

## Second Supplement to Memorandum 90-105

Subject: Study L-1036 - Probate Attorney Fees

Background

The counsel to the Senate Judiciary Committee has suggested that Assembly Bill 831 (probate attorney fees) be revised to eliminate the material relating to trustees fees and to eliminate any other unnecessary material from the bill. This will permit the committee to readily examine the provisions relating to probate attorney fees.

Unless there is some compelling reason to require a different decision, the staff believes that it is essential that the bill be simplified by revising it to read in substance as set out in Exhibit 1 attached. We are sending this revision out now even though the committee counsel has not yet reviewed the revision so that interested persons will have an opportunity to review it. We urge the Commission to approve this revision at the July meeting.

Delaying Operative Date Until July 1, 1991

One reason that Assembly Bill 831 is so long is that it is drafted to become operative on January 1, 1991. The result is that it is necessary to include duplicate provisions, some of which amend or add provisions to the existing Probate Code which will be repealed on July 1, 1991 (to cover the period from January 1, 1991, to June 30, 1991), and other provisions which enact the same amendments or additions to the new Probate Code (to apply after June 30, 1991).

If Assembly Bill 831 is revised to become operative on July 1, 1991, its bulk can be reduced considerably (from 34 pages to about 9 pages) without losing anything except the earlier operative date. Moreover, as a matter of policy, in view of the delay in enacting Assembly Bill 831, the delayed operative date would be desirable to permit lawyers and judges to become familiar with the new law and to give the Judicial Council time to develop the necessary forms. Accordingly, the staff believes that it is essential that the operative date of the bill be delayed until July 1, 1991.

### Trustee's Fees

Assembly Bill 759 (new Probate Code) already contains all of the recommended provisions in Assembly Bill 831 concerning trustee's fees (except for the provision found in the first section of AB 831). Accordingly, we can delete the duplicated provisions from Assembly Bill 831 and retain in Assembly Bill 831 only the provision relating to trustees fees which is now found in the first section of the bill.

### Personal Representative's Fees

Assembly Bill 759 (new Probate Code) already contains all of the recommended provisions in Assembly Bill 831 relating to compensation of personal representatives. Accordingly, we can delete the duplicated provisions from Assembly Bill 831.

### Probate Attorney Fees

The new Probate Code (Assembly Bill 759) was drafted on the assumption that the Commission's recommendation on attorney fees would be enacted, and it already includes many of the provisions that are included in Assembly Bill 831 and which can be deleted if the July 1, 1991, operative date is approved.

Assembly Bill 831 must contain the new chapter on probate attorney fees (pages 12-16) of Exhibit 1. Two other sections of the new Probate Code require amendment to reflect the change in the operative date of Assembly Bill 831 from January 1 to July 1 (see Section 10406 on page 35 of Exhibit 1 and Section 10850 on page 36 of Exhibit 1). In addition, so that the members of the Senate Judiciary Committee will have before them two other key provisions of the Commission's recommendation, the staff recommended amendment would make technical revisions in two other sections of the new Probate Code (see Section 10585.5 on pages 35 and 36 of Exhibit 1) and Section 10900 (on pages 36 and 37 of Exhibit 1).

### What Happens if AB 831 is Not Enacted

As pointed out in Memorandum 90-105, the staff is seeking to have Senate Bill 1775 amended so that the new Probate Code will go into

effect even though Assembly Bill 831 is not enacted. The amendment to Senate Bill 1775 would add to that bill a provision that prior law governing probate attorney fees will govern if Assembly Bill 831 is not enacted. Attached as Exhibit 2 are amendments to Senate Bill 1775 to accomplish this result (the relevant portion is marked). We have provided the counsel to Senator Lockyer with a copy of the amendments, and he is now reviewing them. The amendments do not provide a complete statement of the law governing probate attorney fees. If Assembly Bill 831 is not enacted, the Commission should recommend an urgency bill next session to insert detailed provisions based on existing law in place of the concise statement concerning probate attorney fees that would be added by the amendment to Senate Bill 1775. In any event, an urgency bill will be necessary next session to revise the new Probate Code to pick up the revisions made in the existing Probate Code (but not in the new Probate Code) by bills enacted this session sponsored by groups other than the Commission.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

