

## Memorandum 87-41

Subject: Study L - Assembly Bill 708 (As Amended)

Attached is a copy of Assembly Bill 708 (as amended in Senate June 15, 1987). You should review the amended bill and raise any questions you have for discussion at the meeting.

Additional amendments of a technical nature are attached as Exhibit 1 to this Memorandum. The amendments delete proposed Section 9821 (survival of actions) and add a new Section 573 which is the same in substance as proposed Section 9821 and existing Section 573. This will retain the existing number of Section 573 and avoid the need to make a number of conforming amendments in other codes that otherwise would be required to reflect the renumbering of the section from 573 to 9821. For additional discussion, see Memorandum 87-43 (Litigation Involving Decedent).

The provisions authorizing the personal representative to purchase an annuity should be reviewed by the Commission. Section 9733 on page 99 (supervised administration) and Section 10557 on page 175 (independent administration) authorize the personal representative to purchase an annuity "to satisfy a devise of an annuity or other direction in the will for payment of an amount to a devisee." Should this phrase be revised to read: "to satisfy a devise of an annuity or other direction in the will for ~~payment of an amount~~ periodic payments to a devisee"?

Additional amendments to Assembly 708 are suggested in Memorandum 87-46 and Memorandum 87-47, both of which will be considered at the meeting.

Also attached to this Memorandum is a draft report containing Comments that supplement or replace Comments in the Commission recommendations that would be effectuated by the enactment of Assembly Bill 708. We do not plan to go through these Comments page by page at the meeting. Some of the Comments only correct a typographical error or revise a section reference. Please raise any questions you have on

the revised Comments for discussion at the meeting. Attached to this Memorandum as Exhibit 2 are Comments to Probate Code Section 573 (repealed) and Probate Code Section 573 (added). We will add these Comments to the draft report.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

## Exhibit 1

AMENDMENTS TO ASSEMBLY BILL 708 AS AMENDED IN SENATE JUNE 15, 1987

## AMENDMENT 1

In line 15 of the title, after "of," insert:  
Chapter 8 (commencing with Section 573) and

## AMENDMENT 2

On page 22, between lines 17 and 18, insert:  
SEC. 35.5. Chapter 8 (commencing with Section 573) is added to  
Division 3 of the Probate Code, to read:

## CHAPTER 8. SURVIVAL OF ACTIONS

573. (a) Except as provided in this section, no cause of action is lost by reason of the death of any person, but may be maintained by or against the person's personal representative.

(b) In an action brought under this section against a personal representative, all damages may be awarded which might have been recovered against the decedent had the decedent lived except damages awardable under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.

(c) Where a person having a cause of action dies before judgment, the damages recoverable by his or her personal representative are limited to the loss or damage the decedent sustained or incurred prior to death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived but not including any damages for pain, suffering, or disfigurement.

(d) This section applies where a loss or damage occurs simultaneously with or after the death of a person who would have been liable for the loss or damage if his or her death had not preceded or occurred simultaneously with the loss or damage.

(e) Nothing in this section shall be construed as affecting the assignability of causes of action.

**AMENDMENT 3**

On page 48, line 40, strike out "(a)" and insert:

(b)

**AMENDMENT 4**

On page 110, strike out lines 27 to 40, inclusive.

**AMENDMENT 5**

On page 111, strike out lines 1 to 14, inclusive.

**AMENDMENT 6**

On page 111, line 28, strike out "RENEWAL OR" and insert:  
RENEWAL, OR

**AMENDMENT 7**

On page 207, line 34, strike out "Seciton" and insert:  
Section

Exhibit 2

ADDITIONAL COMMENTS TO SECTIONS IN ASSEMBLY BILL 708

§ 573 (repealed). Survival of actions

Comment. Former Section 573 is restated in new Section 573 without substantive change.

§ 573 (added). Survival of actions

Comment. Section 573 restates former Section 573 without substantive change. See also Section 58 ("personal representative" defined).

**COMMUNICATION FROM  
CALIFORNIA LAW REVISION COMMISSION  
CONCERNING ASSEMBLY BILL 708**

Assembly Bill 708 was introduced to effectuate the following recommendations of the California Law Revision Commission: *Recommendation Relating to Supervised Administration of Decedent's Estate*, 19 Cal. L. Revision Comm'n Reports 5 (1988), *Recommendation Relating to Independent Administration of Estates Act*, 19 Cal. L. Revision Comm'n Reports 205 (1988), *Recommendation Relating to Notice in Guardianship and Conservatorship Proceedings*, 18 Cal. L. Revision Comm'n Reports 1793 (1986), *Recommendation Relating to Preliminary Provisions and Definitions of the Probate Code*, 18 Cal. L. Revision Comm'n Reports 1807 (1986), *Recommendation Relating to Notice in Probate Proceedings*, 19 Cal. L. Revision Comm'n Reports 357 (1988), *Recommendation Relating to Creditor Claims Against Decedent's Estate*, 19 Cal. L. Revision Comm'n Reports 299 (1988), *Recommendation Relating to Administration of Estates of Missing Persons* (April 1987), to be included in Annual Report (December 1987), and *Recommendation Relating to Marital Deduction Gifts* (April 1987), to be included in Annual Report (December 1987). See also *Comments to Conforming Revisions and Repeals*, 19 Cal. L. Revision Comm'n Reports 391 (1988).

The Comments contained in the Law Revision Commission recommendations to the various sections of the bill remain applicable except to the extent they are replaced or supplemented by the revised and new Comments set out below. Unless otherwise indicated, all of the Comments are to sections of the Probate Code.

**Corporations Code § 5230 (technical amendment). Duties and liabilities of directors of nonprofit public benefit corporation**

**Comment.** Subdivision (b) of Section 5230 is revised to correct a cross-reference.

**Corporations Code § 7230 (technical amendment). Duties and liabilities of directors of nonprofit mutual benefit corporation**

**Comment.** Subdivision (b) of Section 7230 is revised to correct a cross-reference.

**Corporations Code § 9240 (technical amendment). Duties and liabilities of directors of nonprofit religious corporation**

**Comment.** Subdivision (b) of Section 9240 is revised to correct a cross-reference.

**§ 58 (added). Personal representative**

**Comment.** Section 58 is new. Subdivision (a) is drawn from the first sentence of Section 1-201(30) of the Uniform Probate Code.

Subdivision (b) is drawn from Section 465 and former Section 700, and from the second sentence of Section 1-201(30) of the Uniform Probate Code. The term "general personal representative" is used in Sections 9050 (notice required), 9051 (time of notice), 9100 (claim period), 9103 (late claims), 9104 (amended or revised claim), 9154 (waiver of formal defects), and 11422 (payment of debts on court order).

**§ 203 (technical amendment). Notice in proceedings to establish death**

**Comment.** Former subdivision (a) of Section 203, which required the clerk to set the petition for hearing, is generalized in Section 1285.

Former subdivision (b) (1), which required the clerk to post notice of hearing, is omitted because it was in conflict with former Section 1200 which governed posted notice. Former subdivision (b) (2), which required notice by mail, is restated in new subdivision (a) without substantive change, except that 15 days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5.

The new notice provisions referred to in Section 203 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 233 (amended). Notice in proceedings to determine survival**

**Comment.** Section 233 is amended to conform to the new general notice and procedural provisions. See Sections 1200-1299.

The cross-reference to the section governing the mailing of notice of hearing is revised to refer to Section 1220. Fifteen days'

notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The provision that excuses giving notice to a person who joins in the petition is generalized in Section 1201. Subdivision (b) is revised by adding the reference to "known" devisees. This revision conforms to Section 1206 (notice to known heirs or devisees). Subdivision (c) is amended to revise the cross-reference to the procedure for requesting special notice.

The new notice provisions referred to in Section 233 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

The references to "executor or administrator" in this section are replaced by references to "personal representative." This is a nonsubstantive change. See Section 58 ("personal representative" defined). The former provision that required the clerk to set the petition for hearing is generalized in Section 1285. Former subdivision (c) is deleted because it is unnecessary in light of the general provision in Section 1260 (proof of giving notice of hearing required).

**§ 277 (technical amendment). Disclaimer by guardian or personal representative**

**Comment.** Subdivision (b) of Section 277 is amended to revise a cross-reference to the Independent Administration of Estates Act. Subdivision (e)(2) is amended to revise a cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. Subdivision (e)(4) is deleted because it is unnecessary in light of the general provision in Section 1202 (additional notice on court order).

The new notice provisions referred to in Section 277 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 328 (amended). Notice of hearing on petition for probate**

**Comment.** The 10-day notice period in the first sentence of Section 328 is increased to 15 days to conform to the general notice period provided in Section 1220. The cross-reference to the procedure for requesting special notice is revised. See Sections 1250-1252. The description of the procedure for



requesting special notice in subdivision (a) is deleted because it is incomplete. The recipient of the notice should refer to Section 1250.

The new notice provisions referred to in Section 328 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

The third paragraph, which defined "post office," is deleted because it is unnecessary. See Section 1215(c).

**§ 333 (technical amendment). Form of Notice of Death and Petition to Administer Estate; publication**

**Comment.** Section 333 is revised to conform to the creditor claims procedure, Part 4 (commencing with Section 9000) of Division 7. The forms provided in subdivisions (b) and (d) are amended to revise cross-references to the procedure for requesting special notice. See Sections 1250-1252. The descriptions of the procedure for requesting special notice in subdivisions (b) and (d) are deleted because they are incomplete. The recipient of the notice should refer to Section 1250.

Subdivision (e) is new and recognizes that Section 10451(c) prescribes a statement that must be included in the notice of hearing when the petition requests authority to administer the estate under the Independent Administration of Estates Act.

The new notice provisions referred to in Section 333 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 441 (technical amendment). Notice of hearing on petition for letters of administration**

**Comment.** Section 441 is amended to do the following: The 10-day notice period in the second sentence is increased to 15 days to conform to the general notice period provided in Section 1220. The last sentence is amended to revise the cross-reference to the procedure for requesting special notice. See Sections 1250-1252. The description of the procedure for requesting special notice in the last sentence is deleted because it is incomplete. The recipient of the notice should refer to Section 1250.

The new notice provisions referred to in Section 441 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 553.3 (technical amendment). Notice of hearing on reduction of bond**

**Comment.** Section 553.3 is amended to revise a cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5.

The new notice provisions referred to in Section 553.3 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 580 (repealed). Payment of costs and expenses; sale of property recovered**

**Comment.** Former Section 580 is restated in subdivisions (b) and (c) of Section 9653, with the addition of authority for the court to require the creditor to pay the personal representative's attorney's fees, and for application of sale proceeds first to payment of costs and expenses of suit. See also Section 58 ("personal representative" defined).

**§ 584.6 (repealed). Hearing, notice, and order**

**Comment.** The first and second sentences of former Section 584.6 are restated in Section 9732(d) without substantive change. The last sentence is restated in Section 9732(c) without substantive change, except that 15 days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5.

**§ 608.5 (technical amendment). Notice of objection to appraisement**

**Comment.** The 10-day periods in subdivisions (b) and (c) of Section 608.5 are changed to 15-day periods to conform to the general period of notice provided in Section 1220. Subdivision (c) is amended to revise a cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5.

The new notice provisions referred to in Section 608.5 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 700.1 (repealed). Claim for medical assistance**

**Comment.** The first sentence of subdivision (a), subdivision (b), and the first sentence of subdivision (c) of former Section 700.1 are restated without substantive change in Sections 215 (report to Director of Health Services), 1215 (mailing), 9201 (claims governed by other statutes), and 9202 (claim by Director of Health Services).

The last two sentences of subdivision (c) and subdivision (d) are restated without substantive change in Section 9203 (distribution before claim) and generalized to apply to all public entities.

See also Section 58 ("personal representative" defined).

**§ 703 (repealed). Claim of personal representative**

**Comment.** The first three sentences of former Section 703 are restated without substantive change in Section 9252 (where personal representative is creditor), with the addition of the reference to the personal representative's attorney and authority for the court to require a hearing procedure. The last sentence is restated in Section 9257 (action on rejected claim) and extended to allow litigation expenses to the prevailing party. See also Section 58 ("personal representative" defined).

**§ 709 (added). Action pending against decedent**

**Comment.** Section 709 reenacts former Section 709 with changes to conform to the creditor claims procedure, Part 4 (commencing with Section 9000) of Division 7. The cross-reference to the section governing the mailing of notice of hearing is revised to refer to Section 1220. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5.

