

Memorandum 87-14

Subject: Study L-1037 - Amendments to AB 708 (Supervised Administration)

The attached amendments make technical revisions in the portion of Assembly Bill 708 relating to supervised administration.

AMENDMENTS NOTED FOR YOUR SPECIAL ATTENTION

The following amendments are noted for your special attention.

Amendment 3

Section 9613 permits an interested person to petition for an order directing the personal representative to act or not to act with respect to management of the estate. The amendment requires that the petitioner show that the estate will suffer "great or" irreparable injury if the order is not granted. Making the standard "great or irreparable injury" conforms the standard to the standard for granting an injunction under Code of Civil Procedure Section 526. The Commission wanted this to be the standard for granting an order under Section 9613.

Amendments 85 to 87.2

These amendments extend the prohibition against purchase of estate property or a claim against the estate to include the personal representative's attorney and permit the court to issue an order permitting purchase by the attorney where the heirs or devisees of the property to be purchased consent to the purchase in writing and the court approves the purchase. This is believed to be consistent with the decisions made by the Commission in connection with independent administration.

Amendment 129

Section 10261 requires that the court, before confirming the sale of a partnership interest, examine the surviving partner if the surviving partner is "in the county" and able to be present in court. The amendment requires the examination if the surviving partner is "a resident within the state at the time of the [confirmation] hearing" and is able to be present in court. The examination of witnesses is no

longer limited to witnesses who reside in the county where the trial is held.

MATTERS NOTED BY STAFF FOR COMMISSION CONSIDERATION

The staff notes the following matters for Commission consideration.
Section 9730 (page 78 of AB 708). Investments

Subdivision (a) of Section 9730 permits the personal representative to invest money of the estate in direct obligations of the United States maturing not later than one year from the date of making the investment. Should this provision be extended to include direct obligations of the State of California maturing not later than one year from the date of making the investment?

Option to Purchase Given in Will

Under Sections 9980-9981, if the decedent's will gives an option to purchase estate property, the optionee may exercise the option within the time limit provided by the will or within one year after the decedent's death, whichever is earlier. If the option is exercisable after estate administration would otherwise be closed, the property is distributed subject to the option. If the optionee exercises the option during estate administration, the optionee or the personal representative must petition the court for an order directing a conveyance pursuant to the option. This continues existing Section 854.

Section 9981 contains a new limitation not found in existing law: Under subdivision (b) of Section 9981 (page 107 of AB 708), the petition for a court order directing the conveyance must be filed within 30 days after the option is exercised. What happens if the option is exercised but the petition is not filed within the 30-day period? Should we add a provision to the section that failure to file the petition within the 30-day period does not invalidate the option, that the property is distributed subject to the optionee's rights, and that distributees must complete the transaction? Or should the 30-day limit be removed from subdivision (b) of Section 9981? The staff is concerned that the uncertainty in the present draft may create a trap for the unwary optionee. If the option is exercised, how is the optionee to obtain a record title if the petition is not filed within the 30-day limit? What is the Commission's preference?

Section 10206 (pages 118-119 of AB 708). Sale of decedent's contract to purchase

If the decedent died possessed of a contract to purchase real property and the decedent's interest under the contract is sold, Section 10206 provides title does not pass to the purchaser until the purchaser executes a bond to the personal representative to cover the amounts of the payments due and to become due on the contract. When the court confirms the sale, the order is issued subject to the bond being provided. This procedure creates a problem concerning the record title. The record title will not indicate whether the bond has been provided and title does not pass until it has been provided. Section 10206 changes existing law: Existing Section 800 requires that the order of confirmation not be issued until the purchaser executes the bond. This assures that the record title will be clear, since the order can include a provision that the bond has been provided and, absent such a provision, it would be presumed that the bond had been provided if the order is issued by the court. The staff recognizes that the procedure for confirmation is easier if the sale can be confirmed without the bond being then provided, but we believe that the existing procedure provides a better procedure for providing an adequate record title. Does the Commission wish to restore the existing statutory scheme?

COMMENTS FROM INTERESTED PERSONS RELEVANT TO SUPERVISED ADMINISTRATION
Liability for Intentional Breach of Fiduciary Duty

Exhibit 1 is a letter from Daniel Crabtree, Chairman of the Probate, Trust & Estate Planning Subcommittee for Legislation of the San Diego County Bar Association, concerning Section 9601 (measure of liability for breach of fiduciary duty). Mr. Crabtree thinks the section does not provide a severe enough sanction for a willful or grossly negligent breach of duty by the personal representative.