2nd Supp 90-105 Exhibit 1

AMENDED IN SENATE JUNE 19, 1990  
AMENDED IN SENATE APRIL 18, 1990  
AMENDED IN SENATE JANUARY 11, 1990  
AMENDED IN ASSEMBLY JUNE 1, 1989  
AMENDED IN ASSEMBLY MAY 1, 1989

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

**ASSEMBLY BILL**

**No. 831**

**Introduced by Assembly Member Harris**

February 22, 1989

An act to amend Section 2051 of the Financial Code, and to ~~amend and repeal Sections 7623, 7662, 7666, 8404, 8547, 8651, 10406, 10501, 10900, 10954, 11000, 11008, 12205, 15640, 15642, 15800, and 17200 of, to add and repeal Sections 10404.5, 10565, 10585.5, 15645, and 15886 to of, to add and repeal Chapter 2.5 (commencing with Section 9680) to Part 5 of Division 7 of, and to add and repeal Part 7 (commencing with Section 10800) to Division 7 of, and to repeal Part 15 (commencing with Section 900) of Division 2 of, the Probate Code, relating~~ to probate law.

*amend Sections  
10406, 10585.5,  
10850, and  
10900, and to  
add Chapter 2.5*

LEGISLATIVE COUNSEL'S DIGEST

AB 831, as amended, Harris. Probate: estates and trusts.

(1) Existing law regarding the administration of estates provides for the order of payment of obligations of the estate by the public administrator, the powers and duties of the personal representative, the compensation of the personal representative, the hiring of attorneys and other assistants to aid the personal representative in the administration of the estate, and court supervision of the personal representative.

This bill would revise the law with regard to those

*the Probate Code,  
as added by  
Chapter 79 of  
the Statutes  
of 1990,  
relating*

provisions. The bill, contingent upon the enactment of a new Probate Code by AB 759, would add similar provisions to that new Probate Code on its operative date relative to the hiring of attorneys and other assistants to aid the personal representative in the administration of the estate.

(2) Under existing law, if a bank is sold, the selling and purchasing banks are required to enter into an agreement that contain the terms and conditions of the sale. That agreement may provide for the transfer of all trusts to the purchasing bank.

This bill would provide that if a trust is transferred under the agreement, the transfer is good cause for removal of the trustee.

(3) Under existing law, a trustee may resign only in specified instances, including with the consent of beneficiaries.

The bill would provide that if a beneficiary has a conservator, the conservator may consent to the trustee's resignation on behalf of the conservatee without obtaining court approval.

(4) Existing law provides for the removal of a trustee in accordance with the trust instrument, by the court on its own motion, or on the petition of a cotrustee or beneficiary, for specified grounds.

This bill would also provide for removal of a trustee on petition of a settlor, and would add excessive compensation to the grounds for the removal of a trustee.

(5) The bill would provide that in proceedings to remove a trustee of an irrevocable trust and transfer administration to a trust company, the court may award the petitioners costs and attorney's fees, to be paid by the trustee or the trust, as determined by the court, if all the adult beneficiaries of the trust had previously requested the trustee to transfer administration of the trust to a trust company.

(6) Under existing law, if a trust has no trustee or if a vacancy is required to be filled, the vacancy shall be filled as provided in the trust instrument, or the court may appoint a trustee.

This bill would provide that a vacancy not filled as provided in the trust instrument may be filled by a trust company that

has agreed to accept the trust on agreement of all adult beneficiaries, as specified.

(7) The bill would provide that a trustee may not charge an increased trustee's fee unless the trustee first gives at least 60 days' written notice to each affected beneficiary.

(8) The bill would also provide for judicial review of a trustee's compensation.

