

Second Supplement to Memorandum 86-85

Subject: Study 1028 - Estate and Trust Code (Powers Under Independent Administration)

The staff has reviewed the powers of the personal representative under supervised administration with a view to drafting appropriate provisions for the powers of the personal representative who has been granted independent administration authority. The objective is to draft the powers under independent administration so that they are consistent with the draft of the new Estate and Trust Code provisions relating to powers under supervised administration. There also is the need to clarify when advice of proposed action must be given with respect to the exercise of specific powers.

Attached as Exhibit 1 is a draft of provisions to be included in the independent administration statute to state the powers of the personal representative under independent administration and to make clear the powers that may be exercised without the need to give advice of proposed action and the powers that may be exercised only where advice of proposed action has been given.

The draft permits the exercise without giving advice of proposed action of all the powers the personal administrator under court supervision is authorized to exercise without prior court authorization or approval. The draft does not list these powers; the powers are listed in the estate management (supervised administration) provisions. There is no particular benefit of listing these powers in the independent administration statute. And if these powers were listed in the independent administration statute, an amendment to the comparable independent administration provision would be required each time the supervised administration powers are revised.

At the meeting, the staff suggests that the Commission review each section of the attached draft statute with care.

Respectfully submitted,

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Executive Secretary

10/06/86

Exhibit 1

CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT ADMINISTRATION AUTHORITY

Article 1. General Provisions

- § 10500. Administration without court supervision
- § 10501. Matters requiring court supervision

Article 2. Independent Administration Powers

- § 10510. Article describes powers of personal representative who has been granted independent administration authority
- § 10511. Grant of powers that any personal representative may exercise without court supervision
- § 10512. Powers with respect to sale of property
- § 10513. Power to manage, control, convey, divide, partition
- § 10514. Investing in securities
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- § 10516. Purchasing annuity granted in will
- § 10517. Exercising restricted option
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- § 10519. Holding securities in name of nominee or in other form
- § 10520. Selling or exercising security subscription or conversion rights
- § 10521. Continuing operation of decedent's business
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- § 10523. Borrowing; encumbering estate property
- § 10524. Making repairs or alterations in property
- § 10525. Acting on claims against estate
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- § 10527. Compromises and settlements
- § 10528. Modifying terms of obligation
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- § 10530. Giving partial satisfaction of mortgage or partial reconveyance under trust deed
- § 10531. Leasing property of the estate
- § 10532. Exchanging property
- § 10533. Granting option to purchase real property of estate
- § 10534. Granting exclusive right to sell property
- § 10535. Transferring to person given option to purchase in will
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- § 10538. Paying family allowance
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CHAPTER 4. ADVICE OF PROPOSED ACTION

Article 1. Actions Requiring Advice of Proposed Action

- § 10550. Article describes actions requiring advice of proposed action
- § 10551. Selling or exchanging real property
- § 10552. Selling or exchanging personal property
- § 10553. Investing funds of the estate; exercising security subscription or conversion rights
- § 10554. Continuing operation of decedent's business; selling or incorporating decedent's business
- § 10555. Borrowing; encumbering estate property
- § 10556. Determining third-party claim or decedent's claim to property held by another
- § 10557. Compromising claim of estate against personal representative; extending, renewing or modifying obligation of personal representative to estate
- § 10558. Leasing real property.
- § 10559. Entering into contracts other than leases of real property
- § 10560. Granting option to purchase real property
- § 10561. Completing contract by decedent to convey property
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Article 2. Advice of Proposed Action Procedure

- § 10580. Giving advice of proposed action [formerly § 10550]
- § 10581. Persons to whom advice of proposed action must be given [formerly § 10552]
- § 10582. Consent to proposed action [formerly § 10553]
- § 10583. Waiver of advice of proposed action [formerly § 10554]
- § 10584. Form and contents of advice of proposed action [formerly § 10555]
- § 10585. Delivery or mailing of advice of proposed action and copy of form for objecting to proposed action [formerly § 10556]
- § 10586. Objection to proposed action [formerly § 10557]
- § 10587. Restraining order [formerly § 10558]
- § 10588. Court supervision and notice of hearing required if objection made [formerly § 10559]
- § 10589. Effect of failure to object to proposed action [formerly § 10560]
- § 10590. Protection of persons dealing in good faith with personal representative [formerly § 10561]

CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT ADMINISTRATION AUTHORITY

Article 1. General Provisions

§ 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 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.

(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.

Comment. Subdivision (a) of Section 10500 continues the first sentence and the first portion of the second sentence of former Probate Code Section 591.2 without substantive change. See also Section 10401 (defining "court supervision"). Subdivision (b) continues the first sentence of subdivision (b) of former Probate Code 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) (limited authority excludes power to sell, exchange, or grant option to purchase real property using independent administration procedure). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority). See also Section 10510 (introductory clause) (will may restrict powers exercisable under independent administration authority). Notwithstanding that independent administration authority has been granted, some actions can be taken only under court supervision. See Section 10501 (court supervision required for allowance of commissions of personal representative, allowance of attorney's fees, settlement of accountings, and preliminary and final distributions and discharge).

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). As to when advice of proposed action is required, see Article 1 (commencing with Section 10550) of Chapter 4.

The introductory clause of Section 10500 further recognizes that the personal representative acts in a fiduciary capacity in exercising

the powers under this part. See also Section 10510 (introductory clause). As to when a power must or may not be exercised, see Section 9600(b). See also Section 10589 (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).

Subdivision (b) of Section 10500 makes clear that the personal representative may obtain court supervision of an action even though the personal representative is authorized to take the action using the independent administration procedure. For example, even though the personal representative has been granted independent administration powers that include the power to sell real property, the personal representative may nevertheless determine to sell the real property using the court supervised procedure for a real property sale. Where no other procedure is provided by statute for court supervision of the particular proposed action, the personal representative may petition for instructions under Section 9611. See also Section 10580(b) (personal representative may use advice of proposed action procedure for an action that could be taken without giving advice of proposed action).

CROSS-REFERENCES

Definitions

Court supervision § 10401

Personal representative § 58

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

§ 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 of real property, exchange of real property, or 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 Probate Code 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 10510 (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)

Article 2. Independent Administration Powers

§ 10510. Article describes powers of personal representative who has been granted independent administration authority

10510. Except as provided in this chapter, and subject to Chapter 4 (commencing with Section 10550) and the applicable fiduciary duties, unless restricted by the will, a personal representative who has been granted authority to administer the estate under this part has the powers described in this article.