Section 9601 provides:

§ 9601. Measure of liability for breach of fiduciary duty

9601. (a) If a personal representative breaches a fiduciary duty, the personal representative is chargeable with any of the following that is appropriate under the circumstances:

(1) Any loss or depreciation in value of the decedent's estate resulting from the breach of duty, with interest.

(2) Any profit made by the personal representative through the breach of duty, with interest.

(3) Any profit that would have accrued to the decedent's estate if the loss of profit is the result of the breach of duty.

(b) If the personal representative has acted reasonably and in good faith under the circumstances as known to the personal representative, the court, in its discretion, may excuse the personal representative in whole or in part from liability under subdivision (a) if it would be equitable to do so.

In Mr. Crabtree's view, if the personal representative's breach is intentional or grossly negligent, the court should be able to award attorney's fees against the personal representative and to reduce the personal representative's fee. Cf. Prob. Code § 1025.5 (sanction for delay in final distribution). Does the Commission want to provide a more severe sanction as suggested by Mr. Crabtree?

Creditor's Right to Reach Nonprobate Assets

Last fall, Kenneth Klug wrote to express concern about Section 9653 (property transferred in fraud of creditors). The staff redrafted the section before the bill was prepared, and sent it to Mr. Klug for his review. Exhibit 2 is Mr. Klug's letter with his personal comments on the redrafted section.

Mr. Klug is concerned with the extent to which a creditor may reach a transfer effective at death, such as a testamentary trust, insurance policies, pension and retirement plan benefits. He states the existing law is unclear and that, most likely, "we are talking about people who are insulating their assets from debts due former spouses for back spousal and child support." He would provide by statute that a creditor may reach nonprobate assets.

The staff's view is that both Section 9653 and existing law are clear on the right of a creditor to have a fraudulent transfer set aside: If the transfer is fraudulent as to creditors under the Uniform Fraudulent Transfer Act, a creditor may require the property to be restored to the estate. This is what the section says, and the Comment cites cases to make clear that this rule applies to such nonprobate property as joint tenancies and life insurance.

A 1983 article in the Estate Planning & California Probate Reporter says:

Almost any kind of transfer of property rights can result in a fraudulent conveyance. This includes the purchase of life insurance, creation of joint tenancies, transfers in trust, conveyances of remainder interests, and outright gifts.

Chillag, *Creditors' Rights to Reach Nonprobate Assets*, 5 CEB Estate Planning & California Probate Reporter 1 (August 1983).

The staff agrees that the Commission should make a study of the law concerning the right of a creditor to reach a nonprobate asset (such as the decedent's interest in a joint tenancy) when the probate assets are not sufficient to pay the claims of creditors, whether or not a fraudulent transfer can be established. But such a study involves complex and controversial issues. Neither the staff nor the Commission is in a position to make such a study now. The first step in the study would be to develop a claims procedure for trusts. We believe that this is a matter that should be given a top priority when we have completed the draft of the new Probate Code. Next, we could consider the various types of nonprobate assets and determine the extent that creditors should be able to reach the assets. This second study would be a major study. When the new Probate Code has been drafted, the staff suggests that the Commission then consider whether it wishes to devote its time and resources to such a study. If this suggestion is agreeable to the Commission, we can add this matter to the list of matters to be considered after the new Probate Code is drafted.

The Legislature declined to enact a Commission recommendation to permit creditors to reach the decedent's interest in a multiple party account if the decedent's probate estate was not sufficient to satisfy the claims of creditors.

The staff once recommended that a creditor of the deceased joint tenant who had a lien on the decedent's interest in the joint tenancy property should be permitted to reach the decedent's interest in the joint tenancy. The comments the Commission received on the staff recommendation indicated that it was controversial. The Commission decided to defer further consideration of the staff recommendation until a later time. A Commission recommendation to permit creditors to reach nonprobate assets generally would be even more controversial.