(9) *Specified provisions of the bill would be repealed on July 1, 1991.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2051 of the Financial Code is  
2 amended to read:

3 2051. (a) The selling and purchasing banks shall  
4 enter into an agreement of purchase and sale which shall  
5 contain all the terms and conditions of the sale and  
6 contain proper provision for the payment of all liabilities  
7 of the selling bank, or of the business, branch, or branch  
8 business sold, and proper provision for the assumption by  
9 the purchasing bank of all fiduciary and trust obligations  
10 of the selling bank, or business, branch, or branch  
11 business sold. The agreement may provide for the  
12 transfer of all deposits of the selling bank or of the  
13 business, branch, or branch business sold to the  
14 purchasing bank, subject to the right of every depositor  
15 of the selling bank or of the business, branch, or branch  
16 business so sold to withdraw the deposit in full on demand  
17 after such transfer, irrespective of the terms under which  
18 it was deposited with the selling bank, and may provide  
19 for the transfer of all court and private trusts so sold to the  
20 purchasing bank.

21 (b) If a trust is transferred under this section, the  
22 transfer is good cause for removal of the trustee under the  
23 Trust Law, Division 9 (commencing with Section 15000)  
24 of the Probate Code.

~~25 SEC. 2. Part 15 (commencing with Section 300) of~~

~~26 Division 2 of the Probate Code is repealed.~~

1 SEC. 3. Section 7623 of the Probate Code is amended  
2 to read:

3 7623. (a) As used in this section, "additional  
4 compensation" means the difference between the  
5 reasonable compensation of the public administrator in  
6 administering the estate and the compensation awarded  
7 the public administrator under Chapter 1 (commencing  
8 with Section 10800) of Part 7.

9 (b) The public administrator may be awarded  
10 additional compensation if any of the following  
11 conditions are satisfied:

12 (1) A person having priority for appointment as  
13 personal representative has been given notice under  
14 Section 8110 of the public administrator's petition for  
15 appointment, and the person has not petitioned for  
16 appointment in preference to the public administrator.

17 (2) The public administrator has been appointed after  
18 the resignation or removal of a personal representative.

19 SEC. 4. Section 7662 of the Probate Code is amended  
20 to read:

21 7662. The public administrator acting under  
22 authority of this article shall pay out the money of the  
23 estate, in the order prescribed in Section 11420, for  
24 expenses of administration, charges against the estate,  
25 and claims presented to the public administrator before  
26 distribution of the decedent's property pursuant to  
27 Section 7663. A creditor whose claim is paid under this  
28 subdivision is not liable for contribution to a creditor  
29 whose claim is presented after the payment.

30 SEC. 5. Section 7666 of the Probate Code is amended  
31 to read:

32 7666. (a) Except as provided in Section 7623 and in  
33 subdivision (b), the compensation payable to the public  
34 administrator, for the filing of an application pursuant to  
35 this article and for performance of any duty or service  
36 connected therewith, is that set out in Part 7  
37 (commencing with Section 10800).

38 (b) The public administrator is entitled to a minimum  
39 compensation of three hundred fifty dollars (\$350).

40 SEC. 6. Section 8404 of the Probate Code is amended

1 to read:

2 8404. (a) Before letters are issued, the personal  
3 representative (other than a trust company or a public  
4 administrator) shall file an acknowledgment of receipt of  
5 a statement of duties and liabilities of the office of  
6 personal representative. The statement shall be in the  
7 form prescribed by the Judicial Council.

8 (b) The court may by local rule require the  
9 acknowledgment of receipt to include the personal  
10 representative's social security number and driver's  
11 license number, if any, provided that the court ensures  
12 their confidentiality.

13 (c) The statement of duties and liabilities prescribed  
14 by the Judicial Council does not supersede the law on  
15 which the statement is based.

16 SEC. 7. Section 8547 of the Probate Code is amended  
17 to read:

18 8547. (a) Subject to the limitations of this section, the  
19 court shall fix the compensation of the special  
20 administrator.

21 (b) The compensation of the special administrator  
22 shall not be allowed until the close of administration,  
23 unless the general personal representative joins in the  
24 petition for allowance of the special administrator's  
25 compensation or the court in its discretion so allows.  
26 Compensation for extraordinary services of a special  
27 administrator may be allowed on settlement of the final  
28 account of the special administrator. The total  
29 compensation paid to the special administrator and  
30 general personal representative shall not, together,  
31 exceed the sums provided in Part 7 (commencing with  
32 Section 10800) for compensation for the ordinary and  
33 extraordinary services of a personal representative. If the  
34 same person does not act as both special administrator  
35 and general personal representative, the compensation  
36 shall be divided in such proportions as the court  
37 determines to be just or as may be agreed to by the  
38 special administrator and general personal  
39 representative.