Comment. Section 10510 continues the introductory clause of former Section 691.6 without substantive change.

The introductory clause of Section 10510 recognizes that the personal representative acts in a fiduciary capacity in exercising the authority under this part. See also Sections 10500 (introductory clause). The personal representative is required to exercise the power granted under this article to the extent that ordinary care and diligence requires that the power be exercised and may not exercise the power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612. See also Section 10589 (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).

As the introductory clause of Section 10510 recognizes, a personal representative who has been granted only limited authority under this part may not exercise independent administration authority with respect to matters not included within the scope of the authority granted. See Section 10501(e) (limited authority excludes power to sell, exchange, or grant option to purchase real property using independent administration procedure). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority). The introductory clause of Section 10510 also recognizes that the will may limit the authority of the personal representative under this part.

The introductory clause of Section 10510 makes clear that independent administration authority must be exercised in compliance with the provisions of this part. See Chapter 4 (commencing with Section 10550) (advice of proposed action). As to when advice of proposed action is required, see Article 1 (commencing with Section 10550) of Chapter 4. See also Section 10501 (matters requiring court supervision).

CROSS-REFERENCES

Definitions

Personal representative § 58
Limited independent administration authority §§ 10450(b)(2), 10452(c)
Matters requiring court supervision § 10501

§ 10511. Grant of powers that any personal representative may exercise without court supervision

10511. The personal representative has all of the powers granted by this code which may be exercised without court supervision by a personal representative who has not been granted authority to administer the estate under this part. The listing of specific powers in this article does not limit the powers granted to the personal representative by this section.

Comment. Section 10511 continues the apparent effect of the phrase "in addition to any other powers granted by this code" which appeared in the introductory portion of former Probate Code Section 591.6.

The inclusion of Section 10511 makes it unnecessary to list in this article those powers that a personal representative not having independent administration authority can exercise without court supervision. This is the reason why some powers specifically listed in former Probate Code Section 591.6 are not specifically listed in this article. Accordingly, the following powers specifically listed in former Probate Code Section 591.6 are not specifically listed in this article: Power to invest in deposits in banks and savings and loan associations (authorized without court supervision by Section 9700); power to vote a security, in person or by general or limited proxy (authorized without court supervision by Section 9655); power to insure estate and personal representative (authorized without court supervision by Section 9656). Section 10511 gives the personal representative who has been granted independent administration authority these powers as well as any other powers that can be exercised without court supervision by a personal representative who has not been granted independent administration authority.

The will may restrict the exercise of the powers granted by this section. See Section 10510. See also the Comment to Section 10510.

CROSS-REFERENCES

Definitions

Court supervision § 10401
Personal representative § 58
Will § 88

§ 10512. Powers with respect to sale of property

10512. The personal representative has the power to sell property of the estate either at public auction or private sale, and with or without notice, for such price, for cash or on credit, 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 but not limited to 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 section applies to any sale made under the authority of this part on or after January 1, 1985.

Comment. Section 10512 continues subdivision (a) of former Probate Code Section 591.9 without substantive change. The phrase "for cash or on credit" is continued from subdivision (a) of former Probate Code Section 591.6.

The grant of the power described in Section 10512 is limited if the personal representative has limited independent administration authority; a personal representative who has been granted only limited authority may not exercise independent administration authority with respect to the sale, exchange, or granting of an option to purchase real property. See Section 10501(e) (limited authority excludes power to sell, exchange, or grant option to purchase real property using independent administration procedure). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority). The will may restrict the exercise of the powers granted by this section. See Section 10510. See also the Comment to Section 10510.

Section 10512 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. Nor does the court examine into the efforts of the personal representative to obtain the highest and best price for the property reasonably attainable as is the case where there is a court hearing on the confirmation of a real property sale. Publication of notice of sale is not required where the sale is made under independent administration authority. Likewise, notice of sale, court confirmation, and approval of the commission of the agent, broker, or auctioneer is not required where a sale of personal property is made under independent administration authority.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to sell or exchange real property (Section 10551) or to sell or exchange personal property except for certain kinds of property (Section 10552). Advice of proposed action also is required for granting an option to purchase real property (Section 10560), completing a contract by decedent to convey property (Section 10561), or extending an exclusive right to sell property (Section 10563).

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62
Real property § 68
Limited independent administration authority §§ 10450(b)(2), 10452(c)

Note. Is there a need to retain the last sentence of Section 10512?

§ 10513. Power to manage, control, convey, divide, partition

10513. The personal representative has the power to manage, control, convey, divide, and partition property of the estate.

Comment. Section 10513 continues the first portion of subdivision (a) of former Probate Code Section 591.6 without substantive change. The provision of former subdivision (a) relating to "exchanges" is superseded by Section 10532. As to powers with respect to sale of property generally, see Section 10512. See also Section 10501 (matters requiring court supervision).

The grant of the power described in Section 10513 is limited if the personal representative has limited independent administration authority; such a personal representative may not use the independent administration procedure with respect to matters not included within the scope of the authority granted. See Sections 10501 (matters requiring court supervision), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority). In addition, the will may restrict the exercise of the powers granted by this section. See Section 10510. See also the Comment to Section 10510.

Concerning the exercise of powers described in this article, see Section 10510. As to when advice of proposed action is required, see Article 1 (commencing with Section 10550) of Chapter 4.

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62
Limited independent administration authority §§ 10450(b)(2), 10452(c)
Matters requiring advice of proposed action
Borrowing § 10555
Compromising claims against personal representative § 10557
Continuing decedent's business § 10554
Contracts other than leases of real property § 10559
Decedent's contract to convey property § 10561
Determining decedent's claim to property held by another § 20556
Determining third-party claim § 10556
Encumbering estate property § 10555
Exclusive right to sell, extending § 10563
Family allowance § 10562
Investing funds of estate § 10553

Leases

Personal property § 10559

Real property § 10558

Personal property, sale or exchange § 10552

Personal representative

Compromising claim of estate against § 10557

Extending, renewing, or modifying obligation of § 10557

Real property

Completing decedent's contract to sell § 10561

Lease § 10558

Option to purchase § 10560

Sale or exchange § 10551

Note. Section 10513 is a very vague section. A provision is needed to cover management and control of the estate. The staff recommends that Section 10513 be limited to giving the personal representative the general power to "manage and control the estate" and that "convey," "divide," and "partition" be omitted from the section.