The new notice provisions referred to in Section 709 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 714 (repealed). Action on rejected claim**

**Comment.** Part of the first sentence of former Section 714 is replaced by Section 9250 (procedure by personal representative). The remainder of the first sentence and the second, third, and fourth sentences are restated in Section 9257(a) and (c) (action on rejected claim) without substantive change. The last sentence is replaced by general provisions relating to notice. See, e.g., Section 1220(d) (notice by mail to county seat where person's address is unknown). See also Section 58 ("personal representative" defined).

**§ 904 (technical amendment). Notice of petition for payment of commission**

**Comment.** Section 904 is revised to conform to the general notice provisions. See Sections 1200-1265. If a person has requested special notice, notice must be given as provided in Section 1252.

The new notice provisions referred to in Section 904 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 911 (technical amendment). Notice of petition for allowance of attorneys' fees**

**Comment.** Section 911 is revised to conform to the general notice provisions. See Sections 1200-1265. If a person has requested special notice, notice must be given as provided in Section 1252.

The new notice provisions referred to in Section 911 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 926 (technical amendment). Notice of petition to settle accounts**

**Comment.** Section 926 is amended to conform to the general notice provisions. See Sections 1200-1265. If a person has requested special notice, notice must be given as provided in Section 1252.

The new notice provisions referred to in Section 926 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 1000 (technical amendment). Notice of petition for preliminary distribution**

**Comment.** The first sentence of Section 1000 is revised to reflect the repeal of former Section 700. The reference to "presenting" claims is deleted to conform to the revised procedure for making creditor claims. These are nonsubstantive revisions.

Section 1000 is also revised to conform to the general notice provisions. See Sections 1200-1265. If a person has requested special notice, notice must be given as provided in Section 1252.

The new notice provisions referred to in Section 1000 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 1004 (technical amendment). Notice of petition for distribution without court supervision**

**Comment.** The reference to "presenting" claims in Section 1004 is deleted to conform to the revised procedure for making creditor claims. The first sentence is also amended to revise a cross-reference to the provisions governing independent administration of estates. The provision formerly in the fourth sentence requiring the clerk to set the petition for hearing is generalized in Section 1285. The fourth sentence is also amended to revise a cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5.

The new notice provisions referred to in Section 1004 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 1020 (technical amendment). Notice of petition for final distribution**

**Comment.** Section 1020 is revised to conform to the general notice provisions. See Sections 1200-1265. If a person has requested special notice, notice must be given as provided in Section 1252.

The new notice provisions referred to in Section 1020 do not apply to a particular notice where the notice was delivered,

mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 1025.5 (technical amendment). Notice of hearing on report of status of administration**

**Comment.** Section 1025.5 is amended to revise a cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5.

The new notice provisions referred to in Section 1025.5 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 1027 (technical amendment). Notice of petition for final distribution**

**Comment.** Section 1027 is revised to conform to the general notice provisions. See Sections 1200-1265. If a person has requested special notice, notice must be given as provided in Section 1252.

The new notice provisions referred to in Section 1027 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 1031 (repealed). Application of article**

**Comment.** The effect of the first sentence of subdivision (a) of former Section 1031 is preserved in subdivision (b) of Section 21501. The second sentence of subdivision (a) is restated in subdivision (a) of Section 21502.

Subdivision (b) of former Section 1031 is restated in subdivision (b) of Section 21502.

**§ 1041 (technical amendment). Notice of petition involving nonresident's estate**

**Comment.** Section 1041 is amended to revise a cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5.

The new notice provisions referred to in Section 1041 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 1067 (technical amendment). Reopening administration**

**Comment.** Section 1067 is amended to revise a cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5.

The new notice provisions referred to in Section 1067 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 1080 (technical amendment). Notice of petition to determine right to distribution**

**Comment.** The reference to "presenting" claims in the first sentence of Section 1080 is deleted to conform to the revised procedure for making creditor claims. The former second sentence requiring the clerk to set the petition for hearing is generalized in Section 1285. Section 1080 is also amended to revise a cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The 10-day period provided in the first paragraph is increased to 15 days to conform to the general notice period provided in Section 1220.

The new notice provisions referred to in Section 1080 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 1191 (technical amendment). Notice of petition to determine heirship**

**Comment.** Section 1191 is amended to revise the cross-reference to the procedure for mailing notice of hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The new notice provisions referred to in Section 1191 do not apply to a

particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

The former provision requiring the clerk to set the petition for hearing is deleted from Section 1191 and generalized in Section 1285.

#### **§ 1200. Application of chapter**

**Comment.** Section 1200 prescribes the scope of the provisions relating to notice in this chapter. Subdivision (b) supersedes subdivisions (c) and (d) of former Section 1200 and subdivisions (d) and (e) of former Section 1200.5. Notice under the guardianship and conservatorship provisions and under the Trust Law is governed by special provisions. See Sections 1460-1469 (guardianship and conservatorship) and 17100-17107 (trusts).

Subdivision (c) makes clear that this chapter does not apply to the extent that a particular notice provision is inconsistent with this chapter. See, e.g., Section 328 (petition for probate of will).

Subdivision (d) is a transitional provision that applies former law to notices that are first given before the operative date of the new general notice provisions.

#### **§ 1220. Manner of mailing notice of hearing**

**Comment.** Section 1220 supersedes subdivisions (a) and (b) of former Section 1200.5. The list of petitions found in subdivision (a) of former Section 1200.5 has been omitted as unnecessary; the provision that relates to the particular petition has been revised to include a specific requirement in that provision that notice of hearing be given as provided in Section 1220.

Subdivisions (b) and (c) continue a portion of subdivision (b) of former Section 1200.5, but the time for mailing the notice is increased from 10 to 15 days before the time set for the hearing. In addition, the requirement of subdivision (b) of former Section 1200.5 that notice be given to all persons who have requested notice is omitted from subdivision (b) of this section as unnecessary.

If the decedent is a citizen of a foreign nation, a treaty may require notice to the consul of that nation. For a list of countries with whom there were such treaties as of August 1, 1975, see Los Angeles County Probate Policy Memorandum § 7.06, in California Local Probate Rules (8th ed., Cal. Cont. Ed. Bar 1987).

Subdivision (e) makes clear that notice must be given to persons who have requested special notice. See Section 1252



(notice required to be given to person requesting special notice). This is consistent with the approach taken in Section 1460 (guardianship and conservatorship).

Subdivision (d) restates part of subdivision (b) of former Section 1200.5 without substantive change. Subdivisions (e) and (f) are new provisions drawn from Section 1460 (guardianship and conservatorship). Subdivision (f) generalizes provisions of former Sections 584.2 and 860. Under subdivision (f), the court may dispense with notice to a person listed in this section, or a person who has requested special notice.

The person required to give notice by mail as provided in this section can satisfy that requirement by personal delivery of the notice to the person required to be given the notice. See Section 1216. As to shortening the time of notice, see Section 1203. The court may order additional notice. See Section 1202.

**§ 1260 (added). Proof of giving notice of hearing required; conclusiveness of order**

**Comment.** Section 1260 is drawn from subdivision (b) of former Section 1200 and subdivision (c) of former Section 1200.5.

Subdivision (a) supersedes provisions found in various sections of the Probate Code. See, e.g., former subdivision (c) of Section 333 and former Sections 584.3(d), 852, and 1202.5. Subdivision (a) adds the requirement that proof of notice be made either at or before the hearing. This is consistent with existing practice. See 1 California Decedent Estate Practice § 6.37 (Cal. Cont. Ed. Bar 1986).

Subdivision (b) of Section 1260 restates without substantive change parts of subdivision (b) of former Section 1200 and subdivision (c) of former Section 1200.5. The provision for waiver of notice is drawn from case law. See *Estate of Poder*, 274 Cal. App. 2d 786, 791-92, 79 Cal. Rptr. 484 (1969); *Estate of Pailhe*, 114 Cal. App. 2d 658, 662, 251 P.2d 76 (1952); *Estate of Palm*, 68 Cal. App. 2d 204, 213-14, 156 P.2d 62 (1945); *In re Estate of Pierce*, 28 Cal. App. 2d 8, 11-12, 81 P.2d 1037 (1938). See also Section 1204 (waiver of notice).

Subdivision (c) restates the rule of conclusiveness of the finding by the court concerning the giving of notice, which was found in subdivision (b) of former Section 1200 and subdivision (c) of former Section 1200.5, without substantive change.

**§ 1469 (technical amendment). Application of references to general notice provisions in sections incorporated by guardianship and conservatorship law**

**Comment.** Section 1469 is amended to revise the cross-references to general notice provisions. Notice of hearing must be mailed and posted 15 days before the hearing pursuant to Sections 1220 and 1230 instead of 10 days as provided by former Sections 1200 and 1200.5.

The new notice provisions referred to in Section 1469 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

See also Section 58 ("personal representative" defined).

**§ 2105 (amended). Joint guardians or conservators**

**Comment.** Subdivision (b) of Section 2105 is divided into subdivisions (b) and (c) and amended to conform the language to subdivision (a) of Section 9630 (decedents' estates). These changes are nonsubstantive.

Subdivision (d) of Section 2105 is redesignated as subdivision (e) and amended to conform the language to subdivision (c) of Section 9630 (decedents' estates). Under new subdivision (e), the absence of a guardian or conservator from California does not of itself suspend the power to act or participate in joint decision-making. This makes Section 2105 the same as the rule for joint personal representatives. See the Comment to Section 9630.

**§ 2453 (amended). Deposit in insured account**

**Comment.** The first sentence of Section 2453 is amended to substitute the term "insured account in a financial institution" (see Section 46) for the former references to a trust company, savings and loan association, and credit union.

The second sentence is revised to recognize that the court may order that the deposit not be withdrawn without court order. See Section 2456. These revisions make Section 2453 consistent with Section 9700 (decedents' estates).

The third sentence of Section 2453 is new, and is necessary because the definition of "insured account in a financial institution" in Section 46 would otherwise not apply to Section 2453. See Section 20 (application of definitions).

**§ 6246 (amended). Additional mandatory clauses for California statutory will with trust**

**Comment.** Section 6246 is amended to correct a cross-reference in subdivision (b), and to add subdivision (d). Subdivision (d) makes clear that a California statutory will executed on a form which incorporates a reference to former Section 1120.2 of the Probate Code is not invalid for that reason.

**§ 6501 (technical amendment). Notice of petition for temporary possession of family dwelling or exempt property**

**Comment.** Section 6501 is amended to revise the cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The provision formerly in Section 6501 requiring the clerk to set the petition for hearing is generalized in Section 1285.

The new notice provisions referred to in Section 6501 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 6511 (technical amendment). Notice of petition to set aside exempt property other than family dwelling**

**Comment.** Section 6511 is amended to revise the cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The provision formerly in Section 6511 requiring the clerk to set the petition for hearing is generalized in Section 1285.

The new notice provisions referred to in Section 6511 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 6525 (technical amendment). Notice of petition to set aside probate homestead**

**Comment.** Section 6525 is amended to revise the cross-reference to the procedure for mailing notice of a hearing.

Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The provision formerly in Section 6521 requiring the clerk to set the petition for hearing is generalized in Section 1285.

The new notice provisions referred to in Section 6525 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 6527 (technical amendment). Notice of petition for modification or termination of probate homestead**

**Comment.** Subdivision (c) of Section 6527 is amended to revise the cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The provision formerly in subdivision (c) excusing giving notice to oneself is generalized in Section 1201.

The new notice provisions referred to in Section 6527 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 6541 (technical amendment). Petition for grant or modification of family allowance**

**Comment.** Subdivision (b) and the first part of subdivision (c) of Section 6541 are amended to revise cross-references to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The new notice provisions referred to in Section 6541 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

Subdivision (c) (1) is amended to conform to Section 1206 relating to giving notice to known devisees. Subdivision (c) (3) is amended to revise the cross-reference to the procedure for requesting special notice. See Sections 1250-1252.

**§ 6607 (technical amendment). Notice of hearing on small estate set-aside**

**Comment.** Subdivision (c) of Section 6607 is amended to revise cross-references to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The 10-day period formerly provided in subdivisions (a) and (c) is increased to 15 days to conform to the general notice period provided in Section 1220.