40 SEC. 8. Section 9651 of the Probate Code is amended



1 to read:

2 3651. (a) A personal representative who in good faith  
3 takes into possession real or personal property, and  
4 reasonably believes that the property is part of the estate  
5 of the decedent, is not:

6 (1) Criminally liable for so doing.

7 (2) Civilly liable to any person for so doing.

8 (b) The personal representative shall make  
9 reasonable efforts to determine the true nature of, and  
10 title to, the property so taken into possession.

11 (c) During his or her possession, the personal  
12 representative is entitled to receive all rents, issues, and  
13 profits of the property. If the property is later  
14 determined not to be part of the estate of the decedent,  
15 the personal representative shall deliver the property, or  
16 cause it to be delivered, to the person legally entitled to  
17 it, together with all rents, issues, and profits of the  
18 property received by the personal representative, less  
19 any expenses incurred in protecting and maintaining the  
20 property and in collecting rents, issues, and profits. The  
21 personal representative may request court approval  
22 before delivering the property pursuant to this  
23 subdivision.

24 (d) The court may allow the personal representative  
25 reasonable compensation for services rendered in  
26 connection with the duties specified in this section as to  
27 property later determined not to be part of the estate of  
28 the decedent, if the court makes one of the following  
29 findings:

30 (1) The services were of benefit to the estate. If the  
31 court makes this finding, the compensation and the  
32 expenses and costs of litigation, including attorney's fees  
33 of the attorney hired by the personal representative to  
34 handle the matter, are a proper expense of  
35 administration.

36 (2) The services were essential to preserve, protect,  
37 and maintain the property. If the court makes this  
38 finding, the court shall award compensation and the  
39 expenses and costs of litigation, including attorney's fees  
40 of the attorney hired by the personal representative to

1 handle the matter, as an expense deductible from the  
2 rents, issues, and profits received by the personal  
3 representative, or, if these are insufficient, as a lien  
4 against the property.

5 SEC. 9. Chapter 2.5 (commencing with Section 9680)  
6 is added to Part 5 of Division 7 of the Probate Code, to  
7 read:

8

9 CHAPTER 2.5. HIRING AND PAYING ATTORNEYS,  
10 ADVISERS, AND OTHERS

11

12 9680. (a) Except as restricted or otherwise provided  
13 by the will or by court order and subject to subdivision  
14 (b) and to Section 10804, the personal representative,  
15 acting reasonably for the benefit of the estate and in the  
16 best interest of interested persons, may hire persons to  
17 advise or assist the personal representative in the  
18 administration of the estate, including attorneys,  
19 accountants, auditors, technical advisers, investment  
20 advisers, or other experts or agents, even if they are  
21 associated or affiliated with the personal representative.

22 (b) A provision in the will directing the personal  
23 representative to hire a particular person to advise or  
24 assist the personal representative in the administration of  
25 the estate is not binding on the personal representative,  
26 and the personal representative may, but is not required  
27 to, hire that person.

28 9681. (a) The compensation of persons hired under  
29 Section 9680, including the attorney for the personal  
30 representative, shall be determined by agreement  
31 between the personal representative and the person  
32 hired, and, except as provided in Section 9684 and in  
33 Chapter 3 (commencing with Section 11000) of Part 8, is  
34 not subject to approval or review by the court.

35 (b) Subject to Section 9682, if the decedent's will  
36 makes provision for the compensation of a person hired  
37 under Section 9680, including the attorney for the  
38 personal representative, the compensation provided by  
39 the will shall be the full and only compensation for the  
40 services of that person.

1 9682. (a) The personal representative or a person  
2 hired under Section 9680, including the attorney for the  
3 personal representative, may petition the court to be  
4 relieved from a provision of the decedent's will that  
5 provides for the compensation of a person hired under  
6 Section 9680 or for relief from some other restriction or  
7 other limiting provision of the will on the hiring of  
8 persons by the personal representative.