The staff is uncertain whether there is a need to include "convey" in this section. The staff believes that some other specific authorization to act in the specific circumstances (such as authorization to make an exchange or sale) would be required in order to authorize the personal representative to execute the conveyance in a particular case. The staff would omit "convey" from Section 10513 and rely on the specific powers set out in this article.

The staff is uncertain as to the specific powers granted by including in Section 10513 the words "divide" and "partition." Insofar as "partition" relates to partition proceedings, the inclusion of the word in Section 10513 is unnecessary in view of Section 10526 relating to actions and proceedings. But the words "divide" and "partition" might cover division or partition before distribution (Probate Code §§ 1100-1106). But the provisions relating to division or partition before distribution authorize partition or division without court supervision if there is agreement of the heirs or devisees and provide for a court determination only where there is disagreement.

§ 10514. Investing in securities

10514. The personal representative has the power to invest money of the estate in eligible securities for the investment of surplus state moneys as provided for in Section 16430 of the Government Code.

Comment Section 10514 continues a portion of subdivision (b) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by Section 10514. See Section 10553.

Under Section 10511, the personal representative also has the power to invest in savings accounts (Section 9700) and in investments described in Section 9730 (direct obligations of United States maturing not later than one year from the date of making the investment, certain money market mutual funds, and common trust funds). See also Section 10515 (investment in manner provided by the will). For a more limited authority to make investments in federal or state securities under

supervised administration, see Section 9731. For authorization to sell or exercise security subscription or conversion rights under independent administration authority, see Section 10520. See also 10519 (holding securities in name of nominee or in other form).

CROSS-REFERENCES

Definitions

Personal representative § 58
Security § 70

§ 10515. Investing money in manner provided by will

10515. The personal representative has the power to invest money of the estate in any manner provided by the will.

Comment Section 10515 continues the last portion of subdivision (b) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by Section 10515. See Section 10553. As to other authorized investments for money of the estate, see Section 10514 and the Comment to that section. For the comparable provision under supervised administration, see Section 9732.

CROSS-REFERENCES

Definitions

Personal representative § 58
Will § 88

§ 10516. Purchasing annuity granted in will

10516. The personal representative has the power to purchase from an insurer, admitted to do business in this state, an annuity expressly granted by the will to a devisee named in the will.

Comment. Section 10516 is a new provision. Concerning the exercise of powers described in this article, see Section 10510. For the comparable provision under supervised administration, see Section 9733. The power granted by Section 10516 may be exercised without giving advice of proposed action. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

CROSS-REFERENCES

Definitions

Devise § 32
Personal representative § 58
State § 74
Will § 88

§ 10517. Exercising restricted option

10517. The personal representative has the power to exercise an option right that is an asset of the estate and is nontransferrable except by testate or intestate succession from the decedent.

Comment. Section 10517 is a new provision. Concerning the exercise of powers described in this article, see Section 10510. For the comparable provision under supervised administration, see Section 9734. The power granted by Section 10517 may be exercised without giving advice of proposed action. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b). See also Section 10520 (selling or exercising security subscription or conversion rights).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10518. Purchasing securities or commodities sold short

10518. The personal representative has the power to purchase securities or commodities required to perform an incomplete contract of sale where the decedent died having sold but not delivered securities or commodities not owned by the decedent.

Comment. Section 10518 is a new provision. Concerning the exercise of powers described in this article, see Section 10510. For the comparable provision under supervised administration, see Section 9735. The power granted by Section 10518 may be exercised without giving advice of proposed action. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

CROSS-REFERENCES

Definitions

Personal representative § 58

Security § 70

§ 10519. Holding securities in name of nominee or in other form

10518. The personal representative has the power 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.

Comment. Section 10519 continues subdivision (h) of former Probate Code Section 591.6 without substantive change. Concerning the

exercise of powers described in this article, see Section 10510. The power granted by Section 10519 may be exercised without giving advice of proposed action. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

CROSS-REFERENCES

Definitions

Personal representative § 58

Security § 70

§ 10520. Selling or exercising security subscription or conversion rights

10520. The personal representative has the power to sell or exercise security subscription or conversion rights.

Comment. Section 10520 continues subdivision (g) of former Probate Code Section 591.6 with the expansion of the scope of the provision to cover "securities" instead of "stock". See Section 70 (defining "security"). Concerning the exercise of powers described in this article, see Section 10510. For a general provision relating to sales of property, see Section 10512. See also Sections 10514 (investing in securities), 10517 (exercising restricted option), 10519 (holding securities in name of nominee or in other form).

The power granted by Section 10520 to sell security subscription or conversion rights may be exercised without giving advice of proposed action. See Sections 10552(b) (4), (5) (surrender of security for redemption or conversion; sale of security subscription right). Although advice of proposed action is not required, the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

Advice of proposed action is required to exercise security subscription or conversion rights. See Section 10553(b).

Under supervised administration, the sale of subscription rights for the purchase of securities is permitted without court supervision. See Section 10202. As to the sale or surrender for redemption or conversion of securities under supervised administration, see Section 10200. There is no provision in supervised administration for the exercise of security subscription or conversion rights.

CROSS-REFERENCES

Definitions

Personal representative § 58

Security § 70

Note. Although Section 10520 authorizes the personal representative to exercise a stock subscription right under independent administration procedure, there is no provision in supervised administration that would authorize the exercise of a stock subscription right; under supervised administration, Section 10202 authorizes sale of subscription rights. In some cases, it may be important to the value of stocks of the estate to exercise a stock subscription right. If the Commission does not wish to include a specific provision to authorize the exercise of a stock subscription

right under supervised administration where authorized by the court, perhaps a statement could be included in the Comment to Section 10202 that the court could authorize the exercise of the stock subscription right on a petition for instructions.

§ 10521. Continuing operation of decedent's business

10521. The personal representative has the following powers:

(a) The power to continue the operation of the decedent's business (as defined in Section 9760).

(b) The power to continue as a general partner in any partnership in which the decedent was a general partner at the time of death. This power is subject to the provisions of the Uniform Partnership Act.

(c) The power to continue as a limited partner in any partnership in which the decedent was a general or limited partner at the time of death.