The new notice provisions referred to in Section 6607 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 9050. Notice required**

**Comment.** Section 9050 is new. It is designed to satisfy due process requirements by ensuring reasonable notice to creditors within the practicalities of administration of the estate of a decedent. Notice may be given either by mail or personal delivery. See Sections 1215-1216.

The personal representative is not required to make a search for possible creditors under this section. Section 9053(c). The personal representative is required only to notify creditors who are actually known to the personal representative either because information comes to the attention of the personal representative in the course of administration or because the creditor has demanded payment during administration. Information received by the personal representative may be written or oral, but actual, as opposed to constructive, knowledge is required before a duty to give notice is imposed on the personal representative. The personal representative is protected by statute from a good faith failure to give notice. Section 9053(b). However, the personal representative may not willfully ignore information that would likely impart knowledge of a creditor. For example, the personal representative may not refuse to inspect a file of the decedent marked "unpaid bills" of which the personal representative is aware. Inferences and presumptions may be available to demonstrate the personal representative's knowledge.

The personal representative is not required to notify persons who are potentially creditors because of possible liability of the

decedent, but only creditors who have made their claims known. In a case where there is doubt whether notice to a particular person is required under this standard, the personal representative should give notice. The personal representative is protected from liability in this event. Section 9053(a).

The purpose of the notice is to alert creditors to the need to file a formal claim. For this reason, the personal representative need not give notice to a creditor who has already filed a formal claim or to a creditor whose demand for payment the personal representative elects to allow as a claim notwithstanding the creditor's failure to comply with formal claim requirements. Section 9054 (when notice not required).

The new notice provisions referred to in Section 9050 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

#### **§ 9100. Claim period**

**Comment.** Section 9100 supersedes the last portion of subdivision (a) and all of subdivision (c) of former Section 700. If letters are issued by more than one court or if subsequent letters are issued by the same court, the four month period of paragraph (1) of subdivision (a) commences on the first issuance of letters to a general personal representative. In the case of a special administrator granted the powers of a general personal representative, the claim period commences to run on first issuance of letters reciting the general powers of the special administrator.

#### **§ 9103. Late claims**

**Comment.** Section 9103 supersedes the second, third, and fourth sentences of former Section 707(a). Section 9103 eliminates authority to file a late claim where a claim was made in another proceeding but a personal representative was not appointed, precludes late claim treatment for claims that arise out of the conduct of a business in the state, requires a showing by clear and convincing evidence, and makes other clarifying changes.

A creditor has knowledge of the administration of an estate within the meaning of subdivision (a) (2) if the creditor has actual knowledge of the administration through receipt of notice given under Section 9050 or otherwise, such as information from

a newspaper clipping service. Constructive knowledge through publication of a notice of death or other information that does not come to the attention of the creditor is not knowledge for the purpose of subdivision (a) (2).

#### **§ 9150. How claim is filed**

**Comment.** Subdivision (a) of Section 9150 generalizes a provision of the first sentence of former Section 704.2. A person acting on behalf of the creditor may include the personal representative or the guardian or conservator of the estate of the creditor.

Subdivision (b) supersedes subdivision (a) of former Section 700. Under the former provision, the creditor was required either to file the claim with the court or to present it to the personal representative. Section 9150 requires the claim to be filed with the court and a copy to be mailed to the personal representative. See also Section 9153 (form of claim).

The requirement that the claim be filed with the court supersedes the alternative under former law permitting the claimant to present the claim to the personal representative. Under Section 9150, if the claimant mails a copy of the claim to the personal representative but fails to file it with the court, the claim is not properly filed. Thus the holding in *Estate of Schweitzer*, 182 Cal. App. 3d 330, 227 Cal. Rptr. 11 (1986) (sending settlement agreement to executor's attorney was sufficient) is no longer good law. However, the requirement that the claim be filed with the court does not preclude application of estoppel or other equitable doctrines in an appropriate case. See also Section 9154 (waiver of formal defects).

When a claim is filed with the court, the court clerk must accept it as filed, and may not reject it for formal defects.

#### **§ 9202. Claim by Director of Health Services**

**Comment.** Section 9202 restates the first sentence of subdivision (a), all of subdivision (b), and the first sentence of subdivision (c) of former Section 700.1, except that notice by beneficiaries and persons in possession of the decedent's property is omitted. For notice by these persons, see Section 215 (report to Director of Health Services). The time within which the notice must be made to the Director of Health Services runs from the date of issuance of letters rather than from the date of death, to simplify administration.

**§ 9203. Distribution before claim**

**Comment.** Section 9203 restates the second and third sentences of subdivision (c) and all of subdivision (d) of former Section 700.1, and generalizes them to apply to all public entities.

**§ 9250. Procedure by personal representative**

**Comment.** Section 9250 supersedes the third sentence of former Section 710, the first sentence of former Section 711, and the first sentence of former Section 714. Under Independent Administration of Estates, the personal representative may allow, pay, reject, contest, or compromise any claim without court supervision. Section 10552 (acting on claims against estate). However, court supervision is necessary where the personal representative is the creditor. See Section 9252.

The new notice provisions referred to in Section 9250 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 9257. Action on rejected claim**

**Comment.** Subdivisions (a) and (c) of Section 9257 restate a portion of the first sentence and the second, third, and fourth sentences of former Section 714 and former Section 715, except that the time after which an action on a rejected claim that is not yet due must be brought is increased from two months to three months, and the 10 day period within which notice of pendency of the action must be filed is deleted. The fact that an action has been brought on a rejected claim or that the time within which the action must be brought has not expired, does not preclude closing estate administration where the amount in dispute is paid into court. See Section 11426 (trust for installment or contingent debt).

Subdivision (b) is new.

Subdivision (d) restates the last sentence of former Section 703 and extends it to allow litigation expenses to the prevailing party.

A dispute over a claim may be submitted to a temporary judge or to arbitration under Sections 9620-9621 (summary determination of disputes).



**§ 9645. Existing orders and pending matters arising under prior law**

**Comment.** Section 9645 makes clear that on and after the operative date (July 1, 1988) this part applies to pending petitions and other pending matters unless the court with respect to a particular matter determines that application of a particular provision of this part would substantially interfere with the effective conduct of the matter or with the rights of the parties or other interested persons. If the court makes such a determination, the matter is governed by prior law which is preserved for this purpose. Section 9645 is drawn from Section 1484 (guardianship and conservatorship law).

**§ 9653. Duty to recover property transferred in fraud of creditors**

**Comment.** Subdivision (a) of Section 9653 restates former Section 579 without substantive change, except that the former provision that the personal representative must prosecute the action to recover the property "to final judgment" is not continued. Under subdivision (a) of Section 9653, the personal representative must prosecute the action, but may settle the action as in other actions generally. As under prior law, the personal representative may, with court approval, assign to the creditor the right to bring the action. *Webb v. Pillsbury*, 23 Cal. 2d 324, 328, 144 P.2d 1 (1943).

The requirement of subdivision (a) that the transfer must have been "during lifetime" does not preclude recovery of property given by a transfer which takes effect at death, such as a joint tenancy or life insurance. See, e.g., *Rupp v. Kahn*, 246 Cal. App. 2d 188, 55 Cal. Rptr. 108 (1966) (joint tenancy); *Headen v. Miller*, 141 Cal. App. 3d 169, 190 Cal. Rptr. 198 (1983) (life insurance).

The reference in paragraph (1) of subdivision (a) to conveyances fraudulent as to creditors under the Uniform Fraudulent Transfer Act (Civ. Code §§ 3439-3439.11) replaces the former reference to conveyances made with intent to defraud creditors, to avoid any obligation due another, or that is void as against creditors. This change is nonsubstantive. See *Webb v. Pillsbury*, *supra*; *Estate of Heigho*, 186 Cal. App. 2d 360, 365-66, 9 Cal. Rptr. 196 (1960); *Goldstein v. Prien*, 143 Cal. App. 2d 123, 127, 299 P.2d 344 (1956).

The authority in paragraph (2) of subdivision (a) for a creditor to recover a gift made in view of death (Civ. Code § 1149) is qualified by the requirement in the introductory clause of

subdivision (a) that there be insufficient estate assets to pay creditors. This continues a provision in former Section 579. See also *Adams v. Prather*, 176 Cal. 33, 40-42, 167 P. 534 (1917) (gift rendering estate insolvent); Civ. Code §§ 1149-1153 (gifts in view of death).

In cases where Section 9653 applies, the personal representative must take action to recover the property even in the absence of a request by a creditor. *Goldstein v. Prien*, *supra*. See also Section 9820 (actions or proceedings for benefit of estate).

Subdivisions (b) and (c) restate former Section 580 with the following additions:

(1) Authority is added in subdivision (b) for the court to require the creditor to pay all or part of the personal representative's attorney's fees.

(2) The provision in subdivision (c) for application of the proceeds of sale first to costs and expenses of suit is new. The last sentence of subdivision (c) is new.

#### **§ 9730. Investments permitted without prior court authorization**

**Comment.** The investments described in Section 9730 may be made without prior court authorization. See Section 9610. The personal representative is required to exercise the power granted by this section to the extent that ordinary care and diligence require that the power be exercised and may not exercise the power to the extent that ordinary care and diligence require that the power not be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612.

Subdivision (a) of Section 9730 continues without substantive change the portion of former Section 584.1 relating to investments in direct obligations of the United States and adds authority to invest in direct obligations of the State of California maturing not later than one year from the date of making the investment. Subdivision (b) of Section 9730 replaces a portion of former Section 584.1 with language drawn from Section 16224 (powers of trustees). The words "and reinvest" which were found in former Section 584.1 have been omitted as unnecessary; under Section 9730 "invest" includes reinvestment.

Subdivision (c) restates former Section 585.1 without substantive change.

**§ 9732. Investment of money as provided in will**

**Comment.** Section 9732 replaces former Sections 584.5 and 584.6. Subdivision (a) of Section 9732 restates the first sentence of former Section 584.5 with the substitution of "may order" for "may authorize" and the inclusion of additional language in paragraph (2) to make clear that an order may be made if the court is satisfied that all uncontested claims will be paid. The word "reinvested" which was found in the former provision has been omitted as unnecessary. The limitation in the former provision that only "surplus" money could be invested has been omitted as unnecessary.

Subdivision (b) restates a portion of the second sentence of former Section 584.5 without substantive change except that the personal representative or "any interested person" is authorized to file a petition. Former Section 584.5 permitted the personal representative to file an initial petition, while former Section 584.6 permitted any person interested to file a petition for renewal, modification, or termination of the order.

Subdivision (c) restates the fourth and fifth sentences of former Section 584.5 with the following changes:

(1) Language has been added to require notice to the person nominated as trustee if a trustee has not yet been appointed for a trust that is a devisee.

(2) The former requirement that notice be mailed to all persons in being who will or may participate in the corpus or income of the trust is not continued.

(3) Notice must be given at least 15 days before the hearing pursuant to Section 1220, instead of the 10-day notice under former Section 1200.5.

The third sentence of former Section 584.5, which required the clerk to set the petition for hearing by the court, is continued in Section 1285. The language of the fourth and fifth sentences of former Section 584.5 requiring notice to persons "whether or not they have requested special notice or given notice of appearance" has been omitted as unnecessary.

Subdivision (d) restates a portion of the first sentence of former Section 584.5 (court "may" authorize) and the first and second sentences of former Section 584.6 without substantive change. The language of former Section 584.6 that "the court shall hear the petition if no objection thereto has been filed" is revised to say that the court may make an order if no objection has been filed. This is consistent with the original intent of the section. See Review of Selected 1968 Code Legislation 224 (Cal. Cont. Ed. Bar 1968).

If the money cannot be invested as provided in the will because the requirements of Section 9732 are not satisfied, the money can be invested under other provisions. See Sections 9700 (savings accounts), 9703 (accounts and deposits withdrawable only upon court order), 9730 (investments permitted without court authorization), 9731 (investments in federal or state securities with court authorization).

**§ 9733. Purchase of annuity granted in will**

**Comment.** Section 9733 supersedes a portion of former Section 584. Subdivision (a) makes clear that an annuity may be purchased to satisfy not only a devise of an annuity as under former Section 584 but also to satisfy any other direction in the will for payment of an amount to a devisee. Under subdivision (b), notice must be given at least 15 days before the hearing pursuant to Section 1220, instead of the 10-day notice under former Section 1200.5.