Subrogation of Creditor to Personal Representative's Right to Recover
Property

Under Section 9653, a creditor may apply to the court for an order requiring the personal representative to bring an action to recover property transferred in fraud of creditors. The Comment notes that this is not an exclusive remedy, and, as under prior law, the personal representative may, with court approval, assign to the creditor the right to bring the action. Mr. Klug would add authority for the creditor to be subrogated to the right of the personal representative to recover the property, presumably whether or not the personal representative consents. Cf. Prob. Code § 20117(b) (proration of estate taxes).

The staff is concerned that to give a creditor the right to proceed directly against the holder of the property, without either consent of the personal representative or a court order, might result in two actions against the third person -- one by the personal representative and one by the creditor. Also we are concerned that giving a creditor this right might give the creditor a preference over other creditors; retaining the right in the personal representative alone will avoid giving the one creditor a preference. A possible solution would be to permit the creditor to petition the court for an order assigning the right of action to the creditor without the need for the personal representative's consent. This could be an alternative to the provision now in Section 9653 for an order requiring the personal representative to bring the action. What is the Commission's view?

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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December 9, 1986

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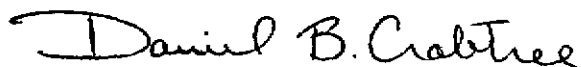
Re: Memorandum--86-89

Dear Mr. DeMouilly:

A section of Memorandum 86-89, dealing with the measure of liability for breach of fiduciary duty, although codifying the applicable case law cited therein, does not go far enough against a personal representative who commits either intentional wrong doing or gross negligence. The measure of liability stated in the memorandum is appropriate for a personal representative who through neglect, causes the damages or losses mentioned therein. The feeling, however, of the San Diego County Bar Association, Probate, Trust & Estate Planning Subcommittee for Legislation is that any personal representative who through gross negligence or intentional wrong doing creates losses to the estate or damages through depreciation in value, loss of interest, or loss of profit should not only have to reimburse the estate appropriately, but also pay attorneys' fees to both sets of attorneys as well as have the possibility of additional surcharges either through loss of fees such as stated in Probate Code 1025.5 or surcharges beyond loss of fees.

The reasoning for the more severe sanction is that frequently when gross negligence or intentional wrong doing comes to light, some or all of the beneficiaries of the estate are forced to hire independent counsel to pursue the personal representative. It, thereafter, requires the attorney for the estate to defend the personal representative. When the litigation is completed, assuming the beneficiaries are successful in proving their claim, the objective is to have the estate put back whole, but this never takes into consideration that attorneys for each side will be asking extraordinary fees to be paid from the estate, which is often approved. Therefore, the beneficiaries often times are victorious but have the size of their eventual distributions depleted to pay attorneys' fees. It is for this reason that the new proposed Probate Code 9601 and 9602 should be expanded to include more severe penalties against personal representatives who commit gross negligence or intentional wrong doing.

Very truly yours,



Daniel B. Crabtree
Chair

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February 6, 1987

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Re: Proposed Section 9653 (Estate Management-
Memo 86-89)

Dear Bob:

I apologize for not responding to your December 23, 1986, letter earlier than this, but it arrived while I was on vacation. Immediately after returning from vacation, my volunteer time was devoted to conducting a seminar at the USC Tax Institute. All of that put me three weeks behind in my work and I am just now catching up.

Your proposed redraft of Section 9653 does not directly address the major problem I discussed in my letter of October 9, 1986, to wit: the question of a creditor's right to reach a transfer which takes effect on death. You indirectly address the problem in the comment to your proposed Section 9653; your December 23 letter discusses additional authority, including Nancy A. Chillag's excellent article in the CEB Estate Planning and California Probate Reporter. The length of your proposed comment, the case authority cited, and Ms. Chillag's article all underscore my earlier comment that the law on creditor's rights in this area is terribly unclear and should be cleared up by the statute. Indeed, the opening sentence of Ms. Chillag's discussion of revocable inter vivos trusts states "The liability of revocable trust estate assets for a decedent trustor's debts is at best undecided in California." I recommend that the new statute clear up that matter.

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I note with some irony that the legislature and a previous Law Revision Commission have expanded the ability of a creditor of a beneficiary to reach assets of a spend-thrift trust created by someone other than the beneficiary; but no major step has been taken to allow a creditor of a deceased settlor to reach assets of a trust established by the decedent.