Comment. Section 10521 continues subdivision (1) of former Probate Code Section 591.6 without substantive change. The former provision did not distinguish between nonpartnership businesses and partnerships in which the decedent was a general partner. But the provisions relating to supervised administration make that distinction, and Section 10521 has been drafted to conform to the supervised administration provisions. For the provisions governing supervised administration, see Sections 9760-9763. The power to continue as a general partner is subject to the provisions of the Uniform Partnership Act. See Corp. Code §§ 15000-15045.

The phrase "to such extent as he or she shall deem to be for the best interest of the estate and those interested therein" which was found in the former section has been omitted as unnecessary. The introductory clause of Section 10510 recognizes that the personal representative acts in a fiduciary capacity in exercising the authority under this part. See also Sections 10500 (introductory clause). The personal representative is required to exercise a power granted under this article to the extent that ordinary care and diligence requires that the power be exercised and may not exercise the power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612. See also Section 10589 (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).

Advice of proposed action is required for continuing operation for a period of more than six months from the date of appointment of the personal representative of the decedent's business or for the sale or incorporation of the decedent's business. See Section 10554. Although advice of proposed action is not required in order to continue the operation for the first six months, the personal representative may give advice of proposed action of the continuance of the business

during this period if the personal representative so desires. See Section 10580(b).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10522. Abandoning tangible personal property

10522. The personal representative has the following powers:

(a) The power to abandon valueless tangible personal property.

(b) The power to abandon tangible personal property where the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.

Comment. Section 10522 supersedes subdivision (d) of former Probate Code Section 591.6. The former provision has been revised to conform to the language used in the provisions governing supervised administration. See Sections 9780-9789. Concerning the exercise of powers described in this article, see Section 10510. The power granted by Section 10522 may be exercised without giving advice of proposed action. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

Section 10522 applies only to tangible personal property. As to the power with respect to real property and intangible personal property, see Sections 10526 (instituting and defending actions and proceedings), 10527 (compromises and settlements).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 10523. Borrowing; encumbering estate property

10523. The personal representative has the following powers:

(a) The power to borrow.

(b) The power to place, replace, renew, or extend any encumbrance upon any property of the estate.

Comment. Section 10523 continues subdivision (c) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by Section 10523. See Section 10555. For provisions relating to supervised administration, see Sections 9800-9807.

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62

§ 10524. Making repairs or alterations in property

10524. The personal representative has the power to make ordinary or extraordinary repairs or alterations in buildings or other property.

Comment. Section 10524 continues subdivision (e) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. The power granted by Section 10524 may be exercised without giving advice of proposed action. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b). For provisions relating to supervised administration, see Sections 9800(a)(2) (borrowing money to improve or preserve property).

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62

Note. There should be provisions in the supervised administration provisions to deal with the matter of repairs and improvements of estate property, and the provisions should indicate when court approval is required for repairs and improvements and when it is not required.

§ 10525. Acting on claims against estate

10525. The personal representative has the power to allow, pay, reject, contest, or compromise any claim against the estate.

Comment. Section 10525 continues without substantive change the portion of subdivision (j) of former Probate Code Section 591.6 relating to claims against the estate. Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is not generally required to exercise the power granted by Section 10525. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b). See also Sections 10501 (notwithstanding grant of independent administration authority, personal representative is required to obtain court supervision for allowance of commissions of personal representative and allowance of attorney's fees), 10556 (advice of proposed action required for determining third-party claim to real or personal property if decedent died in possession of, or holding title to, the property). For provisions relating to claims, see Chapter 12 of Division 3 (commencing with Section 700).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10526. Instituting and defending actions and proceedings

10526. The personal representative has the following powers:

(a) The power to institute and maintain actions and proceedings for the benefit of the estate.

(b) The power to defend actions and proceedings against the decedent, the personal representative, or the estate.

Comment. Section 10526 continues without substantive change the portion of subdivision (j) of former Probate Code Section 591.6 which authorized the personal representative to "institute" and "defend" actions and proceedings. The language used in Section 10526 conforms to the language used in the provision relating to supervised administration. See Section 9820. The authority with respect to actions and proceedings is not limited and includes, for example, instituting, maintaining, or defending partition actions. See Section 9823.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is not generally required to exercise the power granted by Section 10526. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b). Advice of proposed action is required for determining third-party claims to real or personal property if the decedent died in possession of, or holding title to, the property and for determining decedent's claim to real or personal property title to or possession of which is held by another. See Section 10556. Advice of proposed action is required for compromising or settling a claim by the estate against the personal representative. See Section 10557.

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. The authorization to defend actions and proceedings "against the personal representative" should be added to Section 9820 (supervised administration).

§ 10527. Compromises and settlements

10527. The personal representative has the following powers:

(a) The power to compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate.

(b) The power to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

Comment. Section 10527 supersedes a portion of subdivision (j) of former Probate Code Section 591.6. Subdivision (a) uses language drawn from Section 9830 (supervised administration). Subdivision (b) continues language found in subdivision (j) of former Section 591.6. Concerning the exercise of powers described in this article, see Section 10510.

Advice of proposed action is not generally required to exercise the power granted by Section 10527. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b). Advice of proposed action is required (1) for determining third-party claims to real or personal property if the decedent died in possession of, or holding title to, the property and (2) for determining decedent's claim to real or personal property title to or possession of which is held by another. See Section 10556. Advice of proposed action is required for compromising or settling a claim by the estate against the personal representative or for extending, renewing, or modifying the terms of a debt or other obligation of the personal representative owing to or running in favor of the estate. See Section 10557. See also Section 10501 (notwithstanding grant of independent administration authority, personal representative is required to obtain court supervision for allowance of commissions of personal representative and allowance of attorney's fees).

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. No authority comparable to subdivision (b) of Section 10527 is found in the supervised administration authority. Subdivision (b) may be unnecessary in view of the broad authority under subdivision (a). If subdivision (b) is necessary, a comparable provision should be added to the supervised administration provisions.

§ 10528. Modifying terms of obligation

10528. The personal representative has the power to extend, renew, or in any manner modify the terms of an obligation owing to or running in favor of the decedent or the estate.

Comment. Section 10528 is a new provision. For the comparable provision under supervised administration, see Section 9830(a)(2).

