.3 (amended). When advice of proposed action is required; waiver

591.3. (a) Except as provided in subdivisions (c) and (d):

(1) Prior to the consummation of any of the actions described in subdivision (b) without court supervision, the executor or administrator to whom authority has been granted to act without court supervision shall advise the persons affected by the proposed action of his or her intention to take such action.

(2) The advice, known and referred to in this article as "advice of proposed action," shall be given to the devisees and legatees whose interest in the estate is affected by the proposed action; to the heirs of the decedent in intestate estates; to the State of California if any portion of the estate is to escheat to it; and to persons who have filed a request for special notice pursuant to Section 1202.

(b) The actions requiring such advice are all of the following:

(1) Selling or exchanging real property.

(2) Granting options to purchase real property.

(3) Selling or exchanging personal property, except for securities sold upon an established stock or bond exchange and other assets referred to in Sections 770 and 771.5 when sold for cash.

(4) Leasing real property for a term in excess of one year.

(5) Entering into any contract, other than a lease of real property, not to be performed within two years.

(6) Continuing for a period of more than six months from the date of appointment of the executor or administrator of an unincorporated business or venture in which the decedent was engaged or which was wholly or partly owned by the decedent at the time of his or her death, or the sale or incorporation of such business.

(7) The first payment, the first payment for a period commencing 12 months after the death of the decedent, and any increase in the payments, of a family allowance.

(8) Investing funds of the estate, except depositing funds in banks and investing in insured savings and loan association accounts, in units of a common trust fund described in Section 535.1, in direct obligations of the United States maturing not later than one year from the

date of investment or reinvestment, and in mutual funds which are comprised of (A) those obligations, or (B) repurchase agreements with respect to any obligation, regardless of maturity, in which the fund is authorized to invest.

(9) Completing a contract entered into by the decedent to convey real or personal property.

(10) Borrowing money or executing a mortgage or deed of trust or giving other security.

(11) Determining third-party claims to real and personal property if the decedent died in possession of, or holding title to, such property, or determining decedent's claim to real or personal property title to or possession of which is held by another.

(c) The advice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The advice of proposed action need not be given to any person who, in writing, waives his or her right to the advice of proposed action with respect to the particular proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver shall describe the particular proposed action and may waive particular aspects of the advice, such as the service, mailing, or time requirements of Section 591.4, or the giving of the advice in its entirety for the particular proposed action.

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

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. A copy of the form prepared by the Judicial Council for objecting to a proposed action shall accompany the advice of proposed action. The advice of proposed action shall 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 and the amount of, or method of calculating, any commission or compensation paid or to be paid to an agent or broker in connection with the transaction.

(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.

Probate Code § 591.5 (amended). Objection to proposed action

591.5. (a) Any person described in Section 591.3 who objects to the taking of any proposed action described in Section 591.3 without court supervision, may do either or both of the following:

(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. Such order may be served by the person so objecting upon the executor or administrator in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in the manner authorized by the court.

(2) The person may deliver or mail a written objection to the executor or administrator at the address stated in

the advice of proposed action, so that the objection is received before the date specified on or after which the proposed action is to be taken, or before the proposed action is actually taken, whichever is later.

(b) If the executor or administrator has notice of the issuance of the restraining order or of the written objection of a person described in Section 591.3, the executor or administrator shall, if he or she desires to consummate such action, submit it to the court for approval following the provisions of this code dealing with the court supervision of such action and may consummate such action under such order as may be entered by the court. Failure to comply with this subdivision is a violation of the fiduciary duty of the executor or administrator and is grounds for his or her removal.

(c) The failure of the executor or administrator to comply with subdivision (b) and the consummation of the action by the executor or administrator without complying with subdivision (b) 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 subdivision (b). 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 subdivision (b).

(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. The failure to 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 did not receive the advice of proposed action before the time to object expired and who did not consent to the proposed action or waive his or her right to receive the advice of proposed action pursuant to subdivision (c) or (d) of Section 591.3.

(e) Any person who objects as provided in this section, to the proposed action shall receive notice of any hearing on a petition for court authorization or confirmation of the proposed action.

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

591.8. (a) For purposes of Sections 591.3 and 591.4, the advice of proposed action shall be in substantially the following form or in another form as may be prescribed by the Judicial Council:

**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(s))

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 591-591.9).

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, (1) state the material terms of the transaction, including any sale price and the amount of or method of calculating any compensation paid or to be paid to an agent or broker in connection with the transaction, (2) state the amount of any probate inventory valuation of the property on file with the court, and (3) set forth the following statement: "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."]

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 a written objection to any executor or administrator at the following address:

_____. 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(s). Alternatively, you may also apply to the court for an order preventing the executor or administrator from taking the proposed action without court supervision.

6. Your written objection or the court order 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.

7. IF YOU DO NOT OBJECT IN WRITING OR OBTAIN A COURT ORDER PREVENTING THE PROPOSED ACTION, YOU WILL BE TREATED AS IF YOU CONSENTED TO THE PROPOSED ACTION AND YOU MAY NOT OBJECT AFTER THE PROPOSED ACTION IS TAKEN.

Dated: _____

(Signature of executor or
administrator or attorney for
executor or administrator)

(b) The Judicial Council shall prepare a form that a person may use to object to a proposed action pursuant to paragraph (2) of subdivision (a) of Section 591.5. A person who wishes to object to a proposed action either may use the Judicial Council form or may make the objection in any other writing that satisfies the requirements of this article.

Probate Code § 591.9 (added). Sales of property

591.9. (a) Subject to Sections 591.3 to 591.5, inclusive, and the applicable fiduciary duties, 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. The requirements applicable to court confirmation of sales of real property, including publication of notice of sale, court approval of agents' and brokers' commissions, and sale at not less than 90 percent of appraised value, do not

apply to sales under independent administration. This subdivision applies to any sale made under authority of this article on or after January 1, 1985.

(b) If the executor or administrator is otherwise required to file a bond and is authorized to sell real property of the estate without court supervision under this article, the court, in its discretion, may fix the amount of the bond at not less than the estimated value of the personal property, the estimated net proceeds of the real property authorized to be sold under this article, and the estimated 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.