Your December 23, 1986, letter does not indicate whether the failure to address the issue of a creditor's access to property whose transfer takes effect on death was a conscious decision by the Law Revision Commission or merely an oversight. In any case, it is my opinion that this is an area desperately in need of study. A decedent's creditor is allowed to reach probate property. A decedent's creditor is allowed to reach property transferred by summary administration proceedings. Probate Code Sections 631, 645.3, and 649.4. The result of these sections is that the typical, unsophisticated individual of modest means cannot escape his creditors by dying. But the more sophisticated individuals who can afford to pay an attorney have devised means by which they can enjoy their property during lifetime and can avoid their debts on death. Bear in mind that we are not necessarily talking about insulating assets from Bank of America or Sears, Roebuck. More likely, we are talking about people who are insulating their assets from debts due former spouses for back spousal and child support.

It is my recommendation that Section 9653 expressly authorize creditors to reach assets whose transfer takes effect on death. I am not recommending that that statute utilize that specific language, because there are some contravening public policy issues. While I don't believe there are any contravening public policy issues regarding trusts established by the decedent during lifetime, there are public policies exempting from debts certain payments of life insurance benefits and pension and retirement plan benefits. Nancy Chillag's article which you cited in your letter is a good starting point for identifying the various types of transfers which take effect on death. It may be that Section 9653 should address each of those types of transfers and clarify the extent to which a creditor may or may not reach each of them.

While I recognize that there may not be any easy and entirely satisfactory solutions to these problems, there

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is no question in my mind that they should be addressed by the statute. Indeed, it would appear that a primary purpose of revising the Probate Code is to identify the existing problem areas and deal with them, no matter how difficult they may be to deal with. It is my personal opinion that the ability of creditors to reach assets, the transfer of which takes effect on death, is of major concern not only to creditors, but to debtors and estate planners. Without clear rules, estate planners, themselves, work at their peril. As Nancy Chillag points out in her article:

Estate planning actions can inadvertently destroy an asset's apparent immunity from the reach of creditors. Whether property is subject to claims may affect the Federal Estate Tax deduction for administration expenses under IRC Section 2053. . . . In addition, the possibility that an asset may be vulnerable to a future claim of a creditor may dictate probating the asset when the claim is unlikely to be presented in the probate proceeding. 5 CEB Est. Plan R 1 (1983).

There are many estate planners who recommend against living trusts for professionals due to the uncertainty of the law on the ability of creditors to reach trust assets. I strongly recommend that the Law Revision Commission propose a statutory clarification of these issues.

On another matter involving a creditor's right to reach property outside of the estate, I recommend that a procedure be established whereby the creditor be subrogated to the rights of the personal representative and permitted to bring an action to recover property for the benefit of the estate. As I discussed in my October 9, 1986, letter, there are many subtle decisions which need to be made in litigation which have a bearing on costs and recovery, and those decisions might best be made by the real party in interest. There is precedent for subrogation in a similar context, e.g. where a personal representative has a duty to collect estate taxes prorated against a beneficiary. Other beneficiaries whose interests are affected are subrogated to the rights of the personal representative, and may bring an action against the recalcitrant beneficiary directly.

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Page Four

Probate Code Section 20117. I believe that a right of subrogation would be helpful not only to creditors, but to personal representatives who may be embarrassed by suing a particular defendant.

The views expressed in this letter are my personal views, and may or may not reflect those of the Executive Committee.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'Klug', written in a cursive style.

Kenneth M. Klug

2/23/87

AMENDMENTS TO ASSEMBLY BILL 708 (SUPERVISED ADMINISTRATION)

AMENDMENT 1

On page 69, line 40, strike out "pursuant to Section 9611"

AMENDMENT 2

On page 70, line 9, strike out "For the purposes of this subdivision,"

AMENDMENT 3

On page 70, line 25, after "suffer" insert:
great or

AMENDMENT 4

On page 70, line 37, strike out "in this part"

AMENDMENT 5

On page 71, line 24, strike out "714" and insert:
9257

AMENDMENT 6

On page 72, line 6, strike out "take action" and insert:
exercise a power

AMENDMENT 7

On page 72, line 8, strike out "the act of a majority is valid"
and insert:
a majority must concur to exercise a power

AMENDMENT 8

On page 72, line 11, after "representatives" insert:
as if they are the only personal representatives

AMENDMENT 9

On page 72, line 22, strike out "under this division" and insert:
by one or more of the other personal representatives or by any other
person