**§ 9760. Operation of decedent's business other than partnership**

**Comment.** Subdivision (a) of Section 9760 is a new provision. The first portion of subdivision (a) uses language taken from former Section 591.3(b)(6). Subdivision (a) also makes clear that Section 9760 does not apply to a business operated by a partnership in which the decedent was a partner. See Sections 9761-9762 (operation of decedent's partnership).

Section 9760 requires court authorization to continue operation of the decedent's nonpartnership business for a period of more than six months from the date letters are first issued to any personal representative, whether the personal representative is a special personal representative or a general personal representative. The six-month period commences to run from the time the first special or general personal representative is issued letters. The six-month limitation recognizes that operation of the business may result in the loss of estate assets if the business proves to be unprofitable. Section 9760 permits but does not require a court order for the personal representative to continue operation of the decedent's nonpartnership business for a period not exceeding six months from the date letters are first issued to any personal representative. Under prior law, if the personal representative continued the operation of the decedent's business without a court order, but acted in good faith and as a cautious and prudent person would act under similar circumstances, the personal

representative was not personally liable for expenses of operating the business. *In re Estate of Maddalena*, 42 Cal. App. 2d 12, 18, 108 P.2d 17 (1940).

The personal representative is required to exercise the power granted by this section to the extent that ordinary care and diligence require that the power be exercised and may not exercise the power to the extent that ordinary care and diligence require that the power not be exercised. See Section 9600(b). See also Section 9612 (effect of court authorization or approval).

Although Section 9760 makes clear that the personal representative may continue to operate the decedent's nonpartnership business without prior court authorization for the six-month period, it is generally advisable for the personal representative to obtain an order under Section 9760 authorizing continued operation of the business. See Abel & Price, *First Steps in Handling Decedents' Property*, in 1 California Decedent Estate Administration § 6.29, at 218 (Cal. Cont. Ed. Bar 1971). If the personal representative operates the decedent's business without prior authorization of the court, the court may nonetheless ratify the acts and expenditures of the personal representative after the fact. *In re Estate of Maddalena*, 42 Cal. App. 2d at 19. Under Section 9760, the personal representative can obtain such ratification only upon the showing that it was to the advantage of the estate and in the best interest of interested persons to continue the operation of the decedent's business. See subdivision (b).

Subdivisions (c) and (d) replace a portion of the first sentence of former Section 572. Under subdivision (c), a petition may be filed by the personal representative or "any interested person." It was unclear under former Section 572 whether an interested person was authorized to file a petition.

The requirement that notice of the hearing on the petition shall be given as provided in Section 1220 is substituted for the requirement of former Section 572 that the order be made after notice to all persons interested in the estate, given in such manner as may be directed by the court or a judge thereof. If the court determines that notice as provided in Section 1220 is not sufficient, the court can require such further and additional notice to be given as the court considers proper. See Section 1202.

#### **§ 9761. Accounting by decedent's surviving partner**

**Comment.** Section 9761 replaces the authority provided in former Section 571 to order an accounting where necessary and to enforce the order "by attachment." The standard for ordering

an accounting is provided in the statutes governing partnerships. As to a general partnership, see Corp. Code §§ 15022 (right to formal accounting where "just and reasonable"), 15043 (right to account of deceased partner's interest accrues to personal representative); see also Corp. Code §§ 15019 (right to inspect partnership books), 15020 (right to information on demand). As to a limited partnership, see Corp. Code §§ 15510(1)(a)-(b) (right to information), 15521 (personal representative's exercise of rights), 15634 (right to information), 15675 (personal representative's exercise of rights). The court has jurisdiction and discretion to order any surviving partner to render an account to the extent provided in the sections of the Corporation Code referred to in Section 9761.

The order to account under this section is enforceable by the power to punish for contempt under Code of Civil Procedure Section 717.010. Only the personal representative may apply for an accounting under Section 9761. An interested person may neither make application under this section nor petition for instructions under Section 9611.

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

**Comment.** Section 9831 replaces the first sentence of former Section 718.5. Section 9831 requires authorization by order of court obtained under Sections 9836-9837 if the compromise or settlement is to be made before the time for filing creditor's claims has expired. As to when the time for filing creditor's claims has expired, see Section 9100(b).

Section 9831 requires court authorization only for a compromise or settlement of a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate. The section does not require court authorization in order 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. See generally Section 9830(a)(2).

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

**Comment.** Section 9834 is new and is the same in substance as Section 2503 (guardianship-conservatorship law) except that Section 9834 also covers transactions involving the personal representative's attorney. Section 9834 requires authorization by order of court obtained under Sections 9836-9837 for a

compromise, settlement, extension, renewal, or modification described in the section. Section 9834 requires court authorization because the section involves matters that may involve a conflict of interest for the personal representative.

The term "the personal representative's attorney" is used in a broad sense and includes the associates, partners, and attorneys of counsel with the law firm of the attorney selected by the personal representative and also associates, partners, and attorneys of counsel with other law firms associated in the estate proceeding with the firm of the attorney selected by the personal representative.

#### **§ 9861. Notice of hearing**

**Comment.** Subdivision (a) of Section 9861 replaces the last portion of the second sentence of former Section 851 and the fourth sentence of former Section 851.5. Subdivision (a) expands the cases where service under the Code of Civil Procedure is required: Service is required in that manner on the personal representative (if not the petitioner) and on any person claiming an interest in or having title to or possession of the property. Under former Section 851.5, heirs and devisees (whether or not claiming an interest in the property) and the personal representative received mailed notice.

Subdivision (b) replaces the third sentence of former Section 851.5. Notice is given under subdivision (b) only to those persons described in the subdivision who are not given notice as provided in subdivision (a). Persons who requested special notice also must be given notice. See Sections 1250-1252. As to giving notice to known heirs and known devisees, see Section 1206. See also Section 1201 (notice need not be given to persons joining in petition).

#### **§ 9880. Prohibition against purchase of estate property or claim against estate**

**Comment.** Section 9880 restates the first portion of the first paragraph of former Section 583 without substantive change except that the prohibition is extended to the personal representative's attorney. The term "personal representative's attorney" is to be given a broad meaning for the purposes of this chapter and includes the associates, partners, and attorneys of counsel with the law firm of the attorney selected by the personal representative and also associates, partners, and attorneys of counsel with other law firms associated in the estate proceeding with the firm of the attorney selected by the personal representative.

**§ 9882. Purchase where authorized by will**

**Comment.** Section 9882 supersedes the first portion of the third paragraph of former Section 583 which provided that the prohibition against purchase by the personal representative did not prohibit the purchase of property of the estate by the personal representative pursuant to the will of the decedent. Section 9880 extends this prohibition against purchase to include the personal representative's attorney, and Section 9882 expands the provision of former Section 583 to permit the court to make an order authorizing purchase by the personal representative's attorney pursuant to the will of the decedent.

**§ 9883. Petition for order under Section 9881 or 9882**

**Comment.** Subdivision (a) of Section 9883 continues the substance of the first sentence of former Section 851 which was made applicable to purchases by the personal representative of estate property by the last sentence of former Section 583. Section 9883 also applies to a purchase by the personal representative's attorney. See Section 9881.

Subdivision (b) is new.

Subdivisions (c) and (d) supersede the portion of the last sentence of former Section 583 relating to notice. Persons who requested special notice also must be given notice. See Sections 1250-1252. As to giving notice to known heirs and known devisees, see Section 1206.

The first sentence of subdivision (e) continues the substance of the last portion of the first sentence of former Section 852 and the first portion of the second sentence of former Section 853. These provisions were applied to purchases by the personal representative of estate property by the last sentence of former Section 583. The second sentence of subdivision (e) is new.

Only the personal representative may petition under Section 9883. An interested person may neither petition under Section 9883 nor petition for instructions under Section 9611.

**§ 9944. Notice of hearing**

**Comment.** Subdivisions (a) and (b) of Section 9944 restate a portion of the second sentence and all of the third sentence of former Section 841 without substantive change, except that (1) under subdivision (a), notice must be given at least 15 days before the hearing pursuant to Section 1220, instead of the 10-day notice under former Section 1200.5, and (2) the provision in subdivision (b) dispensing with notice is expanded to include the



case where the will authorizes or directs sale of the property as well as authorizing or directing its leasing. Persons who requested special notice also must be given notice. See Sections 1250-1252.

Subdivision (c) restates the second sentence of former Section 842.1 without substantive change, except that under subdivision (c) notice must be given for at least 15 days before the hearing, instead of the 20-day notice under former Section 842.1. As to giving notice to known heirs and known devisees, see Section 1206. The authority under former Section 842.1 for the court to require additional notice is omitted as unnecessary in view of the general provision which gives the court this authority. See Section 1202.

#### **§ 9963. Notice of hearing**

**Comment.** Section 9963 restates subdivision (c) of former Section 584.3 without substantive change, except that:

(1) Notice by mail (Section 1220) is required in addition to notice by posting (Section 1230).

(2) Mailed notice must be at least 15 days before the hearing as provided in Section 1220, instead of the 10-day notice under subdivision (c) of former Section 584.3.

(3) The giving of notice to known heirs and known devisees is limited to those "whose interest in the estate would be affected by the granting of the option." For the meaning of "known" heirs and devisees, see Section 1206.

Persons who requested special notice also must be given notice. See Sections 1250-1252.

#### **§ 9981. Order; petition; notice**

**Comment.** Subdivisions (a) and (b) of Section 9981 restate the first sentence of subdivision (b) of former Section 854 without substantive change. The requirement of former Section 854 that the petition be filed 'within any time limits provided in the will' has been omitted as unnecessary in view of the requirement of subdivision (a) of Section 9981 that the person given the option must comply with the terms and conditions stated in the will. Subdivision (c) of Section 9981 continues the third sentence of subdivision (b) of former Section 854 without substantive change, except that notice must be given at least 15 days before the hearing pursuant to Section 1220, instead of the 10-day notice under former Section 1200.5. Persons who requested special notice also must be given notice. See Sections 1250-1252.

**§ 10206. Decedent's contract right to purchase real property**

**Comment.** Subdivision (a) of Section 10206 restates former Section 800 without substantive change. The remainder of Section 10206 restates former Section 801 without substantive change. The bond covers whatever is required under the contract to be paid. This includes, for example, both principal and interest payments required to be made under the contract. See also Section 10314 (assignment of contract right to purchaser after furnishing of bond and confirmation of sale).

Treating the sale of the decedent's contract right to purchase real property in the same manner as sale of real property generally is consistent with the general treatment of such interests as real property at the decedent's death. See *Fleishman v. Woods*, 135 Cal. 256, 259, 67 P. 276 (1901) (equitable estate of vendee "is alienable, descendible, and devisable in like manner as real estate held by a legal title"); *Retsloff v. Smith*, 79 Cal. App. 443, 448, 249 P. 886 (1926) ("[i]f the purchaser dies while the contract is in force and effect, his interest passes to his heirs as real property").

**§ 10207. Sale to grazing or pasture association in conformity with the federal Consolidated Farm and Rural Development Act**

**Comment.** Section 10207 restates subdivision (b) of former Section 794 with the addition of subdivision (b) and language that makes clear that the sale may be made only with the consent of the "known" heirs and the "known" devisees. As to the meaning of known heirs and devisees, see Section 1206. Persons who requested special notice also must be given notice. See Sections 1250-1252.

Subdivision (a) of former Section 794 (finding and declaration of legislative purpose) is not continued as a codified provision, but may be found in 1978 Cal. Stat. ch. 40.

**§ 10255. Private sale**

**Comment.** Subdivision (a) of Section 10255 restates a portion of the fourth sentence of former Section 772 without substantive change except that Section 10255 makes clear that the notice of sale may indicate the person to whom bids are to be delivered. This would, for example, permit the notice of sale to require that bids be delivered to the attorney for the personal representative.

Subdivision (b) is new and codifies existing practice. See Hudner, *Sales of Estate Property*, in 1 California Decedent Estate Administration § 14.53, at 540 (Cal. Cont. Ed. Bar 1971).

**§ 10258. Court order relaxing requirements for credit sale**

**Comment.** Section 10258 restates the fifth, sixth, seventh, and eighth sentences of former Section 773 without substantive change, except that notice under subdivisions (b) and (c) must be given at least 15 days before the hearing pursuant to Sections 1220 and 1230, instead of the 10-day notice under former Sections 1200 and 1200.5.

