

Memorandum 87-15

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

The Commission reviewed the draft of the Recommendation Relating to the Independent Administration of Estates Act after the text of the proposed legislation contained in that recommendation had been sent to the Legislative Counsel. Accordingly, Assembly Bill 708 does not include the changes made when the recommendation was approved for printing.

The amendments attached will make Assembly Bill 708 conform to the proposed legislation contained in the Commission's approved recommendation. It is difficult to review these amendments because they are extensive. It would be much easier to review the amendments after the bill has been amended and reprinted. The staff plans to review the reprinted bill for consistency and to discover and correct any technical defects. We believe, however, that the attached amendments are satisfactory. If staff resources permit, we will reproduce a copy of the Commission's Recommendation as approved for printing, and you can review the proposed legislation as set out in the Recommendation. The amended bill will contain the proposed legislation as set out in the Recommendation.

At the March 1987 meeting, interested persons can request that the Commission review any policy decisions reflected in the proposed legislation as it would be amended by the attached amendments. Also, please bring to the attention of the Commission any technical defects in the bill that are not corrected by the attached amendments or any technical defects in the attached amendments.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

AMENDMENTS TO ASSEMBLY BILL 708 (INDEPENDENT ADMINISTRATION PORTION)

AMENDMENT 1

On page 137, line 16, after "judicial" insert"
order,

AMENDMENT 2

On page 137, line 17, strike out "otherwise"

AMENDMENT 3

On page 137, lines 20 and 21, strike out "independent
administration"

AMENDMENT 4

On page 137, lines 24 and 25, strike out "independent
administration"

AMENDMENT 5

On page 137, line 40, after "with" insert:
, or has been granted,

AMENDMENT 5.5

On page 138, line 17, strike out "as" and insert:
at

AMENDMENT 6

On page 138, lines 31 and 32, strike out "the independent
administration" and insert:
that existing

AMENDMENT 7

On page 138, lines 34 and 35, strike out "the independent
administration" and insert:
that existing

AMENDMENT 8

On page 139, line 4, strike out "his or her appointment" and insert:

appointment of the personal representative

AMENDMENT 9

On page 139, line 7, strike out "independent administration authority" and insert:

authority to administer the estate under this part

AMENDMENT 10

On page 139, line 8, strike out "independent administration authority" and insert:

authority to administer the estate under this part

AMENDMENT 11

On page 139, line 20, strike out the first "the" and insert:
any

AMENDMENT 12

On page 139, line 21, strike out "not the" and insert:
the person is not a

AMENDMENT 13

On page 139, line 22, strike out "to"

AMENDMENT 14

On page 139, line 33, strike out "Before taking some" and insert:
However, before taking certain

AMENDMENT 15

On page 139, line 34, strike out "prior"

AMENDMENT 16

On page 139, line 35, after "persons" insert:
unless they have waived notice or have consented to the proposed action

AMENDMENT 17

On page 37, strike out "appear and"

AMENDMENT 18

On page 139, line 40, after "objection" insert:
or by appearing at the hearing and making the objection

AMENDMENT 19

On page 140, lines 5 and 6, strike out "independent administration"

AMENDMENT 20

On page 140, line 7, strike out "independent administration"

AMENDMENT 21

On page 140, line 11, strike out "independent administration"

AMENDMENT 22

On page 140, line 20, after "10453." insert:

(a)

AMENDMENT 22.5

On page 140, lines 21 and 22, strike out "independent administration"

AMENDMENT 23

On page 140, line 27, after "all" insert:
of

AMENDMENT 24

On page 140, strike out lines 30 to 40, inclusive

AMENDMENT 25

On page 141, strike out lines 1 to 11, inclusive, and insert:

(b) If the personal representative is otherwise required to file a bond and has limited authority, the court, in its discretion, shall fix

the amount of the bond at not more than the estimated value of the personal property and the estimated value of the probable annual gross income of all of the property belonging to the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

10454. (a) Any interested person may file a petition requesting that the court make either of the following orders:

(1) An order revoking the authority of the personal representative to continue administration of the estate under this part.

(2) An order revoking the full authority of the personal representative to administer the estate under this part and granting the personal representative limited authority to administer the estate under this part.