AMENDMENT 10

On page 72, lines 26 and 27, strike out "this division provides a
procedure" and insert:
a procedure is provided by statute

AMENDMENT 11

On page 73, line 37, strike out ", the personal representative"

AMENDMENT 12

On page 73, line 38, strike out "Has" and insert:
The personal representative has

AMENDMENT 13

On page 73, line 38, after "shall" strike out the comma

AMENDMENT 14

On page 73, line 39, after the first "of" insert a comma

AMENDMENT 15

On page 74, line 4, strike out "Is" and insert:
The personal representative is

AMENDMENT 16

On page 74, line 23, strike out "not criminally or civilly" and
insert:

not:

- (1) Criminally liable for so doing.
- (2) Civilly

AMENDMENT 17

On page 75, strike out line 2 and insert:
and the personal representative's attorney

AMENDMENT 18

On page 75, line 25, strike out "so" and insert:
otherwise

AMENDMENT 19

On page 75, line 40, strike out "cost" and insert:
costs

AMENDMENT 20

On page 76, line 12, after "unless" insert:
(1)

AMENDMENT 21

On page 76, line 14, strike out ", and" and insert:
and (2)

AMENDMENT 22

On page 76, line 21, strike out "attorneys'" and insert:
attorney's

AMENDMENT 23

On page 76, line 24, strike out "The" and insert:
After all the debts of the decedent have been paid, the

AMENDMENT 24

On page 76, lines 24 and 25, strike out ", after all the debts of
the decedent have been paid,"

AMENDMENT 25

On page 76, line 28, strike out the comma

AMENDMENT 26

On page 76, line 38, strike out "general or limited"

AMENDMENT 27

On page 77, line 6, strike out "assets" and insert:
the property

AMENDMENT 28

On page 77, line 7, strike out the comma

AMENDMENT 29

On page 77, lines 20 and 21, strike out "deposited under this section"

AMENDMENT 30

On page 77, line 25, strike out "properly" and insert:
property

AMENDMENT 31

On page 77, line 31, strike out "the"

AMENDMENT 32

On page 77, line 32, after the first "company" insert:
by a personal representative

AMENDMENT 33

On page 78, line 29, strike out "moneys" and insert:
money

AMENDMENT 34

On page 80, line 27, strike out "any money" and strike out lines 28 to 31, inclusive, and insert:

the personal representative purchase any of the following from an insurer admitted to do business in this state:

(1) An annuity granted by the will to a devisee named in the will.

(2) An annuity to provide for the payment of an amount granted by the will to a devisee named in the will.

AMENDMENT 35

On page 80, lines 35 and 36, strike out "that is nontransferable except by testate or intestate succession from the decedent"

AMENDMENT 36

On page 81, strike out lines 7 and 8 and insert:
as provided in Section 1220.

AMENDMENT 37

On page 81, strike out lines 18 to 22, inclusive, and insert:
Notice of the hearing on the petition shall be given as provided in Section 1220.

AMENDMENT 38

On page 81, line 23, strike out "(2)" and insert:
(c)

AMENDMENT 39

On page 81, strike out lines 30 to 32, and insert:
may pass by delivery.

AMENDMENT 40

On page 82, line 16, strike out "pesonal" and insert:
personal

AMENDMENT 41

On page 84, line 2, strike out "10" and insert:
15

AMENDMENT 42

On page 84, line 7, strike out "institute" and insert:
commence

AMENDMENT 43

On page 84, line 9, strike out "instituted" and insert:
commenced

AMENDMENT 44

On page 84, strike out lines 19 to 22, inclusive, and insert:
representative may dispose of or abandon tangible personal property

AMENDMENT 45

On page 84, line 35, after "Each" insert:
known

AMENDMENT 46

On page 84, strike out lines 37 and 38 and insert:
(2) If the estate is an intestate estate, each known heir of the
devisee whose interest in the estate is affected by the proposed action.

