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Memorandum 86-39

Subject: Study L-1037 - Estate and Trust Code (Estate Management -
Compromise of Claims and Actions; Extension, Renewal, or
Modification of Obligations)

Attached to this Memorandum is the portion of the estate management provisions relating to compromise of claims and actions and extension, renewal, and modification of obligations. This material will become a part of the draft statute attached to Memorandum 86-38 (Estate Management).

Existing statutory provisions authorize the personal representative to compromise or settle claims and actions and extend, renew, and modify obligations "with the approval of the court." The California courts have held, however, that under earlier versions of these provisions the personal representative may, but is not required to, obtain court approval.

The draft statute attached to this Memorandum limits the authority the personal representative appears to have under existing law to compromise claims and actions without court approval. Although there is no general requirement of court approval imposed by the draft statute, the draft statute requires that certain matters receive prior court approval before the personal representative may compromise or settle the claim, action, or proceeding, or extend, renew, or modify the obligation. This new scheme is drawn from the guardianship-conservatorship law.

Respectfully submitted,

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Executive Secretary

STAFF DRAFT

**CHAPTER 8. COMPROMISE OF CLAIMS AND ACTIONS;
EXTENSION, RENEWAL, OR MODIFICATION OF OBLIGATIONS**

**§ 9830. Authority to compromise claims and actions and to extend,
renew, or modify obligations**

9830. (a) Subject to subdivisions (b) and (c), if it is to the advantage of the estate, the personal representative may do any of the following:

(1) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate, including the giving of a covenant not to sue.

(2) Extend, renew, or in any manner modify the terms of an obligation owing to or running in favor of the decedent or the estate.

(b) Unless this chapter or some other applicable statute requires court authorization or approval, the power set forth in subdivision (a) may be exercised by the personal representative without court authorization, instruction, approval, or confirmation. Nothing in this subdivision precludes the personal representative from seeking court authorization pursuant to the provisions of this chapter.

(c) Upon petition of an interested person or upon the court's own motion, the court may limit the authority of the personal representative under subdivision (a). Notice of the hearing on the petition shall be given for the period and in the manner provided in [Section 1200.5].

Comment. Section 9830 is drawn from Section 2500 (guardianship-conservatorship law). It replaces the first, second, and third sentences of former Probate Code Section 578 and the portion of the first sentence of former Probate Code Section 718.5 relating to compromises or settlements after the time for filing creditor's claims has expired.

The provisions of former Sections 578 and 718.5 authorized the personal representative to do the acts described in subdivision (a) "with the approval of the court." Under Section 9830, the personal representative may, but is not required to, obtain court authorization. By permitting but not requiring prior court authorization, Section 9830 continues prior law. See *Moulton v. Holmes*, 57 Cal. 337, 343-44 (1881); *Estate of Coffey*, 161 Cal. App.2d 259, 264, 326 P.2d 511 (1958); *Taylor v. Sanson*, 24 Cal. App. 515, 517-18, 141 P. 1060 (1914). See also *Estate of Lucas*, 23 Cal.2d 454, 463-65, 144 P.2d 340 (1943).

When the personal representative acts under Section 9830 without court authorization, the action taken may be later reviewed by the court. Section 9830 requires that the action taken be to the advantage of the estate. In addition, the personal representative must exercise ordinary care and diligence in determining whether to exercise a power granted by Section 9830 and in exercising the power. See Section 9600. The personal representative may seek prior authorization from the court under Sections 9836-9837 if in doubt as to the appropriate action to take. As to the effect of obtaining court authorization, see Section 9612.

This chapter limits the authority the personal representative had under prior law to compromise claims and actions without court approval. Although there is no general requirement under this chapter that authorization of the court be obtained, certain matters (specified in Sections 9831-9835) do require authorization by the court. This new scheme is drawn from the guardianship-conservatorship law. See Sections 2500-2507. In addition, under subdivision (c) of Section 9830, the court may limit the authority of the personal representative under this section by requiring, for example, prior authorization by the court for any compromise or settlement of a particular matter or of a particular kind of matter or that no compromise or settlement be made unless it has first been authorized by the court. Under subdivision (c), a creditor or other interested person may request that the court make an order that, for example, limits the authority of the personal representative to take action under this section without prior authorization by order of the court.