(b) The petition shall set forth the basis for the requested order.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220. In addition, the personal representative shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing. Service on the personal representative shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

(d) If the court determines that good cause has been shown, the court shall make an order revoking the authority of the personal representative to continue administration of the estate under this part. Upon the making of the order, new letters shall be issued without the endorsement described in subdivision (c) of Section 10452.

(e) If the personal representative was granted full authority and the court determines that good cause has been shown, the court shall make an order revoking the full authority and granting the personal representative limited authority. Upon the making of the order, new letters shall be issued with the endorsement described in subdivision (c) of Section 10452 that is required where the authority granted is limited authority.

AMENDMENT 26

On page 141, strike out lines 36 and 37, and insert:

(a) Allowance of the personal representative's commissions.

AMENDMENT 27

On page 142, strike out lines 1 to 15, inclusive, and insert:

(e) Where the personal representative has been granted limited authority:

(1) Sale of real property.

(2) Exchange of real property.

(3) Grant of an option to purchase real property.

(4) Borrow money with the loan secured by an encumbrance upon real property.

(f) Sale of property of the estate to the personal representative or to the attorney for the personal representative.

(g) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative.

(h) Grant an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.

(i) Allow, pay, or compromise a claim of the personal representative, or the attorney for the personal representative, against the estate.

AMENDMENT 28

On page 142, line 18, after "representative" insert:
or against the attorney for the personal representative

AMENDMENT 29

On page 142, line 20, after "representative" insert;
, or the attorney for the personal representative,

AMENDMENT 29.5

On page 142, line 21, strike out "running"

AMENDMENT 30

On page 142, line 22, after "10502." insert:

(a)

AMENDMENT 31

On page 142, line 23, strike out "unless restricted by the will,"

AMENDMENT 32

On page 142, between lines 28 and 29, insert:

(b) The will may restrict the powers that the personal representative may exercise under this part.

AMENDMENT 33

On page 142, line 39, strike out "and"

AMENDMENT 34

On page 142, line 40, strike out ")" and insert:

, and court examination into the necessity for the sale, advantage to the estate and benefit to interested persons, and efforts of the personal representative to obtain the highest and best price for the property reasonably attainable), and the requirements applicable to court confirmation of sales of personal property,

AMENDMENT 35

On page 143, strike out lines 9 to 15, inclusive

AMENDMENT 36

On page 143, line 16, strike out "10513." and insert:
10511.

AMENDMENT 37

On page 143, line 16, after "representative" insert"
who has full authority

AMENDMENT 38

On page 143, line 18, strike out "10514." and insert:
10512.

AMENDMENT 39

On page 143, between lines 25 and 26, insert:

10513. The personal representative has the power to abandon tangible personal property where the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.

AMENDMENT 40

On page 143, line 26, strike out "10515. The" and insert:

10514. (a) Subject to subdivision (b), the

AMENDMENT 41

On page 143, line 28, strike out "(a)" and insert:

(1)

AMENDMENT 42

On page 143, line 29, strike out "(b)" and insert:

(2)

AMENDMENT 43

On page 143, between lines 30 and 31, insert:

(b) Only a personal representative who has full authority has the power to borrow money with the loan secured by an encumbrance upon real property.

AMENDMENT 44

On page 143, line 31, strike out "10516." and insert:

10515.

AMENDMENT 45

On page 143, line 31, after "representative" insert:

who has full authority

AMENDMENT 46

On page 143, line 34, strike out "10517." and insert:

10516.

AMENDMENT 47

On page 143, line 39, strike out "10518." and insert:
10517.

AMENDMENT 48

On page 144, strike out lines 3 to 10, inclusive, and insert:
10518. The personal representative has the power to determine any
of the following:

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

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

AMENDMENT 49

On page 144, line 11, strike out "10520." and insert:
10519.