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is not generally required to exercise the power granted by Section 10528. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b). Advice of proposed action is required for compromising or settling a claim by the estate against the personal representative or for extending, renewing, or modifying the terms of a debt or other obligation of the personal representative owing to or running in favor of the estate. See Section 10557. See also Section 10501 (notwithstanding grant of independent administration authority, personal representative is required to obtain

court supervision for allowance of commissions of personal representative and allowance of attorney's fees).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10529. Accepting deed in lieu of foreclosure or trustee's sale

10529. The personal representative has the power to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust.

Comment. Section 10529 is a new provision. For the comparable provision under supervised administration, see Section 9850.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is not generally required to exercise the power granted by Section 10529. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b). Advice of proposed action is required for compromising or settling a claim by the estate against the personal representative or for extending, renewing, or modifying the terms of a debt or other obligation of the personal representative owing to or running in favor of the estate. See Section 10557.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 10530. Giving partial satisfaction of mortgage or partial reconveyance under trust deed

10530. The personal representative has the power to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a trust deed held by the estate.

Comment. Section 10530 is a new provision. For the comparable provision under supervised administration, see Section 9851.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is not required to exercise the power granted by Section 10530. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10531. Leasing property of the estate

10531. The personal representative has the power to lease property of the estate for any purpose, including but not limited to exploration for and production of minerals, oil, gas, or other hydrocarbon substances, for such period, within or beyond the period of administration, and for such rental or royalty and upon such other terms and conditions as the personal representative may determine.

Comment. Section 10531 supersedes a portion of subdivision (a) of former Probate Code Section 591.6. Section 10531 makes clear that the personal representative is authorized to determine the period, rental or royalty, and other terms and conditions of the lease. See Section 9946 (supervised administration). The provision in former Probate Code Section 591.6 giving the personal representative the power "to enter into community oil leases" has been omitted as unnecessary because this power is given by the broad language used in Section 10351. For the comparable provision under supervised administration, see Sections 9940-9948.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required for leasing real property for a term in excess of one year. See Section 10558. Advice of proposed action is required for leasing personal property for a period of more than two years unless the lease can be terminated by the personal representative within the two-year period. See Section 10559.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 10532. Exchanging property

10532. The personal representative has the power to exchange property of the estate for other property upon such terms and conditions as the personal representative may determine.

Comment. Section 10532 continues without substantive change the part of the first portion of subdivision (a) of former Probate Code Section 591.6 which related to exchanges. For the comparable provision under supervised administration, see Section 9920.

The personal representative does not have the power described in Section 10513 with respect to an exchange of real property of the estate if the personal representative has limited independent administration authority; such a personal representative may not exercise authority with respect to matters not included within the scope of the authority granted. See Sections 10501(e) (personal representative granted only limited independent administration authority does not have power to make exchange of real property using independent administration procedure), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exchange real property. See Section 10551. Advice of proposed action is required to exchange personal property unless the case falls within one of the exceptions to this requirement. See Section 10552.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 10533. Granting option to purchase real property of estate

10533. The personal representative has the power to grant an option to purchase real property of the estate for a period within or beyond the period of administration.

Comment. Section 10533 continues the last portion of subdivision (a) of former Probate Code Section 591.6 without substantive change. For the comparable provision under supervised administration, see Section 9960.

The personal representative does not have the power described in Section 10533 with respect to granting an option to purchase real property of the estate if the personal representative has limited independent administration authority; such a personal representative may not exercise authority with respect to matters not included within the scope of the authority granted. See Sections 10501(e) (personal representative granted only limited independent administration authority does not have power to grant an option to purchase real property using independent administration procedure), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by this section. See Section 10560. See also Section 10512 (powers with respect to sale of property).

CROSS-REFERENCES

Definitions

Personal representative § 58

Real property § 68

§ 10534. Granting exclusive right to sell property

10534. The personal representative has the following powers:

(a) The power to grant an exclusive right to sell property for a period not to exceed 90 days.

(b) The power to grant one or more extensions of an exclusive right to sell property, each extension being for a period not to exceed 90 days.

Comment. Subdivision (a) of Section 10534 continues subdivision (1) of former Probate Code Section 591.6 without substantive change. Subdivision (b) is new and makes clear that the exclusive right to sell agreement can be extended, each extension being for a period not to exceed 90 days. This addition conforms the independent administration authority under Section 10534 to the supervised administration provision found in Section 10150(c).

The phrase "where necessary and advantageous to the estate" which was found in former Section 591.6 has been omitted as unnecessary. The introductory clause of Section 10510 recognizes that the personal representative acts in a fiduciary capacity in exercising the authority under this part. See also Sections 10500 (introductory clause). The personal representative is required to exercise the power granted under this article to the extent that ordinary care and diligence requires that the power be exercised and may not exercise the power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612. See also Section 10589 (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).

The personal representative does not have the power to sell real property using independent administration procedures if the personal representative has limited independent administration authority; such a personal representative may not exercise authority with respect to matters not included within the scope of the authority granted. See Sections 10501(e) (personal representative granted only limited independent administration authority does not have power to sell real property using independent administration procedure), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

Concerning the exercise of powers described in this article, see Section 10510. See also Section 10512 (powers with respect to sale of property). Advice of proposed action is not required to grant an exclusive right to sell property but is required to extend an exclusive right to sell property. See Section 10563. However, advice of proposed action is required for (1) selling or exchanging real property and for (2) selling or exchanging personal property (with certain exceptions). See Sections 10550 and 10552. See also Section 10584 (contents of advice of proposed action).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. Is extending an exclusive right to sell agreement of such significance that advice of proposed action should be required? Advice of proposed action must be given of the sale itself.

§ 10535. Transferring to person given option to purchase in will

10535. The personal representative has the power to transfer or convey to a person given an option to purchase real or personal property in the will upon compliance with the terms and conditions stated in the will.

Comment. Section 10535 is a new provision. For the comparable provision under supervised administration, see Section 9980.

The personal representative has the specific power granted by Section 10535 even though the personal representative does not have general independent administration authority to sell real property of the estate.. See Sections 10501(e) (personal representative granted only limited independent administration authority does not have power to sell real property using independent administration procedure), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is not required to exercise the power granted by Section 10535. See the Comment to Section 10551 (real property) and Section 10552 (b)(6) (personal property). But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

CROSS-REFERENCES

Definitions

Person § 56
Personal representative § 58
Real property § 68
Will § 88

§ 10536. Completing contract of decedent to convey or transfer property

10536. The personal representative has the power to transfer or convey real or personal property to complete a contract entered into by the decedent to convey or transfer the property.