AMENDMENT 47

On page 85, line 2, after "it" insert:
and its interest in the estate is affected by the proposed action

AMENDMENT 48

On page 85, line 11, strike out "first-class"

AMENDMENT 49

On page 85, strike out lines 12 and 13, and insert:
address. If the

AMENDMENT 50

On page 85, strike out lines 22 and 23, and insert:
9783. A person described in Section 9782 may deliver or mail a

AMENDMENT 51

On page 85, line 27, after "abandoned" insert:
. Subject to Section 9788, after receipt of the written objection,

AMENDMENT 52

On page 86, line 4, after "order" insert:
(1)

AMENDMENT 53

On page 86, line 5, strike out ", or" and insert:
or (2)

AMENDMENT 54

On page 86, strike out lines 8 to 11, inclusive, and insert:

(c) The personal representative is deemed to have notice of the restraining order if it is served upon the personal representative in the same manner as is provided for in Section 415.10 or 415.30 of the Code of Civil Procedure, or in the manner authorized by the court, before the date specified in the notice as the date on or after which the property will be disposed of or abandoned.

AMENDMENT 55

On page 86, line 19, strike out "or" and insert:
, or who

AMENDMENT 56

On page 86, line 21, after "section" insert a comma

AMENDMENT 57

On page 86, line 25, strike out "who has been given" and insert:
described in Section 9782 who receives

AMENDMENT 58

On page 88, line 31, strike out "raised" and insert:
borrowed

AMENDMENT 59

On page 89, line 3, strike out "the"

AMENDMENT 60

On page 89, line 38, strike out the comma

AMENDMENT 61

On page 89, strike out lines 39 and 40

AMENDMENT 62

On page 90, line 1, strike out "directed" and insert:
and deliver the mortgage or deed of trust, or execute and deliver the
instrument creating the security interest

AMENDMENT 63

On page 90, line 5, after "representative" insert:
and shall be acknowledged by the personal representative if the
instrument creates a lien on real property

AMENDMENT 64

On page 90, line 13, strike out ", interest, and estate" and
insert:
and interest

AMENDMENT 65

On page 90, line 15, strike out "or prior thereto"

AMENDMENT 66

On page 90, line 19, strike out "adminster" and insert:
administer

AMENDMENT 67

On page 90, line 30, strike out "in pursuance" and insert:
pursuant

AMENDMENT 68

On page 91, line 21, strike out "Institute" and insert:
Commence

AMENDMENT 69

On page 92, line 13, strike out "maintain" and insert:
bring

AMENDMENT 70

On page 92, line 19, strike out "instituted and maintained" and insert:
brought

AMENDMENT 71

On page 92, lines 21 and 22, strike out "institute and maintain" and insert:
bring

AMENDMENT 72

On page 92, strike out lines 25 to 28, inclusive

AMENDMENT 73

On page 93, line 5, strike out "running"

AMENDMENT 74

On page 93, line 22, after "9832." insert:
(a)

AMENDMENT 75

On page 94, after line 40, insert:
9838. (a) If an order made under Section 9837 authorizes a compromise or settlement that requires the transfer of real property of the estate, the personal representative shall execute a conveyance of the real property to the person entitled thereto under the compromise or settlement. The conveyance shall refer to the order authorizing the compromise or settlement and directing that the conveyance be executed. A certified copy of the order shall be recorded in the office of the recorder of the county in which the real property or any portion thereof lies.

(b) A conveyance made in compliance with the court order authorizing the compromise or settlement and directing the conveyance to be executed vests in the person to whom the property is transferred both of the following:

(1) All the right, title, and interest which the decedent had in the property at the time of the decedent's death.

(2) Any other or additional right, title, or interest in the property acquired by the estate of the decedent, by operation of law or otherwise, prior to the transfer.

9839. If the personal representative pays a claim for less than its full amount, the personal representative's accounts may be credited only for the amount actually paid.

AMENDMENT 76

On page 95, line 15, strike out "by clear and convincing evidence"

AMENDMENT 77

On page 95, between lines 18 and 19, insert:

(c) The court shall make an order under this section only if the advantage to the estate of accepting the deed is shown by clear and convincing evidence.

AMENDMENT 78

On page 96, line 18, strike out the comma

AMENDMENT 79

On page 97, line 2, after "Each" insert:

known

AMENDMENT 80

On page 97, strike out lines 4 and 5 and insert:

(2) If the estate is an intestate estate, each known heir of the decedent whose interest in the estate is affected by the proposed purchase.