AMENDMENT 50

On page 144, line 20, strike out "the need to give" and insert:
giving

AMENDMENT 51

On page 144, lines 26 and 27, strike out "the need to give" and
insert:
giving

AMENDMENT 52

On page 144, line 31, strike out "the provision of this chapter"
and insert:
a provision of Chapter 3 (commencing with Section 10500)

AMENDMENT 53

On page 144, line 39, strike out "the need to give" and insert:
giving

AMENDMENT 54

On page 145, line 4, strike out "(1)"

AMENDMENT 55

On page 145, strike out lines 5 to 7, inclusive, and insert:
is not to be fully performed within two years, except that the personal representative is not required to comply with those requirements if the personal representative has the unrestricted right under the contract to terminate the contract within two years.

AMENDMENT 56

On page 145, between lines 14 and 15, insert:

10533. (a) The personal representative has the power to do all of the following:

(1) Deposit money belonging to the estate in an insured account in a financial institution in this state.

(2) Invest money of the estate in any one or more of the following:

(A) Direct obligations of the United States maturing not later than one year from the date of making the investment.

(B) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.

(C) Units of a common trust fund described in Section 1564 of the Financial Code. The common trust fund shall have as its objective investment primarily in short term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.

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

(3) Invest money of the estate in any manner provided by the will.

(b) Except as provided in subdivision (c), the personal representative may exercise the powers described in subdivision (a) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative exercises the power to make any investment pursuant to the power granted by subdivision (a)(2)(D) or subdivision (a)(3), except that the personal representative may invest in direct obligations of the United States maturing not later than one year from the date of making the investment without complying with the requirements of Chapter 4 (commencing with Section 10580).

AMENDMENT 57

On page 145, line 15, strike out "10533. (a) Subject to" and insert:

10534. (a) Subject to the partnership agreement and

AMENDMENT 58

On page 145, line 31, strike out "the need to give" and insert:
giving

AMENDMENT 59

On page 146, line 2, strike out "10534." and insert:
10535.

AMENDMENT 60

On page 146, line 5, strike out "the need to give" and insert:
giving

AMENDMENT 61

On page 146, line 17, strike out "10535." and insert:
10536.

AMENDMENT 62

On page 146, line 29, strike out "the need to give" and insert:
giving

AMENDMENT 63

On page 147, line 3, strike out "10536." and insert:
10537.

AMENDMENT 64

On page 147, lines 12 and 13, strike out "the need to give" and
insert:
giving

AMENDMENT 65

On page 147, strike out lines 17 to 19, inclusive, and insert:
exchange.

AMENDMENT 66

On page 147, line 28, after "surrendered" insert:
to the issuer

AMENDMENT 67

On page 147, line 30, strike out "10537." and insert:
10538.

AMENDMENT 68

On page 147, line 34, after "grant" insert:
to the same broker

AMENDMENT 69

On page 147, line 39, strike out "the need to give" and insert:
giving

AMENDMENT 70

On page 148, line 4, after "grants" insert:
to the same broker

AMENDMENT 71

On page 148, line 14, strike out "the need to give" and insert:
giving

AMENDMENT 72

On page 148, strike out lines 24 to 40, inclusive

AMENDMENT 73

On page 149, strike out line 1 and insert:

10552. The personal representative has the power to do all of the following:

(a) Allow, pay, reject, or contest any claim by or against the estate.

(b) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate.

(c) Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

10553. The personal representative has the power to do all of the following:

(a) Commence and maintain actions and proceedings for the benefit of the estate.

(b) Defend actions and proceedings against the decedent, the personal representative, or the estate.

AMENDMENT 74

On page 149, line 2, strike out "10555." and insert:

10554.

AMENDMENT 75

On page 149, line 4, strike out "running"

AMENDMENT 76

On page 149, line 6, strike out "10556." and insert:

10555.

AMENDMENT 77

On page 149, strike out lines 9 to 15, inclusive, and insert:

10556. The personal representative has the power to pay all of

the following:

(a) Taxes and assessments.

(b) Expenses incurred in the collection, care, and administration of the estate.

10557. The personal representative has the power to purchase any of the following from an insurer admitted to do business in this state:

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

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

AMENDMENT 78

On page 149, line 16, strike out "10559." and insert:
10558.

AMENDMENT 79

On page 149, line 17, strike out "and" and insert a period

AMENDMENT 80

On page 149, strike out lines 18 and 19

AMENDMENT 81

On page 149, line 20, strike out "10560." and insert:
10559.