Comment. Section 10536 is a new provision. However, former Probate Code Section 591.3 required advice of proposed action where the proposed action was "[c]ompleting a contract entered into by the decedent to convey real or personal property." Accordingly, Section 10536 is consistent with prior law and merely make specific a power that was implied under former law. For the comparable provision under supervised administration, see Section 9860.

The personal representative has the specific power granted by Section 10536 even though the personal representative does not have general independent administration authority to sell real property of the estate. See Sections 10501(e) (personal representative granted only limited independent administration authority does not have power to sell real property using independent administration procedure), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by Section 10535. See Section 10561.

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62
Real property § 68

§ 10537. Determining claims to property claimed to belong to decedent or other person

10537. The personal representative has the following powers:

(a) The power to determine a third-party claim to real or personal property if the decedent died in possession of, or holding title to, the property.

(b) The power to determine the decedent's claim to real or personal property title to or possession of which is held by another.

Comment. Section 10537 is a new provision. However, former Probate Code Section 591.3 required advice of proposed action where the proposed action was "[d]etermining 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. Accordingly, Section 10536 is consistent with prior law and merely makes specific a power that was implied under former law. For the comparable provision under supervised administration, see Section 9860.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by this section. See Section 10537.

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62
Real property § 68

§ 10538. Paying family allowance

10538. The personal representative has the power to pay a reasonable family allowance.

Comment. Section 10538 continues subdivision (m) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. Although advice of proposed action is required for the first payment of a family allowance, the personal representative can continue to make the payment (without any increase) without giving advice of proposed

action, except that another advice of proposed action is required if the family allowance is to be continued for a period commencing 12 months after the death of the decedent. See Section 10562. For a more detailed discussion, see the Comment to Section 10562. For provisions relating to payment of the family allowance, see Sections 6540-6545.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10539. Paying taxes, assessments, and other expenses

10539. The personal representative has the power to pay taxes, assessments, and other expenses incurred in the collection, care, and administration of the estate.

Comment. Section 10539 continues subdivision (k) of former Probate Code Section 591.6 without substantive change. For provisions relating to payment of debts, expenses, and charges, see Sections 950-980.

Concerning the exercise of powers described in this article, see Section 10510. Unless some special provision of Article 1 (commencing with Section 10550) of Chapter 4 is applicable, advice of proposed action is not required to exercise the power granted by this section. But see Section 10501 (notwithstanding grant of independent administration authority, personal representative is required to obtain court supervision for allowance of commissions of personal representative and allowance of attorney's fees)

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10540. Personal representative purchasing property of the estate

10540. The personal representative has the power to purchase property of the estate only in the following cases:

(a) Where the will of the decedent authorizes the personal representative to purchase the property or gives the personal representative an option to purchase the property.

(b) Where there is an enforceable contract entered into by the decedent to convey the property to the personal representative.

(c) Where written consent to the purchase of the property by the personal representative is obtained from (1) all known devisees of the property which is proposed to be sold to the personal representative if the decedent died testate or (2) all of the decedent's heirs if the decedent died intestate.

Comment. Section 10540 is a new provision. For the comparable provisions under supervised administration, see Sections 9881, 9882, 9884, 9885.

The personal representative has the specific power granted by Section 10540 even though the personal representative does not have general independent administration authority to sell real property of the estate. See Sections 10501(e) (personal representative granted only limited independent administration authority does not have power to sell real property using independent administration procedure), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to sell real property (Section 10551) or personal property (Section 10552) to the personal representative. See also Section 10512 (powers with respect to sale of property).

CROSS-REFERENCES

Definitions

Devisee § 34
Heirs § 44
Personal representative § 58
Property § 62
Will § 88

§ 10541. Making a disclaimer

10541. The personal representative has the power to make a disclaimer.

Comment. Section 10541 continues subdivision (n) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is not required to exercise the power granted by this section. For the provisions relating to disclaimers, see Division 2.5 (commencing with Section 260).

CROSS-REFERENCES

Definitions

Personal representative § 58

CHAPTER 4. ADVICE OF PROPOSED ACTION

Article 1. Actions Requiring Advice of Proposed Action

§ 10550. Article describes actions requiring advice of proposed action

10550. The actions requiring advice of proposed action are all of those described in this article.

Comment. Section 10550 continues the introductory clause of subdivision (b) of former Probate Code Section 591.3 without substantive change.

§ 10551. Selling or exchanging real property

10551. Advice of proposed action is required for any of the following:

(a) Selling real property under the power granted by Section 10512.

(b) Exchanging real property under the power granted by Section 10532.

Comment. Section 10551 restates subdivision (a)(1) of former Probate Section 591.3 without substantive change. The power to sell real property under independent administration is granted by Section 10512; the power to exchange real property under independent administration is granted by Section 10532. For a general provision concerning powers with respect to sale of property under independent administration, see Section 10512.

Section 10551 applies only where the sale is made under the power granted by Section 10512 or the exchange is made under the power granted by Section 10532. Accordingly, Section 10551 does not apply where the sale or exchange is made pursuant to another specific power. However, advice of proposed action is required for granting an option to purchase real property (Section 10560), completing a contract by decedent to convey property (Section 10561), or extending an exclusive right to sell property (Section 10563). Advice of proposed action is not required to convey real property to a person given an option to purchase the property in the will (Section 10535).

A personal representative who has been granted only limited independent administration authority may not sell or exchange real property using the independent administration procedure. See Section 10501(e) (limited authority excludes power to sell or exchange real property using independent administration procedure). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority). See also Section 10510 (introductory clause) (will may restrict powers exercisable under independent administration authority). See also the Comment to Section 10510.

CROSS-REFERENCES

Definitions

Real property § 68

§ 10552. Selling or exchanging personal property

10552. (a) Except as provided in subdivision (b), advice of proposed action is required for selling or exchanging personal property of the estate.

(b) Advice of proposed action is not required for the sale or exchange any of the following:

(1) A security sold on an established stock or bond exchange.

(2) A security designated as a national market system security on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker dealer.

(3) Personal property referred to in Section 10202 or 10259 when sold for cash.

