

Memorandum 89-95

Subject: Study L-3027 - Execution or Modification of Lease Without
Court Order

A guardian or conservator and a personal representative may execute, extend, renew, or modify a real property lease without court order if the monthly rental does not exceed \$1,500. Prob. Code §§ 2501(b)(*amended by* 1989 Cal. Stat. ch. 21), 2555, 9832(b), 9941(a). The Commission's *Tentative Recommendation Relating to Miscellaneous Probate Code Revisions* includes a recommendation that the \$1,500 limit be increased to \$2,500 per month, both for decedents' estates and for guardianships and conservatorships. We have prepared this recommendation in the form of a separate Recommendation which is attached.

The Tentative Recommendation was distributed to our list of interested persons and organizations for review and comment. We received only a few comments on this portion of the Tentative Recommendation. All were favorable.

The staff recommends that the Commission approve the attached Recommendation for printing and submission to the 1990 Legislature.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

**Execution or Modification
of Lease Without Court Order**

December 1989

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Execution or Modification of Lease Without Court Order*, 20 Cal. L. Revision Comm'n Reports 555 (1990).

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

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December 1, 1989

To: The Honorable George Deukmejian
Governor of California, and
The Legislature of California

Existing law permits a personal representative, guardian, or conservator to execute, extend, renew, or modify a real property lease without court authorization if the monthly rental does not exceed \$1,500. This recommendation proposes that the \$1,500 maximum be increased to \$2,500.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Edwin K. Marzec
Chairperson

RECOMMENDATION

A personal representative, guardian, or conservator may execute, extend, renew, or modify a real property lease without court authorization if the monthly rental does not exceed \$1,500.¹ The Commission recommends that this \$1,500 maximum be increased to \$2,500.

Recent price increases in the real estate market in California have resulted in substantial rises in rentals. It is not uncommon for monthly rentals, even for residential properties, to exceed \$1,500.

The fiduciary should not be required to obtain a court order, with the attendant delay and cost to the estate, simply to deal with these common, short-term lease transactions.² Increasing the maximum rental to \$2,500 monthly for independent fiduciary action would avoid the need to obtain court authorization for routine lease transactions.³

The recommended legislation amends provisions of the new Probate Code as it will be proposed to be enacted at the 1990 legislative session by Assembly Bill 759. The recommended legislation will become operative at the same time as the new Probate Code becomes operative.

PROPOSED LEGISLATION

The Commission's recommendation would be implemented by enactment of the following amendments:

Probate Code § 2501 (amended). Extension, renewal, or modification of lease by guardian or conservator

2501. (a) Except as provided in subdivision (b), court

1. Prob. Code §§ 9832(b), 9941(a) (personal representative), 2501(b) 2555 (guardian or conservator).

2. The term of a lease that may be made without court authorization is limited. For the personal representative, the term may not exceed one year. See Prob. Code §§ 9832(b), 9941(a). For a guardian or conservator, the term may not exceed two years. See Prob. Code §§ 2501(b), 2555.

3. A person who wishes to obtain court review of the lease transaction may contest the account of the personal representative (subdivision (c) of Section 11001) or the guardian or conservator (Section 2625).

approval is required for a compromise, settlement, extension, renewal, or modification which affects any of the following:

- (1) Title to real property.
- (2) An interest in real property or a lien or encumbrance on real property.
- (3) An option to purchase real property or an interest in real property.

(b) If it is to the advantage of the estate, the guardian or conservator without court approval may extend, renew, or modify a lease of real property in either of the following cases:

(1) Where under the lease as extended, renewed, or modified the rental does not exceed ~~one thousand five hundred dollars (\$1,500)~~ *two thousand five hundred dollars (\$2,500)* a month and the term does not exceed two years.

(2) Where the lease is from month to month, regardless of the amount of the rental.

(c) For the purposes of subdivision (b), if the lease as extended, renewed, or modified gives the lessee the right to extend the term of the lease, the length of the term shall be considered as though the right to extend had been exercised.

Comment. Subdivision (b) of Section 2501 is amended to increase the limit on extending, renewing, or modifying a lease without court approval from \$1,500 to \$2,500. See also Section 2555 (execution of lease by guardian or conservator). For a comparable provision relating to personal representatives, see Section 9832.

Note. This amendment to Section 2501 is made to Section 2501 of the Probate Code as it will be proposed to be enacted at the 1990 legislative session by Assembly Bill 759.

Probate Code § 2555 (amended). Execution of lease by guardian or conservator

2555. If it is to the advantage of the estate, the guardian or conservator may lease, as lessor, real property of the estate without authorization of the court in either of the following cases:

(a) Where the rental does not exceed ~~one thousand five hundred dollars (\$1,500)~~ *two thousand five hundred dollars (\$2,500)* a month and the term does not exceed two years.

(b) Where the lease is from month to month, regardless of the amount of the rental.

Comment. Section 2555 is amended to increase the limit on executing a lease without court approval from \$1,500 to \$2,500. See also Section 2501 (extension, renewal, or modification of lease by guardian or conservator). For a comparable provision relating to personal representatives, see Section 9941.

Note. This amendment to Section 2555 is made to Section 2555 of the Probate Code as it will be proposed to be enacted at the 1990 legislative session by Assembly Bill 759.

Probate Code § 9832 (amended). Extension, renewal, or modification of lease by personal representative

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

- (1) Title to real property.
- (2) An interest in real property or a lien or encumbrance on real property.
- (3) An option to purchase real property or an interest in real property.

(b) If it is to the advantage of the estate, the personal representative without prior court authorization may extend, renew, or modify a lease of real property in either of the following cases:

(1) Where under the lease as extended, renewed, or modified the rental does not exceed ~~one thousand five hundred dollars (\$1,500)~~ *two thousand five hundred dollars (\$2,500)* a month and the term does not exceed one year.

(2) Where the lease is from month to month, regardless of the amount of the rental.

(c) For the purposes of subdivision (b), if the lease as extended, renewed, or modified gives the lessee the right to