CROSS-REFERENCES

Clerk to set matter for hearing § 7202
Definitions
 Court § 29
 Interested person § 48
 Personal representative § 58
Effect of court authorization or approval § 9612
Proof of giving notice § 7308
Verification required § 7203

COMPARABLE PROVISION

Guardianship-conservatorship § 2500

Note. The notice provision of subdivision (c) of Section 9830 will be reviewed when the general notice provisions are drafted.

§ 9831. Compromise before time for filing creditor's claims has expired

9831. Unless the time for filing creditor's claims has expired, authorization by order of court is required for a compromise or settlement of a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate.

Comment. Section 9831 restates without substantive change the portion of the first sentence of former Probate Code Section 718.5

relating to compromises or settlements before the time for filing creditor's claims has expired. The remainder of the first sentence of former Section 718.5 is replaced by subdivision (a)(1) of Section 9830. Section 9831 requires authorization by order of court obtained under Sections 9836-9837 if the compromise or settlement is to be made before the time for filing creditor's claims has expired.

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

§ 9832. Matters relating to real property

9832. Except as provided in subdivision (b), authorization by order of court is required for a compromise, settlement, extension, renewal, or modification which affects any of the following:

(1) Title to real property.

(2) An interest in real property or a lien or encumbrance on real property.

(3) An option to purchase real property or an interest in real property.

(b) If it is to the advantage of the estate, the personal representative without prior court authorization may extend, renew, or modify a lease of real property having an unexpired term of one year or less where, under the lease as extended, renewed, or modified (1) the rental does not exceed one thousand five hundred dollars (\$1,500) a month and the term does not exceed one year or (2) regardless of the amount of the rental, the lease is from month to month.

Comment. Section 9832 is new and is drawn in part from Section 2501 (guardianship-conservatorship law).

Except as provided in subdivision (b), a transaction described in Section 9832 requires authorization by order of court obtained under Sections 9836-9837. Subdivision (b), which provides an exception to the requirement of court authorization, is consistent with Section 9940 (leases permitted without court authorization).

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

Real property § 68

Effect of court authorization or approval § 9612

Independent administration authority §§ 9613, 10500

COMPARABLE PROVISION

Guardianship-conservatorship § 2501

Note. Subdivision (b) of Section 9832 uses the standard the Commission has approved for making leases without prior court authorization. See Section 9940 in the draft attached to Memorandum 86-38.

The existing guardianship-conservatorship provision requires that the rental not exceed \$750 a month, but we plan to revise the guardianship-conservatorship provision to substitute \$1,500 for the \$750 maximum limit used in that section.

Subdivision (b) of Section 9832 does not permit a lease for a term exceeding ONE year without court authorization whereas the provision of the guardianship-conservatorship law permits a lease for a term not exceeding TWO years without court authorization. The one-year limitation of proposed Section 9940 (management of decedent's estate) (draft attached to Memorandum 86-38) is adopted in the staff draft of Section 9832. The one-year limit recognizes that the administration of a decedent's estate should be completed expeditiously whereas a conservatee's estate ordinarily will require a longer period of administration.

Section 10016 (independent administration authority not limited) of the staff draft attached to Memorandum 86-38 should be moved and be renumbered as Section 9613 and made applicable to all of Part 5 (Estate Management). Then it will be clear that the limitations of Section 9832 and other provisions do not restrict independent administration authority, thereby making clear that the new code will make no change in existing law.

§ 9833. Compromise in excess of specified amount

9833. Authorization by order of court is required for a compromise or settlement of a matter when the transaction requires the transfer or encumbrance of property of the estate, or the creation of an unsecured liability of the estate, or both, in an amount or value in excess of twenty-five thousand dollars (\$25,000).