AMENDMENT 81

On page 97, line 12, strike out "such" and insert:

these

AMENDMENT 82

On page 98, line 1, strike out "or" and insert:
, or the

AMENDMENT 83

On page 98, line 2, after "property" insert a comma

AMENDMENT 84

On page 98, lines 19 and 20, strike out ", and the court may enforce its execution by process"

AMENDMENT 85

On page 98, line 26, after "REPRESENTATIVE" insert:
OR PERSONAL REPRESENTATIVE'S ATTORNEY

AMENDMENT 85.1

On page 98, lines 28 and 29, strike out "no personal representative" and insert:
neither the personal representative nor the personal representative's attorney

AMENDMENT 85.2

On page 98, line 34, after "representative" insert:
or the personal representative's attorney

AMENDMENT 85.3

On page 98, line 38, strike out "to the personal representative"

AMENDMENT 86

On page 98, strike out lines 39 and 40 and insert:
died testate or (2) if the estate is an intestate estate, all of the known heirs of the decedent whose interest in the estate is affected by the proposed purchase.

AMENDMENT 87

On page 99, strike out lines 20 and 21 and insert:

(2) If the estate is an intestate estate, each known heir of the decedent whose interest in the estate is affected by the proposed purchase.

AMENDMENT 87.1

On page 99, line 34, after "representative" insert:
or the personal representative's attorney

AMENDMENT 87.2

On page 99, line 40, after "representative" insert:
or the personal representative's attorney

AMENDMENT 88

On page 101, strike out lines 18 and 19 and insert:
securities as defined in Section 10200 for different securities, the

AMENDMENT 89

On page 102, line 15, strike out "in both" and insert:
both in

AMENDMENT 90

On page 102, line 39, strike out "20" and insert:
15

AMENDMENT 91

On page 103, line 20, after "royalty" insert:
or both

AMENDMENT 92

On page 105, line 29, strike out the comma

AMENDMENT 93

On page 107, line 35, strike out "The" and insert:
Subject to the limitations, conditions, and requirements of this chapter, the

AMENDMENT 94

On page 107, line 38, strike out "When" and insert:
Where

AMENDMENT 95

On page 107, line 40, strike out "When" and insert:
Where

AMENDMENT 96

On page 108, line 2, strike out "When" and insert:
Where

AMENDMENT 97

On page 108, line 4, strike out "When" and insert:
Where

AMENDMENT 98

On page 108, line 11, strike out "When" and insert:
Where

AMENDMENT 99

On page 108, line 13, strike out "When" and insert:
Where

AMENDMENT 100

On page 108, line 15, strike out "When" and insert:
Where

AMENDMENT 101

On page 108, lines 20 and 21, strike out "as provided in Section 1242" and insert:
at least five days before the hearing

AMENDMENT 102

On page 109, strike out lines 1 and 2 and insert:
(a) Use discretion as to which property to sell first.

AMENDMENT 103

On page 109, line 4, strike out "or estate"

AMENDMENT 104

On page 109, line 16, after "sale" insert:
of the assets as a unit

AMENDMENT 105

On page 112, lines 13 and 14, strike out "in connection with a sale of property"

AMENDMENT 106

On page 112, line 15, after "expenses" insert:
in connection with a sale of property

AMENDMENT 107

On page 114, line 31, strike out the third "of" and insert:
on

AMENDMENT 108

On page 115, line 31, strike out "Whether" and insert:
(a) Subject to subdivision (b), whether

AMENDMENT 109

On page 115, between lines 36 and 37, insert:
(b) If the auctioneer has a contract with the personal representative, the amount of the compensation of the auctioneer in connection with the sale of property shall not exceed the amount provided for in the contract.

AMENDMENT 110

On page 116, strike out lines 14 and 15, and insert:
may be sold or may be surrendered for redemption or conversion. Title to the securities sold or surrendered as authorized by an order obtained under this section passes without the need for

AMENDMENT 111

On page 116, line 26, strike out the comma

AMENDMENT 112

On page 117, line 39, strike out "when" and insert:
where

AMENDMENT 113

On page 120, line 7, strike out "10500" and insert:
10503

AMENDMENT 114

On page 120, line 14, strike out "10500" and insert:
10503

AMENDMENT 115

On page 120, line 29, strike out "By posting" and insert:
Posting

AMENDMENT 116

On page 120, line 30, strike out ", for"

AMENDMENT 116

On page 120, line 37, strike out "By publication" and insert:
Publication

AMENDMENT 117

On page 121, line 6, strike out "for" and insert:
to

AMENDMENT 118

On page 122, line 31, strike out "in all"

AMENDMENT 119

On page 122, line 32, after "10255." insert:
(a)

AMENDMENT 120

On page 122, between lines 35 and 36, insert:

(b) In the case of a private sale of personal property, the bids or offers shall be in writing and shall be left at the place designated in the notice of sale, or be delivered to the personal representative personally, at any time after the first publication or posting of notice of sale and before the making of the sale.