(4) A security described in Section 10200 surrendered for redemption or conversion.

(5) A subscription right, owned or received by the estate by reason of owning securities, for the purchase of additional securities.

(6) Property transferred to a person given an option to purchase the property in the will.

Comment Section 10552 supersedes subdivision (b)(3) of former Probate Code Section 591.3. The general power to sell personal property under independent administration is granted by Section 10512; the general power to exchange personal property under independent administration is granted by Section 10532. For a general provision concerning the power to sell property under independent administration, see Section 10512. See also Section 10510 (introductory clause) (will may restrict powers exercisable under independent administration authority). See also the Comment to Section 10510.

Subdivision (a) of Section 10552 establishes the general requirement that advice of proposed action be given for the sale or exchange of personal property. Exceptions to this requirement are set forth in subdivision (b).

Paragraph (1) of subdivision (b) continues without change an exception found in former Probate Code Section 591.3.

Paragraph (2) of subdivision (b), which authorizes the sale of certain over-the-counter stocks, is new. No notice of sale is required, nor is court confirmation required, for the sale of these over-the-counter stocks under supervised administration. See Section 10200. Quotations for these over-the-counter stocks are published daily in the Wall Street Journal and many other daily newspapers.

Paragraph (3) of subdivision (b) expands somewhat an exception found in former Probate Code Section 591.3. Former Probate Code Section 591.3 provided an exception for assets referred to in former Sections 770 and 771.5 when sold for cash. Former Section 770 is continued in substance by new Section 10259 which describes the personal property to which title passes upon sale without the need for court confirmation or approval under supervised administration. However, new Section 10259 includes a provision not found in former Section 770 that recognizes that title to personal property sold at public auction passes without the need for court confirmation or approval upon receipt of the purchase price and delivery of the property or an instrument that transfers title to the property. Former

Section 771.5 is continued without substantive change in new Section 10202.

Paragraph (4) of subdivision (b) is new. This paragraph makes clear that a security described in Section 10200 may be surrendered for redemption or conversion without giving advice of proposed action. Section 10200 governs the surrender of securities for redemption or conversion.

Paragraph (5) of subdivision (b) is new. This paragraph makes clear that advice of proposed action is not required to sell security subscription or conversion rights pursuant to the power granted by Section 10520. Under supervised administration, security subscription rights may be sold without notice of sale, prior order of court, or subsequent confirmation by the court. See Section 10202. Although the security subscription or conversion right may be sold without giving advice of proposed action, advice of proposed action is required for the exercise of a security subscription or conversion right. See Section 10553(b). See the Comment to Section 10553.

Paragraph (6) of subdivision (b) is new. This paragraph makes clear that advice of proposed action is not required to transfer personal property to a person given an option to purchase the property in the will pursuant to the power granted by Section 10520.

CROSS-REFERENCES

Definitions

Property § 62

Security § 70

§ 10553. Investing funds of the estate; exercising security subscription or conversion right

10553. (a) Except as provided in subdivision (c), advice of proposed action is required for investing funds of the estate.

(b) Advice of proposed action is required for exercising security subscription or conversion rights.

(c) Advice of proposed action is not required for any of the following investments:

(1) Deposits and investments described in Section 9700.

(2) Investments described in Section 9730.

Comment Section 10553 supersedes subdivision (b)(8) of former Probate Code Section 591.3. The power to invest money of the estate under independent administration is granted by Sections 10511 (investments any personal representative may make without court supervision), 10514 (certain securities), 10515 (investment in manner provided by will), 10520 (exercising security subscription or conversion rights). See also the Comment to Section 10514.

Subdivision (a) of Section 10553 establishes the general rule that advice of proposed action is required for investing funds of the estate. Subdivision (c) sets out the exceptions to the general rule.

Subdivision (b) makes clear that advice of proposed action is required to exercise a security subscription or conversion right. Exercise of such a right under independent administration is authorized by Section 10520, and the exercise of such a right is treated under Section 10553 the same as other investments of estate funds. Although advice of proposed action is required for the exercise of a security subscription or conversion right, advice of proposed action is not required for sale of a security subscription or conversion right. See Section 10552(b)(5).

Subdivision (c) makes reference to statutory provisions found in the supervised administration provisions. The provisions to which reference is made are provisions that permit investments of the type described in subdivision (b)(8) of former Section 591.3 to be made without prior court authorization. See the Comments to Sections 9700 and 9730.

Note. Should advice of proposed action be required to exercise a security subscription or conversion right?

§ 10554. Continuing operation of decedent's business; selling or incorporating decedent's business

10554. (a) Advice of proposed action is required for continuing operation for a period of more than six months from the date of appointment of the personal representative of any of the following:

(1) An unincorporated business or venture in which the decedent was engaged at the time of the decedent's death.

(2) An unincorporated business or venture which was wholly or partly owned by the decedent at the time of the decedent's death.

(b) Advice of proposed action is required for the sale or incorporation of a business described in subdivision (a).

Comment Section 10554 continues subdivision (b)(6) of former Probate Code Section 591.3 without substantive change. The power to continue the operation of the decedent's business under independent administration is granted by Section 10521.

Although advice of proposed action is not required in order to continue the operation of the decedent's business for the first six months, the personal representative may give advice of proposed action for the continuance of the business during this period of the personal representative so desires. See Section 10580(a). See also the Comment to Section 10521.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10555. Borrowing; encumbering estate property

10555. Advice of proposed action is required for borrowing money or executing a mortgage or deed of trust or giving other security.

Comment Section 10555 continues subdivision (b)(10) of former Probate Code Section 591.3 without substantive change. The power to borrow money or to place, replace, renew, or extend any encumbrance upon any property of the estate under independent administration authority is granted by Section 10523.

§ 10556. Determining third-party claim or decedent's claim to property held by another

10556. Advice of proposed action is required for any of the following:

(a) Determining third-party claims to real or personal property if the decedent died in possession of, or holding title to, the property.

(b) Determining decedent's claim to real or personal property title to or possession of which is held by another.

Comment Section 10556 continues subdivision (b)(11) of former Probate Code Section 591.3 without substantive change. The power to determine the claims described in Section 10556 under independent administration authority is granted by Section 10537.

CROSS-REFERENCES

Definitions

Property § 62

Real property § 68

§ 10557. Compromising claim of estate against personal representative; extending, renewing, or modifying obligation of personal representative to estate

10557. Advice of proposed action is required for any of the following:

(a) Compromising or settling a claim, action, or proceeding by the estate against the personal representative.