Comment. Section 9833 is new and is the same in substance as Section 2502 (guardianship-conservatorship law). Section 9833 requires authorization by order of court obtained under Sections 9836-9837 where the amount to be paid or charged against the estate exceeds \$25,000. Section 9833 does not apply to a claim by the estate.

Although Section 9833 does not require court authorization for a compromise or settlement where the amount to be paid or charged against the estate is not more than \$25,000, another provision may require court authorization in the particular case (as, for example, under Section 9832--matter affecting real property).

CROSS-REFERENCES

Definitions

Court § 29

Property § 62

Effect of court authorization or approval § 9612

Independent administration authority §§ 9613, 10500

Transfer or conveyance pursuant to court order § 7411

COMPARABLE PROVISION

Guardianship-conservatorship § 2502

§ 9834. Claim of estate against personal representative; debt of personal representative to estate

9834. Authorization by order of court is required for any of the following:

(a) A compromise or settlement of a claim by the estate against the personal representative, whether or not the claim arises out of the administration of the estate.

(b) An extension, renewal, or modification of the terms of a debt or similar obligation of the personal representative owing to or running in favor of the estate.

Comment. Section 9834 is new and is the same in substance as Section 2503 (guardianship-conservatorship law). Section 9834 requires authorization by order of court obtained under Sections 9836-9837 for a compromise, settlement, extension, renewal, or modification described in the section. Section 9834 requires court authorization because the section involves matters that place the personal representative in a position where there may be a conflict of interest. See Section 9613.

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

Effect of court authorization or approval § 9612

Independent administration authority §§ 9613, 10500

§ 9835. Wrongful death and personal injury claims

9835. Authorization by order of court is required for the compromise or settlement of a claim or right of action given to the personal representative by any law for the wrongful death or injury of the decedent, including any action brought by the personal representative in attempting enforcement of the claim or right of action. Authorization to compromise or settle a claim or right of action includes authorization to give a covenant not to sue.

Comment. Section 9835 continues the substance of the first paragraph of former Probate Code Section 578a. Section 9835 requires authorization by order of court obtained under Sections 9836-9837 for a compromise or settlement described in the section. For provisions giving the personal representative a right of action for wrongful death of the decedent, see Code Civ. Proc. § 377 (wrongful death of adult or certain minors), Labor Code § 2803 (wrongful death of employee).

CROSS-REFERENCES

Action by personal representative

Wrongful death of adult or certain minors Code Civ. Proc. § 377

Wrongful death of employee Labor Code § 2803

Definitions

Court § 29

Personal representative § 58

Continuance of action after death Code Civ. Proc. § 385

Death of party before expiration of time limited for commencement of action Code Civ. Proc. § 353

Effect of court authorization or approval § 9612

Independent administration authority §§ 9613, 10500

Limitation of action for wrongful death § Code Civ. Proc. § 340

Survival of actions § 9821

§ 9836. Court having authority to give authorization

9836. (a) Subject to subdivision (c), when the claim or matter is the subject of a pending action or proceeding, the court authorization required by this chapter shall be obtained from the court in which the action or proceeding is pending.

(b) If the claim or matter is not the subject of a pending action or proceeding, the court authorization required by this chapter shall be obtained from the court in which the estate is being administered.

(c) When the claim or matter is the subject of a pending action or proceeding that is not brought in a court of this state, court authorization required by this chapter shall be obtained from either of the following:

(1) The court in which the action or proceeding is pending.

(2) The court in which the estate is being administered.

Comment. Section 9836 is new and is included to make clear to which court application for authorization is to be made. The section is drawn from Section 2505 (guardianship-conservatorship law). Subdivision (c) applies to cases in the federal courts and in sister state courts or courts outside the United States.

COMPARABLE PROVISION

Guardianship-conservatorship § 2505

§ 9837. Petition for court authorization; notice

9837. To obtain an order from the court in which the estate is being administered authorizing a compromise, settlement, extension, renewal, or modification under this chapter, the personal representative shall file a petition showing the terms of and the advantage of the compromise, settlement, extension, renewal, or modification to the heirs or devisees and the estate. Notice of the hearing on the petition shall be given for the period and in the manner required by [Section 1200.5].