Section 10258 permits the court to vary the requirements of Section 10257 where it is impractical to meet those requirements, such as in the sale of an insurance business, a liquor license, the goodwill of a business, or the stock in trade of a merchant. 36 Cal. St. B.J. 829-30 (1961).

Only the personal representative may petition under Section 10258. An interested person may neither petition under Section 10258 nor petition for instructions under Section 9611.

**§ 10261. Hearing on petition for confirmation of sale**

**Comment.** The first sentence of subdivision (a) of Section 10261 is a new provision drawn from a portion of the first sentence of former Section 785 (real property). Section 10000 provides that real or personal property of the estate may be sold (1) when the sale is necessary to pay debts, devise, family allowance, expenses of administration, or taxes, (2) when the sale is to the advantage of the estate and in the best interest of the interested persons, (3) when the property is directed by the will to be sold, or (4) when authority is given in the will to sell the property.

The second sentence of subdivision (a) restates a portion of the second sentence of former Section 757 without substantive change.

Subdivision (b) restates the first sentence of former Section 756 insofar as it applied to personal property with the addition of the phrase "at or before the hearing."

Subdivision (c) restates the second sentence of former Section 774 but provides for examination of the surviving partner if the surviving partner is able to be present at the hearing and is "a resident within the state at the time of the hearing" and includes a new provision that makes clear that the court may issue a citation to compel the surviving partner to attend the hearing.

The court has jurisdiction and discretion to order any surviving partner to appear for examination. Under former Section 774, the provision for examination of the surviving partner applied only where the surviving partner is able to be present at the hearing and is "in the county."

Subdivision (d) is new and is drawn from portions of the second and third sentences of former Section 785 (real property sales). Subdivision (d) is comparable to subdivision (b) of Section 10312 (real property sales).

Unlike the statutes governing the sale of real property (see Sections 10309, 10313), those for sale of personal property do not require that the purchase price of the property be within a specified percentage range of the amount for which the property is appraised by the probate referee. Hudner, *Sales of Estate Property*, in 1 California Decedent Estate Administration § 14.56, at 542 (Cal. Cont. Ed. Bar 1971).

#### **§ 10306. Private sale**

**Comment.** Subdivision (a) of Section 10306 restates a portion of the first sentence of former Section 782 without substantive change. Subdivision (b) restates the last sentence of former Section 782 with the following changes:

(1) The former authority for filing bids with the clerk of the court is not continued.

(2) Subdivision (b) makes clear that the notice of sale may indicate the person to whom bids are to be delivered. This would, for example, permit the notice of sale to require that bids be delivered to the attorney for the personal representative.

#### **§ 10350. Order vacating sale and directing resale; liability of defaulting purchaser**

**Comment.** Subdivisions (a) and (b) of Section 10350 restate the first sentence of former Section 775 and the first sentence of former Section 788 without substantive change except that the provision in subdivision (b) that notice need not be given to a defaulting purchaser who has filed a written consent is new and is drawn from former Sections 776 and 789.

Subdivision (c) restates the substance of a portion of the second sentence of former Section 788 (resale of real property) and supersedes the third sentence and a portion of the second sentence of former Section 775 (resale of personal property).

Subdivision (d) restates a portion of the second sentence of former Section 775 and a portion of the second sentence of former Section 788 without substantive change.

Subdivision (e) supersedes the last sentence of former Section 775 and the last sentence of former Section 788. Paragraph (1) of subdivision (e) continues prior law. Under former Sections 775 and 788, if the amount realized on resale did not cover the bid and expenses of the first (incomplete) sale, the defaulting purchaser was liable for the "deficiency." See also *Estate of Williamson*, 150 Cal. App. 2d 334, 339, 310 P.2d 77 (1957). Under paragraph (1) of subdivision (e), as under former Sections 775 and 788, the estate's loss of bargain is measured by the contract price for the first sale less the price obtained on the second sale. This differs from damages for defaults generally in that, under the general rule, the resale price is merely some evidence of value. See 1 B. Witkin, *Summary of California Law Contracts* § 847, at 763-64 (9th ed. 1987).

Paragraph (2) of subdivision (e) changes prior law. Under former Sections 775 and 788, if there was a resale of the property, recoverable expenses were those of the first (incomplete) sale, not those of the resale. *Estate of Williamson*, *supra*. Under paragraph (2), the recoverable expenses of sale are those made necessary by the purchaser's breach, the same as under general law. *Id.* Such expenses may include expenses of resale to the extent they exceed the expenses assumed by the estate under the breached contract. *Jensen v. Dalton*, 9 Cal. App. 3d 654, 657, 88 Cal. Rptr. 426 (1970).

Paragraph (3) of subdivision (e) is new. Under paragraph (3), consequential damages are recoverable as under general law. See also 1 B. Witkin, *supra* §§ 848-849, at 764-66. In the case of real property, such consequential damages may include sewer assessments, taxes, and fees for utilities (*Jensen v. Dalton*, 9 Cal. App. 3d at 658), and insurance, security, storage, and pool and gardening expenses.

#### **§ 10351. Order vacating sale and confirming sale to new high bidder**

**Comment.** Section 10351 restates former Sections 776 and 789 without substantive change, except that Section 10351 increases the 45-day period provided in the former sections to 60 days. The time is increased in recognition of the unavoidable delay that sometime occurs in closing an escrow. Increasing the time gives the personal representative more opportunity to use the option of confirming the sale to the new higher bidder but does not require that the personal representative delay until the 60 days have expired before petitioning the court for an order directing the resale of the property. See Section 10350.

### **§ 10403. "Limited authority" defined**

**Comment.** Section 10403 is new. See the Comment to Section 10402. Section 10403 is consistent with subdivision (b) (2) of former Section 591.1 except for the addition of subdivision (d) which is a new limitation on the powers of a personal representative who has only limited authority.

Subdivision (d) is consistent with the portion of subdivision (b) of Section 10501 which requires court supervision if the personal representative has limited authority and proposes to borrow money with the loan secured by an encumbrance upon real property of the estate. In connection with subdivision (d), see Sections 10450(b) (2), 10452(c), and 10501(b). See also the Comment to Section 10501.

If the personal representative was granted independent administration authority prior to July 1, 1988, the personal representative may use that existing authority on and after July 1, 1988, to borrow money on a loan secured by an encumbrance upon real property, whether or not that existing authority includes authority to sell real property. See Section 10406(c).

As to the reason why the personal representative may request only limited authority, see the Comment to Section 10450.

### **§ 10406. Application of part**

**Comment.** Subdivision (a) of Section 10406 is a new provision that makes clear that—subject to subdivision (c)—this part applies to a pending proceeding where independent administration authority was granted subsequent to January 1, 1985, under the former Probate Code provisions that governed independent administration authority.

Under subdivision (b), a personal representative who was granted authority prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act is governed by the provisions of the Independent Administration of Estates Act that were applicable at the time the petition requesting independent administration authority was granted. But paragraph (3) of subdivision (a) provides an exception that permits a personal representative who was granted independent administration authority prior to January 1, 1985, to exercise the authority granted by this part where a petition is filed after that date requesting authority to administer the estate under the independent administration statute in effect at the time the petition is filed and the petition is granted.

Subdivision (c) preserves the authority of a personal representative prior to July 1, 1988, to borrow money secured by real property where the personal representative was granted authority that did not include the authority to sell, exchange, or grant an option to purchase real property. Under the law in effect prior to July 1, 1988, such a personal representative had authority to borrow money with the loan secured by an encumbrance upon real property of the estate. This part (which becomes operative on July 1, 1988) adds an additional limitation on the authority of a personal representative whose authority does not include authority to sell, exchange, or grant an option to purchase real property; such a personal representative does not have authority to borrow money with the loan secured by an encumbrance upon real property of the estate. See Section 10403 (defining "limited authority") and the Comment to that section. See also Section 10501(b) and the Comment to that section. Subdivision (c) of Section 10406 makes clear that this additional limitation does not apply to a personal representative who was granted independent administration authority prior to July 1, 1988. Such a personal representative may borrow money on or after July 1, 1988, on a loan secured by real property of the estate, notwithstanding that the personal representative does not have authority to sell real property of the estate.

**§ 10450. Petition for order granting independent administration authority**

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

Subdivision (b) of Section 10450 restates subdivision (b) of former Section 591.1 without substantive change except that subdivision (b) of Section 10450 uses the defined terms "full authority" and "limited authority." See Sections 10402 (defining "full authority") and 10403 (defining "limited authority"). See also Sections 10452(c) (endorsement on letters) and 10501(b) (matters requiring court supervision).

Subdivision (b) of Section 10450 permits the petitioner either (1) to request full authority (this authority permits the personal representative to administer the estate using all of the powers granted by this part) or (2) to request limited authority. Limited authority permits the personal representative to exercise all of the powers granted by this part except the power to sell, exchange, or grant an option to purchase real property or to borrow money with the loan secured by an encumbrance upon

real property. See Section 10403 (defining "limited authority"). For example, the personal representative granted limited authority cannot use the independent administration procedure to sell or exchange real property but is authorized to use independent administration authority to sell listed and certain over the counter securities without giving notice of proposed action (see paragraphs (1) and (2) of subdivision (b) of Section 10537) and to invest in certain securities using the notice of proposed action procedure (see subdivision (c) of Section 10533).

If a bond is required and the bond is given by a corporate surety, the amount of the bond of the personal representative who is granted full authority is fixed by the court at not more than the estimated value of the personal property, the estimated net proceeds of the real property authorized to be sold under this part, and the estimated value of the probable annual gross income of all the property belonging to the estate; if the bond is given by personal sureties, the amount is fixed at not less than twice that amount. See Section 10453(a). The amount of the estimated net proceeds of the real property is excluded in determining the amount of the required bond if the personal representative has only limited authority. See Section 10453(b). Thus, in some cases, a significant saving in the bond premium can be realized by seeking only limited authority. Because of this consideration, limited authority ordinarily is sought only where a bond is required and the personal representative seeks to avoid the increased bond premium that is required when full authority is granted. Accordingly, a personal representative who is not required to provide a bond almost always will request full authority; and a personal representative who is required to provide a bond for an estate that includes real property ordinarily will request limited authority unless the personal representative wishes to use independent administration authority for a sale of some or all of the real property or to borrow money secured by the real property.

The personal representative, despite the grant of independent administration authority, may seek court supervision of the transaction. See Section 10500(b). Hence, for example, even though the personal representative has been granted full authority (independent administration authority that encompasses real property transactions), the personal representative may decide to sell real property under the supervised administration procedures (using the statutory procedure that governs a real property sale when independent



administration authority has not been granted). See the Comment to Section 10500. Likewise, the personal representative may decide to seek court approval or instructions concerning a transaction rather than to use independent administration authority in a case where there is a lack of agreement as to the desirability of the transaction among the persons interested in the estate or where some of the heirs or devisees who would receive notice of proposed action lack the capacity to object to the proposed action (see subdivision (c) of Section 10590) or for some other reason.

Authority to administer the estate under this part may not be granted where the decedent's will provides that the estate shall not be administered under this part. See Section 10404. Likewise, the authority of the personal representative to exercise particular powers under the Independent Administration of Estates Act may be restricted by the decedent's will. See Section 10502. A special administrator may be granted independent administration authority only if the special administrator is appointed with or has been granted the powers of a general administrator. See Section 10405 and the Comment to that section.

#### **§ 10451. Notice of hearing**

**Comment.** Subdivision (a) of Section 10451 restates subdivision (c) of former Section 591.1 without substantive change.

Subdivision (b) restates subdivision (d) of former Section 591.1 with the following additions and changes. The requirement that notice be given to each known heir whose interest in the estate is affected by the petition replaces the former requirement of notice to "all known heirs of the decedent." The requirement that notice be given to each known devisee whose interest in the estate is affected by the petition replaces the former requirement of notice to "all legatees and devisees." See Section 34 (defining "devisee"). See also Section 1206 (notice to known devisees). The requirement that notice be given to each person named as personal representative in the will of the decedent is new.

Persons who requested special notice also must be given notice. See Sections 1250-1252. Notice need not be given to any person who joins in the petition. Section 1201.

The reference in former Section 591.1 to former Section 1200 (notice by posting) is corrected in subdivision (b) to refer to Section 1220 (notice by mail). Under Section 1220, 15 days'

notice is required, instead of the ten days' notice required under former Sections 1200 and 1200.5.