AMENDMENT 121

On page 123, line 1, strike out "at" and insert:

as

AMENDMENT 122

On page 123, line 33, strike out "when" and insert:

where

AMENDMENT 123

On page 123, line 34, strike out "for the best interests" and insert:
to the advantage

AMENDMENT 124

On page 124, line 1, strike out the comma

AMENDMENT 125

On page 124, line 28, strike out "10500" and insert:
10503

AMENDMENT 126

On page 124, line 30, after "purchaser" insert:
, notwithstanding that the property is directed by the will to be sold or authority is given in the will to sell the property

AMENDMENT 127

On page 125, line 2, strike out "of the estate" and insert:
to the estate and the benefit to the interested persons

AMENDMENT 128

On page 125, line 5, strike out "advantage of the estate" and
insert:
the advantage to the estate and the benefit to the interested persons

AMENDMENT 129

On page 125, line 16, strike out "in the county" and insert:
is a resident within the state at the time of the hearing

AMENDMENT 130

On page 125, line 27, strike out "for"

AMENDMENT 131

On page 125, line 28, strike out "increased bid is for not less
than" and insert:
new bid is at least

AMENDMENT 132

On page 126, line 13, strike out "10500" and insert:
10503

AMENDMENT 133

On page 127, line 12, strike out "posting shall be for at least
five days" and insert:
notice of sale shall be posted at least five days before the sale

AMENDMENT 134

On page 128, line 22, after "notice" insert:
of sale

AMENDMENT 135

On page 128, line 25, strike out "the" and insert:
any

AMENDMENT 136

On page 128, line 27, strike out "10500" and insert:
10503

AMENDMENT 137

On page 128, line 40, strike out the comma

AMENDMENT 138

On page 130, line 3, strike out "of" and insert:
to

AMENDMENT 139

On page 130, line 14, after the first "the" insert:
real

AMENDMENT 140

On page 131, lines 9 and 10, strike out "under Sections 10300 to
10303, inclusive"

AMENDMENT 140.5

On page 131, line 11, strike out the comma

AMENDMENT 141

On page 132, strike out lines 23 to 31, inclusive, and insert:

(c) A conveyance made in compliance with the court order
confirming the sale and directing the conveyance to be executed vests
in the purchaser both of the following:

(1) All the right, title, and interest which the decedent had in
the property at the time of the decedent's death.

(2) Any other or additional right, title, or interest in the
property acquired by the estate of the decedent, by operation of law or
otherwise, prior to the sale.

(d) An assignment made in compliance with the court order
confirming the sale of the decedent's interest under a contract for the

purchase of real property by the decedent vests in the purchaser all the right, title, and interest of the estate, or of the persons entitled to the interest of the decedent, at the time of sale in the property assigned. The purchaser of the decedent's interest under the contract for the purchase of the real property by the decedent has the same rights and remedies against the vendor of the property as the decedent would have had if living.

AMENDMENT 142

On page 132, line 33, strike out "or notes"

AMENDMENT 143

On page 132, line 36, strike out "their payment" and insert:
payment of the note

AMENDMENT 144

On page 133, line 17, after "Default" insert a semicolon

AMENDMENT 145

On page 133, between lines 17 and 18, insert:
Liability of Defaulting Purchaser for Damages

AMENDMENT 146

On page 133, line 26, strike out "the" and insert:

a

AMENDMENT 147

On page 133, line 27, strike out "if his or her" and insert:
whose

AMENDMENT 148

On page 133, line 28, strike out "to him or her"

AMENDMENT 149

On page 134, line 19, strike out "the" and insert:

a

AMENDMENT 150

On page 134, line 20, strike out "if his or her" and insert:
whose

AMENDMENT 151

On page 134, line 21, strike out "to him or her"

AMENDMENT 152

On page 136, line 11, after "sale" insert:
and to discharge the lienholder's lien