Comment. Section 9837 restates the fourth and fifth sentences of former Probate Code Section 578, the third and fourth sentences of former Probate Code Section 578a, and the second sentence of former Probate Code Section 718.5, without substantive change. Section 9837 provides only the procedure for obtaining an order from the court in which the estate is being administered. If there is a pending action or proceeding and Section 9836 requires that the order is to be obtained from the court in which the action or proceeding is pending, Section 9837 does not apply and the order is obtained using the procedures applicable in the court where the action or proceeding is pending.

CROSS-REFERENCES

Clerk to set matter for hearing § 7202
Definitions
Court § 29
Personal representative § 58
Effect of court authorization or approval § 9612
Proof of giving notice § 7308
Verification required § 7203

COMPARABLE PROVISION

Guardianship-conservatorship § 2506

Note. Should an interested person be permitted to file a petition for court authorization under Section 9837?

Note. The notice provision of Section 9837 will be reviewed when the general notice provisions are drafted.

§ 9838. Application of other statutes

9838. Notwithstanding Sections 9830 to 9837, inclusive:

(a) If another statute requires, provides a procedure for, or dispenses with court authorization of a compromise, settlement, extension, renewal, or modification, the provisions of that statute govern any case to which that statute applies.

(b) Whenever another statute provides that a compromise or settlement of an administrative proceeding is not valid unless authorized in such proceeding, the authorization shall be governed by that statute, and authorization in the estate proceeding is not required.

Comment. Section 9838 is new and is the same in substance as Section 2507 (guardianship-conservatorship law).

COMPARABLE PROVISION

Guardianship-conservatorship § 2507

Note. Section 9838 does not appear to be necessary and consideration should be given to its omission. If the section is omitted, it might be necessary in some cases to obtain approval of a compromise or settlement in another court or in an administrative proceeding and, in addition, to obtain authorization from the probate court to compromise or settle the claim or action or proceeding. Nevertheless, omission of the section would simplify the statute and avoid possible confusion as to the application of the section.

DISPOSITION OF EXISTING SECTIONS

§ 578. Obligations due decedent; compromises.; renewal or modification

Comment. The first three sentences of former Probate Code Section 578 are replaced by Estate and Trust Code Sections 9830-9834. See the Comment to Estate and Trust Code Section 9830. The fourth and fifth sentences of former Section 578 are restated in Estate and Trust Code Section 9837 without substantive change.

§ 578a. Wrongful death or personal injury of decedent

Comment. The first two sentences of former Probate Code Section 578a are restated in Estate and Trust Code Section 9835 without substantive change except for the provision of former Section 578a that required that the court where the estate of the decedent is pending approve the compromise or settlement. Under Estate and Trust Code Section 9836, the authorization to compromise or settle the action may (and in some circumstances must) be obtained from the court in which the action is pending if the claim or right is the subject of a pending action. The third and fourth sentences of former Probate Code Section 578a are restated in Estate and Trust Code Section 9837 without substantive change.

§ 718.5. Compromise of claims and actions

Comment. The portion of the first sentence of former Probate Code Section 718.5 relating to compromises or settlements after the time for filing creditor's claims has expired is replaced by Estate and Trust Code Section 9830. See the Comment to Estate and Trust Code Section 9830. The portion of the first sentence of former Section 718.5 relating to compromises or settlements before the time for filing creditor's claims has expired is restated in Estate and Trust Code Section 9831 without substantive change.

The second sentence of former Section 718.5 is restated in Estate and Trust Code Section 9837 without substantive change. The requirement that the clerk set the petition for hearing is continued in Estate and Trust Code Section 7202. The requirement that the petition be verified is continued Estate and Trust Code Section 7203.

The last two sentences of former Section 718.5 are replaced by Estate and Trust Code Section 7411.