Subdivision (c) restates subdivision (e) of former Section 591.1 with the addition of the last three sentences of the statement which are new.

#### **§ 10452. Hearing; order; endorsement on letters**

**Comment.** Subdivision (a) of Section 10452 supersedes subdivision (f) of former Section 591.1. Subdivision (a) makes clear that the written statement is to be filed at or before the hearing and permits a person to appear at the hearing and make the objection without the need to file a written statement.

Subdivisions (b) and (c) of Section 10452 restate subdivision (g) of former Section 591.1 without substantive change, except that the endorsement on the letters required by subdivision (c) where limited authority is granted is made consistent with subdivision (b) of Section 10501. Subdivision (b) of Section 10501 requires court supervision if the personal representative has limited authority and proposes to borrow money with the loan secured by an encumbrance upon real property of the estate. See the Comment to Section 10501. See also Sections 10403 ("limited authority" defined), 10450(b)(2) (petition for limited authority).

The second sentence of subdivision (b) is new and makes clear that the court, for good cause shown, may grant only limited authority rather than full authority. See Sections 10402 (defining "full authority") and 10403 (defining "limited authority").

#### **§ 10500. Administration without court supervision**

**Comment.** Subdivision (a) of Section 10500 restates the first sentence and the first portion of the second sentence of subdivision (a) of former Section 591.2 without substantive change. See also Section 10401 (defining "court supervision"). Subdivision (b) restates the first sentence of subdivision (b) of former Section 591.2 without substantive change.

As the introductory clause of subdivision (a) 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(b) (limited authority excludes power to sell, exchange, or grant option to purchase real property, or to borrow money with the loan secured by an encumbrance upon real property, using independent administration procedure).

See also Sections 10403, 10450(b)(2) and 10452(c) (limited authority); Section 10502 (decendent's will may restrict powers exercisable under independent administration authority). Notwithstanding that full 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, preliminary and final distributions and discharge, and certain transactions involving a possible conflict of interest on the part of the personal representative or the personal representative's attorney).

The introductory clause of subdivision (a) also recognizes that independent administration authority must be exercised in compliance with the provisions of this part. Some actions can be taken only if the notice of proposed action procedure is followed. See Article 2 (commencing with Section 10510) and Article 3 (commencing with Section 10530) (actions requiring notice of proposed action). See also Chapter 4 (commencing with Section 10580) (notice of proposed action procedure). For a general provision concerning the exercise of powers under this part, see Section 10502. See also the Comment to Section 10502.

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 full authority (full authority includes the power to sell real property using the independent administration procedure), the personal representative may nevertheless determine to sell the real property using the court supervised procedure for a real property sale. If the personal representative determines to use the court supervised procedure, all the requirements of the court supervised procedure apply to the same extent that they would apply if the personal representative had not been granted independent administration authority. See Section 10401 (defining "court supervision"). For example, except as provided in Sections 10301 to 10303, inclusive, the requirement that notice of sale be published must be satisfied. See Section 10300. See also Section 10303 (notice of sale need not be published where decendent's will directs or authorizes the sale).

Where the personal representative decides to obtain court supervision of an action even though the personal representative is authorized to take the action using the independent administration procedure and 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. For example, there being no specific procedure for obtaining authority under supervised administration for incorporation of the decedent's unincorporated business (see Section 10512), the personal representative may elect to petition for instructions under Section 9611 rather than using the notice of proposed action procedure under Chapter 4 (commencing with Section 10580). See also Section 10580(b) (personal representative may use notice of proposed action procedure for an action that could be taken without giving notice of proposed action).

#### **§ 10501. Matters requiring court supervision**

**Comment.** Paragraphs (1)-(4) of subdivision (a) of Section 10501 restate without substantive change clauses (1)-(3) of the second sentence of subdivision (a) of former Section 591.2.

Paragraphs (5)-(10) of subdivision (a) are new. Prior law did not expressly provide that the independent administration procedure could not be used for the types of actions listed in those paragraphs. The types of actions described in those paragraphs are ones where there often will be a conflict of interest.

Paragraphs (5)-(7) of subdivision (a) make clear that the personal representative cannot use the independent administration procedure to do any of the following:

- (1) Sell estate property to the personal representative or the personal representative's attorney.
- (2) Exchange of estate property for property of the personal representative or the personal representative's attorney.
- (3) Grant of an option to purchase estate property to the personal representative or the personal representative's attorney.

The prohibitions of paragraphs (5)-(7) are subject to the qualification that the independent administration procedure may be used for the transaction when it is between the personal representative as such and the personal representative as an individual and the requirements of subdivision (c) of Section 10501 are satisfied.

Special supervised administration provisions govern the transactions described in paragraphs (5)-(7). See, e.g., Sections 9880-9885. A purchase by or exchange with the personal representative or the personal representative's attorney's may be accomplished only to the extent allowed under these special

provisions and is subject to their limitations and requirements. Under these provisions, the purchase is permitted only if all known heirs or devisees give written consent to the purchase and the court approves the purchase. See Sections 9881 and 9883. The personal representative or personal representative's attorney may purchase property of the estate pursuant to a contract made during the lifetime of the decedent only if the statutory supervised administration requirements are satisfied. See Sections 9860-9868, 9884. The personal representative or personal representative's attorney may exercise an option to purchase property of the estate given in the will of the decedent only if the statutory supervised administration requirements are satisfied. See Sections 9885, 9980-9983.

Paragraph (8) of subdivision (a) makes clear that the personal representative may not use the independent administration procedure for a claim against the estate by the personal representative or the personal representative's attorney. The personal representative must submit the claim for allowance or rejection by the judge pursuant to Section 9252. Paragraph (8) is subject to the qualification that the independent administration procedure may be used for a claim of the personal representative against the estate if the requirements of subdivision (c) are satisfied.

Paragraphs (9) and (10) preclude the use of independent administration to compromise or settle a claim, action, or proceeding of the estate against the personal representative or the personal representative's attorney or to modify the terms of a debt or similar obligation of the personal representative or the personal representative's attorney to the estate. A special provision governs these transactions. See Sections 9830 and 9834. Independent administration procedure may be used for the actions described in paragraphs (9) and (10) between the personal representative as such and the personal representative as an individual if the requirements of subdivision (c) are satisfied.

Paragraphs (1)-(3) of subdivision (b) restate without substantive change clause (4) of the second sentence of subdivision (a) of former Section 591.2. Paragraph (4) of subdivision (b) is new and requires court supervision if the personal representative has limited authority and proposes to borrow money with the loan secured by an encumbrance upon real property of the estate. Under former law, the personal representative with limited authority could use independent

administration authority to borrow money with the loan secured by an encumbrance upon real property. The new limitation on borrowing money does not affect the powers of a personal representative who was granted independent administration authority prior to July 1, 1988. See Section 10406(c). In connection with subdivision (b), see Sections 10403, 10450(b) (2), and 10452(c) (limited authority). See also Section 10502 (decedent's will may restrict powers exercisable under independent administration authority).

Subdivision (c) is a new provision which permits the use of the independent administration procedure for a transaction between the personal representative as such and the personal representative as an individual under the circumstances described in the subdivision. Subdivision (c) does not permit use of the independent administration procedure where the transaction involves the personal representative's attorney; such a transaction is subject to the applicable court supervision provisions referred to above.

The term "the attorney for the personal representative" is used in a broad sense and includes the associates, partners, and attorneys of counsel with the law firm of the attorney selected by the personal representative and also associates, partners, and attorneys of counsel with other law firms associated in the estate proceeding with the firm of the attorney selected by the personal representative.

#### **§ 10502. Powers exercisable under independent administration authority**

**Comment.** Section 10502 restates the introductory clause of former Section 591.6 without substantive change except for the portion of former Section 591.6 giving the executor or administrator powers "in addition to any other powers granted by this code," this portion being superseded by Section 10551. See the Comment to Section 10551.

A reference to Section 9600 (duty to manage estate using ordinary care and diligence) has been added to Section 10502 to recognize that the personal representative acts in a fiduciary capacity in exercising the powers under this part. This reference continues and generalizes the substantive effect of the phrase "the applicable fiduciary duties" which appeared in former Section 591.9. The personal representative is required to exercise the power granted under this part 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 10590 (court review of action taken pursuant to independent administration authority).

As the introductory clause of subdivision (a) of Section 10502 recognizes, the powers of the personal representative are subject to the conditions and limitations of this part. Thus, 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(b) (limited authority excludes power to sell, exchange, or grant option to purchase real property, or to borrow money secured by encumbrance on real property, using independent administration procedure). See also Sections 10403, 10450(b)(2), and 10452(c) (limited authority); Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority).

Subdivision (b) of Section 10502 states another limitation on the exercise of powers by the personal representative: The decedent's will may limit the powers of the personal representative under this part. See also Section 10404 (part not applicable if decedent's will so provides).

A further limitation on the exercise of independent limitation powers is that in some cases powers described in this chapter may be exercised only if notice of proposed action is given or the person entitled to notice of proposed action has waived the notice or has consented to the proposed action. If a person entitled to notice of proposed action makes a timely objection to the proposed action, it may be taken only under court supervision. See Chapter 4 (commencing with Section 10580) (notice of proposed action procedure). As to when notice of proposed action is required, see Article 2 (commencing with Section 10510) and Article 3 (commencing with Section 10530).

#### **§ 10503. Manner of sale of property under independent administration authority**

**Comment.** Section 10503 restates subdivision (a) of former Section 591.9 without substantive change. The phrase "for cash or on credit" is continued from subdivision (a) of former Section 591.6. The phrase "the applicable fiduciary duties" which appeared in subdivision (a) of former Section 591.9 is replaced by Section 10502 (personal representative acts in a fiduciary capacity in exercising the powers granted by this part). See also Section 9600 and the Comment to Section 10502.

The 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(b) (limited authority excludes power to sell, exchange, or grant option to purchase real property using independent administration procedure). See also Sections 10403, 10450(b)(2), and 10452(c) (limited authority). The decedent's will may restrict the exercise of the power to sell property. See Section 10502. See also the Comment to Section 10502. In addition, except in certain narrowly limited circumstances, independent administration authority may not be used to sell estate property to the personal representative or the personal representative's attorney. See Section 10501.

Section 10503 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 and the provisions concerning contracts and commissions of agents or brokers (Sections 10150-10166) are not applicable. Nor does the 90-percent-of-appraised-value requirement apply when a sale is made 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.

Section 10503 concerns the manner of sale of property when the personal representative exercises the power to sell property. The power to sell property is found in other provisions of this chapter. See Sections 10511 (real property) and 10537 (personal property). See also Sections 10515 (granting option to purchase real property), 10516 (transferring to person given option to purchase in will), 10517 (completing contract of decedent to convey or transfer property), 10538 (exclusive right to sell property). The personal representative acts in a fiduciary capacity in exercising the powers granted by this part. See Sections 9600 and 10502 and the Comment to Section 10502.



Unless notice has been waived or consent to the proposed action has been obtained, notice of proposed action under Chapter 4 (commencing with Section 10580) is required to sell or exchange real property (Section 10511) or to sell or exchange personal property except for certain kinds of property (Section 10537). Absent waiver of notice or consent to the proposed action, notice of proposed action also is required for selling the decedent's unincorporated business (Section 10512), granting an option to purchase real property (Section 10515), transferring to a person given an option to purchase in the decedent's will (Section 10516), completing a contract by decedent to convey property (Section 10517), or granting an extension of an exclusive right to sell property that will cause the entire period covered by the right to exceed 270 days (Section 10538).

The personal representative has the power to execute any conveyance needed to effectuate the sale. See Section 10555.

**§ 10510. Article describes powers that may be exercised only after giving notice of proposed action**

**Comment.** Section 10510 conditions the exercise of the powers described in this article: Those powers may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied.

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). See also Section 10502 (introductory clause) and the Comment to that section. As to the effect of court authorization or approval, see Section 9612. See also Section 10590 (court review of action taken pursuant to independent administration authority).

The personal representative may not take certain actions under independent administration authority where there is a conflict of interest between the interest of the personal representative and the interest of the estate. See Section 10501 (except in certain narrowly limited circumstances, personal representative cannot use independent administration procedure to sell property of the estate to the personal representative or the personal representative's attorney, to exchange estate property for property of the personal representative or the personal representative's attorney, or to grant to the personal representative or to the personal

representative's attorney an option to purchase property of the estate). See also the Comment to Section 10501.