(b) Extending, renewing, or modifying the terms of a debt or other obligation of the personal representative owing to or running in favor of the decedent or the estate.

Comment Section 10557 is a new provision. The general power to compromise or settle a claim, action, or proceeding by the estate under independent administration authority is granted by Section 10527. The power to extend, renew, or modify the terms of a debt or other obligation owing to or running in favor of the estate under independent administration authority is granted by Section 10528.

Section 10557 requires advice of proposed action only where the claim, action, or proceeding is against the personal representative or where the debt or other obligation is that of the personal representative. For other compromises or settlements advice of proposed action is not required, and advice of proposed action is not required for other extensions, renewals, or modifications of the terms of an obligation owing to or running in favor of the decedent or the estate. However, a conflict of interest may be involved where the personal representative compromises or settles a claim by the estate against the personal representative or where the personal representative changes the terms of a debt of the personal representative to the estate. Section 10557 is added to require that advice of proposed action be given in this situation.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10558. Leasing real property.

10558. Advice of proposed action is required for leasing real property for a term in excess of one year.

Comment Section 10558 continues subdivision (b)(4) of former Probate Code Section 591.3 without substantive change. The power to lease property of the estate under independent administration authority is granted by Section 10531.

CROSS-REFERENCES

Definitions

Real property § 68

§ 10559. Entering into contracts other than leases of real property

10559. Advice of proposed action is required for entering into any contract, other than a lease of real property, which by its provisions (a) cannot be terminated by the personal representative within two years and (b) is not to be fully performed within two years.

Comment Section 10559 continues subdivision (b)(5) of former Probate Code Section 591.3 with two revisions:

(1) Clause (a) -- that the contract cannot be terminated by the personal representative within two years -- is a new provision. This provision makes clear that advice of proposed action need not be given if a contract is one that by its terms can be terminated by the personal representative within two years. There is no reason that a contract that can be terminated within two years should not be treated the same as a contract that is to be fully performed within two years.

(2) The word "fully" is added in clause (b) to make clear that advice of proposed action is not required under this clause only if the contract is one that will be "fully" performed within two years.

The power to lease personal property of the estate under independent administration authority is granted by Section 10531. The power to make contracts under independent administration authority in connection with the management and control of the estate is included in the power granted by Section 10513. Other specific powers granted in Article 2 (commencing with Section 10510) by implication include the power to make a contract where necessary to effectuate the specific power granted in that article. Where a contract is made to effectuate an independent administration power, advice of proposed action is required if the contract fits the description of section 10559.

CROSS-REFERENCES

Definitions

Personal representative § 58

Real property § 68

§ 10560. Granting option to purchase real property

10560. Advice of proposed action is required for granting an option to purchase real property.

Comment Section 10560 continues subdivision (b)(2) of former Probate Code Section 591.3 without substantive change. The power to grant under independent administration authority an option to purchase real property is granted by Section 10533.

CROSS-REFERENCES

Definitions

Real property § 68

§ 10561. Completing contract by decedent to convey or transfer property

10561. Advice of proposed action is required for completing a contract entered into by the decedent to convey or transfer real or personal property.

Comment Section 10561 continues subdivision (b)(9) of former Probate Code Section 591.3 without substantive change. The power to transfer or convey property to complete the decedent's contract under independent administration authority is granted by Section 10536.

CROSS-REFERENCES

Definitions

Property § 62

Real property § 68

§ 10562. Paying or increasing family allowance

10562. Advice of proposed action is required for all of the following:

(a) Making the first payment of a family allowance.

(b) Making the first payment of a family allowance for a period commencing 12 months after the death of the decedent.

(c) Making any increase in the amount of the payment of a family allowance.

Comment Section 10562 continues subdivision (b)(7) of former Probate Code Section 591.3 without substantive change. The power to pay a reasonable family allowance under independent administration authority is granted by Section 10538.

Although advice of proposed action is required for the first payment of a family allowance, the personal representative can continue to make the payment (without any increase) without giving advice of proposed action, except that another advice of proposed action is required if the family allowance is to be continued for a period commencing 12 months after the death of the decedent. Advice of proposed action also must be given if there is to be an increase in the amount of the payment of a family allowance. Advice of proposed action also must be given if a family allowance is proposed to be paid to a person who previously has not been receiving a family allowance, even where advice of proposed action previously has been given with reference to the payment of a family allowance to another person who already is receiving a family allowance.

§ 10563. Extending exclusive right to sell property

10563. Advice of proposed action is required for extending an exclusive right to sell property.

Comment Section 10563 is a new provision. The power to give an exclusive right to sell property, and to extend that right, under independent administration authority is granted by Section 10534.

Although the personal representative may give an exclusive right to sell property for a period not to exceed 90 days without giving advice of proposed action, any extension of that exclusive right to sell (which may not be for a period exceeding 90 days) requires advice of proposed action.

CROSS-REFERENCES

Definitions

Property § 62

Note. Section 10561 is a new provision included for Commission consideration. Should advice of proposed action be required to extend an exclusive right to sell property? Existing law does not require advice of proposed action to grant an exclusive right to sell property. Many of the actions taken under existing law without giving advice of proposed action might be considered to be more significant than extending an exclusive right to sell agreement.

Article 2. Advice of Proposed Action Procedure

The remainder of the existing provisions in this chapter of the Tentative Recommendation would be renumbered as indicated below.

- § 10580. Giving advice of proposed action [formerly § 10550]
- § 10581. Persons to whom advice of proposed action must be given
[formerly § 10552]
- § 10582. Consent to proposed action [formerly § 10553]
- § 10583. Waiver of advice of proposed action [formerly § 10554]
- § 10584. Form and contents of advice of proposed action [formerly
§ 10555]
- § 10585. Delivery or mailing of advice of proposed action and copy
of form for objecting to proposed action [formerly § 10556]
- § 10586. Objection to proposed action [formerly § 10557]
- § 10587. Restraining order [formerly § 10558]
- § 10588. Court supervision and notice of hearing required if
objection made [formerly § 10559]
- § 10589. Effect of failure to object to proposed action [formerly
§ 10560]
- § 10590. Protection of persons dealing in good faith with personal
representative [formerly § 10561]