AMENDMENT 82

On page 149, line 25, strike out "10561." and insert:
10560.

AMENDMENT 83

On page 149, strike out lines 28 to 30, inclusive, and insert:
security may pass by delivery.

AMENDMENT 84

On page 149, line 31, strike out "10562" and insert:
10561.

AMENDMENT 85

On page 149, strike out lines 33 to 36, inclusive

AMENDMENT 86

On page 149, line 37, strike out "10564." and insert:
10562.

AMENDMENT 87

On page 149, line 40, strike out "10565." and insert:
10563.

AMENDMENT 88

On page 150, line 4, strike out "10566." and insert:
10564.

AMENDMENT 89

On page 150, line 35, after "action" insert:
that

AMENDMENT 90

On page 151, strike out lines 2 and 3 and insert:
(b) If the estate is an intestate estate, each known heir of the
decendent whose interest in the estate is affected by the proposed
action.

AMENDMENT 91

On page 151, line 7, after "it" insert:
and its interest in the estate is affected by the proposed action

AMENDMENT 92

On page 151, strike out lines 35 to 40, inclusive

AMENDMENT 93

On page 152, strike out lines 1 to 3, inclusive

AMENDMENT 94

On page 152, line 4, strike out "(c)" and insert:

(b)

AMENDMENT 95

On page 152, strike out lines 39 and 40

AMENDMENT 96

On page 153, strike out lines 1 to 14, inclusive, and insert:

10586. The notice of proposed action shall be mailed or personally delivered to each person required to be given notice of proposed action not less than 15 days before the date specified in the notice of proposed action on or after which the proposed action is to be taken. If mailed, the notice of proposed action shall be addressed to the person at the person's last-known address. Sections 1215 and 1216 apply to the mailing or delivery of the notice of proposed action.

AMENDMENT 97

On page 153, line 35, after "action" insert:

is one that

AMENDMENT 98

On page 154, line 8, after "manner" insert:

as is

AMENDMENT 99

On page 155, line 3, after "person" insert:

described in Section 10581

AMENDMENT 100

On page 155, line 18, after "given" insert a comma

AMENDMENT 101

On page 155, line 22, strike out "personal" and insert:

legal

AMENDMENT 102

On page 155, line 24, strike out "personal" and insert:
legal

AMENDMENT 103

On page 155, line 26, strike out "personal" and insert:
legal

AMENDMENT 104

On page 155, line 39, strike out "10589, and 10590" and insert:
and 10589

AMENDMENT 105

On page 156, line 4, after "persons" insert:
who,

AMENDMENT 106

On page 156, line 5, after "representative" delete "who" and
insert a comma

AMENDMENT 107

On page 156, strike out lines 13 to 19, inclusive, and insert:
10592. (a) In a case where notice of proposed action is required
by this chapter, it is grounds for removal of the personal
representative from office unless the personal representative does one
of the following:

(1) Gives notice of proposed action as provided in this chapter.
(2) Obtains a waiver of notice of proposed action as provided in
this chapter.

(3) Obtains a consent to the proposed action as provided in this
chapter.

(b) It is grounds for removal of the personal representative from
office if the personal representative takes a proposed action in
violation of the provisions of Section 10589.

AMENDMENT 108

On page 156, line 35, strike out "typed in all capital letters or"

AMENDMENT 109

On page 156, line 36, strike out "bold-face" and insert:
boldface

AMENDMENT 110

On page 156, line 37, after "thereof" insert:
or typed in all capital letters

AMENDMENT 111

On page 157, strike out line 4

AMENDMENT 112

On page 158, strike out lines 4 to 9, inclusive, and insert:
YOU HAVE THE RIGHT TO REVOKE (CANCEL) THIS WAIVER AT ANY TIME. A
REVOCATION MUST BE IN WRITING AND IS NOT EFFECTIVE UNTIL IT IS

AMENDMENT 113

On page 158, strike out lines 14 to 16, inclusive, and insert:
1. The name of the personal representative of the estate of the
deceased and the address to which notices to the personal
representative may be delivered or mailed are:

AMENDMENT 114

On page 158, line 24, strike out "Check" and insert:
check

AMENDMENT 115

On page 159, strike out lines 6 to 22, inclusive