A personal representative who has been granted only limited authority may not exercise independent administration authority with respect to matters not included within the scope of the authority granted. See Section 10502 and the Comment to that section. See also Section 10501(b) (limited authority excludes power to sell, exchange, or grant option to purchase real property, or to borrow money secured by encumbrance on real property, using independent administration procedure); Sections 10403, 10450(b)(2), and 10452(c) (limited authority); Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority).

The decedent's will may limit the powers of the personal representative under this part. See Section 10502.

#### **§ 10511. Selling or exchanging real property**

**Comment.** Section 10511, together with Section 10510, restate without substantive change a portion of subdivision (a) of former Section 591.6 (powers of personal representative) and subdivision (b)(1) of former Section 591.3 (notice of proposed action required). Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10511 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. For a general provision concerning the manner of sale of real property under independent administration, see Section 10503. The personal representative has power to make any conveyance needed to effectuate the power granted by Section 10511. See Section 10555.

A personal representative who has been granted only limited authority may not sell or exchange real property using the independent administration procedure. See Section 10501(b) (limited authority excludes power to sell or exchange real property using independent administration procedure). See also Sections 10403, 10450(b)(2), and 10452(c) (limited authority).

Except in certain narrowly limited circumstances, the personal representative may not use independent administration authority to sell property of the estate to the personal representative or the personal representative's attorney or to exchange estate property for property of the personal representative or the personal representative's attorney. See Section 10501 and the Comment to that section.

**§ 10512. Selling or incorporating decedent's business**

**Comment.** Section 10512, together with Section 10510, restate the last portion of subdivision (b) (6) of former Section 591.3 without substantive change. Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10512 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. Real or personal property or both may be sold in connection with the sale of the decedent's business. For a general provision concerning the manner of sale of real property under independent administration, see Section 10503. The personal representative has power to execute any conveyance needed to effectuate the power granted by Section 10512. See Section 10555. As to the power to continue the operation of the decedent's business, see Section 10534.

If the business includes ownership of real property, the personal representative who has been granted only limited authority may not sell or exchange the real property using the independent administration procedure. See Section 10501(b) (limited authority excludes power to sell or exchange real property using independent administration procedure). See also Sections 10403, 10450(b) (2), and 10452(c) (limited authority).

Except in certain narrowly limited circumstances, the personal representative may not use independent administration authority to sell property of the estate to the personal representative or the personal representative's attorney. See Section 10501 and the Comment to that section.

**§ 10514. Borrowing; encumbering estate property**

**Comment.** Section 10514, together with Section 10510, restate subdivision (c) of former Section 591.6 (powers of personal representative) and subdivision (b) (10) of former Section 591.3 (notice of proposed action required) with the addition of subdivision (b) which makes Section 10514 consistent with Section 10501(b) (4). See the Comment to Section 10501. See also Sections 10403, 10450(b) (2), and 10452(c) (limited authority). For provisions relating to supervised administration, see Sections 9800-9807.

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections.

The power described in Section 10514 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510.

**§ 10515. Granting option to purchase real property**

**Comment.** Section 10515, together with Section 10510, restate without substantive change the last portion of subdivision (a) of former Section 591.6 (powers of personal representative) and subdivision (b) (2) of former Section 591.3 (notice of proposed action required). For the comparable provision under supervised administration, see Section 9960.

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10515 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. See also Section 10503 (manner of sale of property under independent administration authority)

A personal representative who has been granted only limited authority may not grant an option to purchase real property of the estate using the independent administration procedure. See Section 10501(b) (limited authority excludes power to grant an option to purchase real property). See also Sections 10403, 10450(b) (2), and 10452(c) (limited authority).

Except in certain narrowly limited circumstances, independent administration authority may not be used to grant an option to the personal representative or the personal representative's attorney to purchase property of the estate. See Section 10501 and the Comment to that section.

**§ 10516. Transferring to person given option to purchase in will**

**Comment.** Section 10516 is a new provision, but the power to transfer to a person given an option in the will probably was embraced within the power to "convey" in subdivision (a) of former Section 591.6. For the comparable provision under supervised administration, see Section 9980.

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10516 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See

Section 10510. The personal representative has the power to execute any conveyance needed to effectuate the power granted by Section 10516. See Section 10555. The personal representative has the specific power described in Section 10516 even though the personal representative has only limited authority. The limitations of Section 10501 that independent administration authority may not be used for certain transactions involving the transfer of estate property to the personal representative or the personal representative's attorney do not apply to the exercise of the power granted by Section 10516.

**§ 10517. Completing contract of decedent to convey or transfer property**

**Comment.** Section 10517 restates former Section 591.3(b) (9) without substantive change. For the comparable provision under supervised administration, see Section 9860.

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10517 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. The personal representative has the power to execute any conveyance needed to effectuate the power granted by Section 10517. See Section 10555. The personal representative has the specific power described in Section 10517 even though the personal representative has only limited authority. The limitations of Section 10501 that independent administration authority may not be used for certain transactions involving the transfer of estate property to the personal representative or the personal representative's attorney do not apply to the exercise of the power granted by Section 10517.

**§ 10518. Determining claims to property claimed to belong to decedent or other person**

**Comment.** Section 10518 restates former Section 591.3(b) (11) without substantive change. For the comparable provision under supervised administration, see Section 9860.

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10518 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. Except in certain narrowly limited circumstances, independent administration authority may not be used to

compromise or settle a claim of the personal representative or the personal representative's attorney against the estate. See Section 10501 and the Comment to that section.

#### **§ 10533. Investing money of the estate**

**Comment.** Section 10533 supersedes subdivision (b) of former Section 591.6 (powers of personal representative) and subdivision (b) (8) of former Section 591.3 (notice of proposed action required—with certain specified exceptions—for investing funds of the estate). Section 10533 uses language from the supervised administration provisions. See Sections 9700 (investment in insured account in a financial institution in this state), 9730 (investment in direct obligations of United States or the State of California, money market mutual fund, investment vehicle authorized for the collective investment of trust funds, units of common trust fund).

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority). For authorization to exercise security subscription or conversion rights under independent administration authority, see Section 10561. See also 10560 (holding securities in name of nominee or in other form).

#### **§ 10534. Continuing operation of decedent's business**

**Comment.** Section 10534 supersedes subdivision (l) of former Section 591.6 (powers of personal representative) and the first portion of subdivision (b) (6) of former Section 591.3 (notice of proposed action). The former provisions did not distinguish between nonpartnership businesses and partnerships in which the decedent was a general partner. However, the provisions relating to supervised administration make that distinction, and Section 10534 has been drafted to conform to the supervised administration provisions. For the provisions governing supervised administration, see Sections 9760-9763. The partnership agreement may contain a provision governing the continuance of the personal representative as a partner in the case of the death of a partner, but the power to continue as a general partner is subject to the provisions of the Uniform Partnership Act. See Corp. Code §§ 15001-15045.

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections.

See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority).

Subdivision (d) requires notice of proposed action if the personal representative continues the operation of the business for more than six months from the date letters are first issued to any personal representative, whether the personal representative is a special personal representative or a general personal representative. The six-month period commences to run from the time the first special or general personal representative is issued letters.

Although notice 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 has the option of giving notice of proposed action if the personal representative plans to continue the business during this period. See Section 10580(b). If notice of proposed action is given, a person who fails to object to the proposed action waives the right to have the court later review the action taken. See Section 10590 and the Comment to that section. See also the Comment to Section 10530.

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 former Section 591.6 has been omitted as unnecessary. The introductory clause of Section 10502 recognizes that the personal representative is required to exercise a power granted under this chapter 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). See also the Comment to Section 10502.

#### **§ 10537. Selling or exchanging personal property**

**Comment.** Section 10537 supersedes portions of subdivisions (a) and (g) of former Section 591.6 which related to sales or exchanges of personal property (powers of personal representative) and all of subdivision (b) (3) of former Section 591.3 (notice of proposed action). For the comparable provisions under supervised administration, see Sections 9920 (exchanges), 10250-10264 (sales).

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority). For a general provision concerning the power to sell

property under independent administration, see Section 10503. Except in certain narrowly limited circumstances, independent administration authority may not be used for the sale of property to the personal representative or the personal representative's attorney or the exchange of property of the estate for property of the personal representative or the personal representative's attorney. See Section 10501.

Subdivision (a) continues the general requirement of subdivision (b) (3) of former Section 591.3 that notice of proposed action be given for the sale or exchange of personal property. Exceptions to this requirement are set forth in subdivision (b) of Section 10537. See also Sections 10510 and 10512 (notice of proposed action required for sale of decedent's unincorporated business).

Paragraph (1) of subdivision (b) restates without substantive change an exception found in subdivision (b) (3) of former Section 591.3. For the comparable provision relating to supervised administration, see Section 10200.

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 newspapers.

Paragraph (3) of subdivision (b) supersedes the exception found in subdivision (b) (3) of former Section 591.3 for assets referred to in former Sections 770 and 771.5 when sold for cash. Paragraph (3) of subdivision (b) of Section 10537 expands the exception provided under former Sections 770 and 771.5 to the extent indicated below:

(1) New Section 10259 (supervised administration) continues the substance of former Section 770 (perishable and other property) which was referred to in former Section 591.3(b) (3), and the substance of the last sentence of former Section 772 (personal property sold at public auction) which was not referred to in former Section 591.3(b) (3). By referring to Section 10259, subdivision (b) (3) of Section 10537 adds the sale of personal property at public auction for cash to the cases where notice of proposed action is not required.

(2) Former Section 771.5 is restated without substantive change in new Section 10202. The reference to Section 10202 in paragraph (3) of subdivision (b) of Section 10537 makes clear that notice of proposed action is not required to sell security subscription or conversion rights when sold for cash. If rights are



not sold for cash, Section 10537 requires that notice of proposed action be given for the sale. 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. As to the exercise of a security subscription or conversion right under independent administration authority, see Sections 10550 and 10562 (notice of proposed action not required).

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 notice of proposed action. Section 10200 governs the surrender of securities for redemption or conversion.

#### **§ 10538. Granting or extending exclusive right to sell property**

**Comment.** Paragraph (1) of subdivision (a) of Section 10538 restates subdivision (o) of former Section 591.6 without substantive change. Under paragraph (1), the personal representative may grant an exclusive right to sell to one broker; and, when that exclusive right expires, grant another broker the exclusive right to sell the same property. The granting of the exclusive right to sell to the new broker is not an extension of the exclusive right to sell within the meaning of paragraph (2) or subdivision (c).

Paragraph (2) of subdivision (a) 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 10538 to the supervised administration provision found in Section 10150(c). Subdivisions (b) and (c) of Section 10538 are new provisions.

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority). For a general provision governing the manner of sale of property, see Section 10503. Notice 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 10510, 10511, and 10537.

Although notice of proposed action is not required in order to grant an exclusive right to sell property for a period not to exceed 90 days, or to extend the broker's exclusive right to sell so long as the total period does not exceed 270 days, the personal representative may give notice of proposed action if the personal representative so desires. See Section 10580(b).

The personal representative does not have the power to sell real property using independent administration procedures if the personal representative has limited authority. See Sections 10501(b) (personal representative granted only limited authority does not have power to sell real property using independent administration procedure). See also Sections 10403, 10450(b)(2), and 10452(c) (limited authority).

The phrase "where necessary and advantageous to the estate" which was found in subdivision (o) of former Section 591.6 has been omitted as unnecessary. The introductory clause of Section 10502 recognizes that 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). See also the Comment to Section 10502.

#### **§ 10552. Acting on claims against estate**

**Comment.** Subdivision (a) of Section 10552 restates the first clause of subdivision (j) of former Section 591.6 without substantive change. The words "by compromise," which appeared at the end of the first clause of subdivision (j) of former Section 591.6, are omitted at the end of subdivision (a) of Section 10552 because these words are as unnecessary and their omission does not make a substantive change in the meaning of the provision. As to the payment of taxes, assessments, and other expenses incurred in the collection, care, and administration of the estate, see Section 10556. For provisions relating to claims, see Part 4 (commencing with Section 9000). See also Part 9 (commencing with Section 11400) (payment of debts).

Subdivision (b) uses language drawn from Section 9830 (supervised administration) and supersedes a portion of the last clause of subdivision (j) of former Section 591.6.

Subdivision (c) continues without change language found in the second clause of subdivision (j) of former Section 591.6.

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections.

Notice of proposed action is not required to exercise the power granted by Section 10552. See Section 10550 and the Comment to that section. Notice 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 10518.

Except in certain narrowly limited circumstances, Section 10501 prohibits use of independent administration authority to:

(1) Compromise or settle a claim, action, or proceeding by the estate against the personal representative or the personal representative's attorney.

(2) Pay or compromise a claim of the personal representative against the estate or a claim of the personal representative's attorney against the estate, whether or not an action or proceeding is commenced on the claim.

Notwithstanding the granting of independent administration authority, the personal representative is required to obtain court supervision for allowance of commissions of the personal representative and allowance of attorney's fees. See Section 10501.

#### **§ 10553. Commencing and defending actions and proceedings**

**Comment.** Section 10553 restates without substantive change the portion of subdivision (j) of former Section 591.6 which authorized the personal representative to "institute" and "defend" actions and proceedings. The language used in Section 10553 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, commencing, maintaining, or defending partition actions. See Section 9823 (supervised administration).

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections.

Notice of proposed action is not required to exercise the power granted by Section 10553. See Section 10550. Notice 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 10518.

Except in certain narrowly limited circumstances, Section 10501 prohibits use of independent administration authority to:

(1) Compromise or settle a claim, action, or proceeding by the estate against the personal representative or the personal representative's attorney.

(2) Pay or compromise a claim of the personal representative or the personal representative's attorney against the estate, whether or not an action or proceeding is commenced on the claim.

#### **§ 10554. Modifying terms of obligation**

**Comment.** Section 10554 is a new provision. For the comparable provision under supervised administration, see Section 9830(a) (2).

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the power granted by Section 10554. See Section 10550.

The power granted by Section 10554 is not limited to modifying the terms of an indebtedness owing to the decedent or the estate. It extends to the modification of the terms of an obligation as well. For example, if the lessee has an obligation (not involving the payment of money) to the estate under the terms of a lease (such as a requirement as to the hours of business of the lessee), Section 10554 authorizes the personal representative to modify that term of the lease, it being one of the terms of the obligation in favor of the estate.

Except in certain narrowly limited circumstances, independent administration authority may not be used to extend, renew, or modify the terms of a debt or other obligation of the personal representative or the personal representative's attorney owing to or in favor of the estate. Notwithstanding the granting of independent administration authority, the personal representative is required to obtain court supervision for allowance of commissions of the personal representative and allowance of attorney's fees. See Section 10501.

#### **§ 10582. Consent to proposed action**

**Comment.** Section 10582 restates subdivision (c) of former Section 591.3 without substantive change. Section 10582 provides a method that can be used to avoid the delay that otherwise would result from the requirement (see Sections 10586 and 10587) that a person given notice of proposed action be allowed

at least 15 days within which to object to the proposed action. Concerning the effect of a consent, see Section 10590. Concerning revocation of a consent, see Section 10584.

**§ 10583. Waiver of notice**

**Comment.** Subdivision (a) of Section 10583 restates subdivision (d) of former Section 591.3 without substantive change. The subdivision permits waiver of notice of proposed action only with respect to a particular proposed action. A person entitled to notice of proposed action may execute a written waiver under subdivision (a) that would, for example, permit notice of a particular proposed real property transaction to be given to the person by telephone so that the proposed action can be expeditiously completed if the person does not object. In such a case, if the person is agreeable to the sale of the real property, the waiver could be drafted in terms that would permit the personal representative to call the person on the telephone to notify the person of an offer to buy the property and to permit the sale of the property at the price and on the terms offered if the person called is agreeable or at a price and on the terms of a counter-offer that is agreeable to the person called.

Subdivision (b) is new. Under this provision, a person could, for example, execute a statutory waiver in the form prescribed by Section 10600 to waive the right of notice of proposed action with respect to investing funds of the estate and borrowing money without waiving the right to notice of proposed action with respect to sales of real property. Or the person could waive the right to receive notice of proposed action with respect to any and all actions the personal representative might decide to take.

Concerning the effect of a waiver, see Section 10590. Concerning revocation of a waiver, see Section 10584.

**§ 10588. Restraining order**

**Comment.** Section 10588 restates subdivision (a)(1) of former Section 591.5 without substantive change except that Section 10588 makes clear the time within which the order must be served on the personal representative and also recognizes the new provision found in subdivision (b) of Section 10580. Section 10588 applies whether the notice of proposed action is given pursuant to subdivision (a) of Section 10580 (giving of notice mandatory) or under subdivision (b) of that section (giving of notice permissive). See also Section 10590 (effect of failure to object).

Where notice of proposed action is mandatory (see subdivision (a) of Section 10580), a person who is entitled to notice of proposed action but has not been given notice of proposed action may nevertheless obtain a restraining order under Section 10588. See the discussion in the Comment to Section 10587. Where notice of proposed action is not required (see subdivision (b) of Section 10580), a person can obtain a restraining order under Section 10588 only if the person has been given notice of the proposed action. If other persons have been given a notice of proposed action under subdivision (b) of Section 10580 but the person who objects to the proposed action has not been given the notice, the person entitled to notice under Section 10581 can object to the proposed action as provided in Section 10587 but may not obtain a restraining order under Section 10587.

**§ 10589. Court supervision and notice of hearing required if personal representative has notice of objection**

**Comment.** Subdivision (a) of Section 10589 continues the first sentence of subdivision (b) of former Section 591.5 without substantive change. Subdivision (b) is new. Subdivision (c) restates subdivision (e) of former Section 591.5 without substantive change.

Where notice of proposed action is required, subdivision (a) requires that the proposed action be taken only under court supervision if the personal representative has notice of a written objection or a restraining order with respect to the proposed action. And, when the proposed action is taken under court supervision, all the requirements of the court supervised procedure apply to the same extent that they would apply if the personal representative had not been granted independent administration authority. See Section 10401 (defining "court supervision"). For example, except as provided in Sections 10301 to 10303, inclusive, if the proposed action is the sale of real property, notice of sale must be published. See Section 10300.

Subdivision (a) of Section 10589 applies not only to a case where notice of proposed action is required but also to a case where notice of proposed action is not required to be given for a proposed action that would require court supervision if independent administration authority had not been granted. See Section 10580(b) (personal representative may give notice of proposed action with respect to a proposed action that could be taken without giving notice of proposed action). If the personal representative elects to give notice of proposed action in such a

case, even though not required, subdivision (a) permits the personal representative to take the proposed action only under court supervision if the personal representative has notice of a written objection to the proposed action or of a restraining order issued with respect to the proposed action.

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

The benefit of the new procedure under subdivision (b) of Section 10580 and subdivisions (a) and (b) of Section 10589 is that the new procedure permits a court review of the proposed action before it is taken if the personal representative has notice of an objection rather than having the objection first made after the action has been taken. For further discussion, see the Comment to Section 10580.

What are the consequences if the personal representative goes ahead with the proposed transaction without court supervision after the personal representative has notice of a written objection to the transaction? As far as the third party to the transaction is concerned, the third party is protected if the third party is a bona fide purchaser or a third person dealing in good faith with the personal representative who changes his or her position in reliance upon the action, conveyance, or transfer, without actual notice of the failure of the personal representative to comply with the court supervision requirements. See Section 10591. As far as the personal representative is concerned, there are two sanctions that would apply where the personal representative goes ahead with a transaction knowing that there is a written objection to the transaction. First, the personal representative can be surcharged if the personal representative violates the standard of ordinary care and diligence established by Section 9600. In view of the objection, the burden is on the personal representative to establish that the action taken satisfied the requirements of Section 9600. Second, taking an action without obtaining court supervision where there has been an objection to the proposed action is grounds for removal of the

personal representative. See Section 10592 and the Comment to that section. If the objection was made by serving a restraining order with respect to the proposed action, the personal representative also would be subject to sanctions for violation of the court order.

Subdivision (c) of Section 10589 requires that notice of hearing be given to a person who has made a written objection under Section 10587 or has served a restraining order under Section 10588. Subdivision (c) requires that notice of hearing be given of the hearing on a petition for instructions authorizing a proposed action described in subdivision (b) as well as of a hearing on a petition for court authorization or confirmation of a proposed action described in subdivision (a).

#### **§ 10590. Effect of failure to object to proposed action**

**Comment.** Section 10590 applies only where notice of proposed action was given as provided in Sections 10580-10586 or where the notice was waived or consent was given to the proposed action. See Sections 10585 (contents of notice), 10586 (delivery or mailing required). See also Sections 10582-10584 (waiver or consent). Subject to subdivision (c), only a person described in Section 10581 may obtain review of the action and then only if the person was not given a proper notice of proposed action and had not waived the notice or consented to the proposed action.

To satisfy the requirements of Section 10590, the notice must include a description of the proposed action in reasonably specific terms, with additional information if the proposed action involves a sale or exchange of real property or an option to purchase real property. See Section 10585.

Subdivisions (a) and (b) of Section 10590 restate the substance of the second sentence and a portion of the third sentence of subdivision (d) of former Section 591.5, but Section 10590 limits the right to obtain court review on the court's own motion. For example, under Section 10590, a creditor who does not request special notice is not entitled to notice of proposed action (see Section 10581) and is not entitled to obtain review of the action taken. A creditor who requests special notice pursuant to Section 1250 is entitled to notice of proposed action. See Section 10581(c).

Subdivision (c) of Section 10590 supersedes the portion of the third sentence of subdivision (d) of former Section 591.5 which permitted the court to review the proposed action on its own



motion. Subdivision (c) narrows the situations where the court can review the action of the personal representative on its own motion to cases where necessary to protect the interests of an heir or devisee who lacked capacity to object to the proposed action or was a minor. As to the right of a person having capacity who failed to object to the action to obtain court review, see subdivision (b).

Paragraph (2) of subdivision (a) and the introductory clause of subdivision (b) make clear that the court is not authorized to review the proposed action on motion of a person who consented to the proposed action (Section 10582) or waived the notice of proposed action (Section 10583). See the Comments to Sections 10582 and 10583. See also Section 10584 (revocation of consent or waiver).

A guardian ad litem can be appointed to object, waive, or consent to proposed actions under the Independent Administration of Estates Act where the person entitled to notice of proposed action lacks the capacity to act with respect to the proposed action.

Subdivision (d) of Section 10590 continues the substantive effect of the first sentence of subdivision (d) of former Section 591.5.

**§ 13101 (technical amendment). Affidavit or declaration**

**Comment.** Section 13101 is amended to add clarifying language to subdivision (a). This amendment is nonsubstantive.

**§ 13153 (amended). Hearing on petition to determine succession to real property**

**Comment.** The first sentence requiring the clerk to set the matter for hearing is deleted, since it is generalized in Section 1285. The former requirement that notice be given not less than 10 days before the hearing is replaced by a cross-reference to Section 1220 which provides for 15 days' notice. The former language relating to the manner of mailing notice is deleted and generalized in Sections 1215 (manner of mailing) and 1220 (manner of mailing notice of hearing).

The new notice provisions referred to in Section 13153 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 13655 (technical amendment). Petition confirming property passing to surviving spouse**

**Comment.** The second sentence of subdivision (b) of Section 13655 is amended to conform to the general notice period provided in Section 1220. Subdivision (b)(3) is amended to revise the cross-reference to the procedure for requesting special notice. See Sections 1250-1252. The last paragraph relating to the version of this section that becomes operative is deleted since it is no longer needed.

The new notice provisions referred to in Section 13655 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

**§ 21501. Application of part**

**Comment.** Subdivision (a) of Section 21501 provides a special transitional rule for this part. Subdivision (b) preserves the effect of the first sentence of subdivision (a) of former Section 1031.

This part applies to trusts as well as wills. Section 21101 (division applicable to wills, trusts, and other instruments). *Cf.* former Section 15005 (law applicable to marital deduction gifts in trust).

**§ 21502. Instrument making part inapplicable**

**Comment.** Section 21502 restates the second sentence of subdivision (a) of former Section 1031 without substantive change.

**§ 21503. Application of formula clause to federal estate tax**

**Comment.** Section 21503 establishes rules of construction that would apply formula clauses to the maximum extent possible, consistent with their intent. One effect of these rules is that a formula clause applies to the tax imposed by chapter 11 (commencing with Section 2001) of Subtitle B of the Internal Revenue Code and not to the tax imposed by Section 4981(d) of the Internal Revenue Code, which the formula clause cannot affect.