9 (b) Notice of the hearing on the petition shall be given  
10 as provided in Section 1220 to all of the following persons:

11 (1) Each person listed in Section 1220.

12 (2) Each known heir whose interest in the estate  
13 would be affected by the petition.

14 (3) Each known devisee whose interest in the estate  
15 would be affected by the petition.

16 (4) The Attorney General, at the office of the Attorney  
17 General in Sacramento, if any portion of the estate is to  
18 escheat to the state and its interest in the estate would be  
19 affected by the petition.

20 (c) If the court determines that it is to the advantage  
21 of the estate and in the best interest of the interested  
22 persons, the court may make an order:

23 (1) Granting relief from the restriction or other  
24 limiting provision of the will upon the terms and  
25 conditions the court specifies in the order.

26 (2) Authorizing compensation for the person hired  
27 under Section 9680 in an amount greater than provided  
28 in the will.

29 9683. (a) Except as otherwise provided in this  
30 section, the personal representative may pay persons  
31 hired under Section 9680 out of funds of the estate as a  
32 proper expense of administration.

33 (b) If a person, including an attorney, is hired to assist  
34 the personal representative in the performance of the  
35 services of the personal representative for which the  
36 personal representative is compensated under Part 7  
37 (commencing with Section 10800), the person hired shall  
38 be paid out of the personal representative's own funds  
39 and not out of the funds of the estate, except that, at the  
40 request of the personal representative, the court may

1 order payment out of the estate directly to the person  
2 assisting the personal representative in the performance  
3 of these services, the payment to be charged against and  
4 deducted from the compensation that otherwise would  
5 be paid to the personal representative.

6 (c) Nothing in subdivision (b) limits the authority of  
7 the personal representative to pay out of funds of the  
8 estate for services of tax counsel, tax auditors,  
9 accountants, or other tax experts hired for the providing  
10 of services in the computation, reporting, or making of  
11 tax returns, or in negotiations which may be necessary for  
12 the final determination and payment of taxes.

13 9684. (a) Subject to Section 10590 and to subdivision  
14 (f) of this section, on petition of the personal  
15 representative or an interested person, the court shall  
16 review the following as requested in the petition:

17 (1) The propriety of employment by the personal  
18 representative of any person under Section 9680 who has  
19 been or is to be paid out of funds of the estate.

20 (2) The reasonableness of the agreed compensation  
21 under subdivision (a) of Section 9681 of any person who  
22 has been or is to be paid out of funds of the estate.

23 (b) Notice of the hearing on the petition shall be given  
24 as provided in Section 1220 to all of the following persons:

25 (1) The person whose employment or compensation is  
26 in question.

27 (2) Each person listed in Section 1220.

28 (3) Each known heir whose interests in the estate is  
29 affected by the petition.

30 (4) Each known devisee whose interests in the estate  
31 is affected by the petition.

32 (5) The Attorney General, by mail at the office of the  
33 Attorney General in Sacramento, if any portion of the  
34 estate is to escheat to the state and its interest in the  
35 estate is affected by the petition.

36 (c) On hearing the petition, the court shall approve  
37 the agreed compensation unless the court determines  
38 that the agreed compensation is unreasonable in light of  
39 the work to be performed for the estate. If the work has  
40 already been performed and the court has not previously

1 reviewed the agreed compensation, the court shall  
2 determine whether the agreed compensation is  
3 unreasonable in light of the work actually performed for  
4 the estate. In making the determination as to the  
5 reasonableness of the compensation in the case of the  
6 attorney for the personal representative, the court shall  
7 be guided by Rule 4-200 of the Rules of Professional  
8 Conduct of the State Bar of California (fees for legal  
9 services). If the court determines that the agreed  
10 compensation is unreasonable, the court shall fix a  
11 reasonable amount as compensation.

12 (d) If the court determines that the attorney for the  
13 personal representative has received excessive  
14 compensation, the court shall order the attorney to make  
15 an appropriate refund. If the court determines that a  
16 person other than the attorney for the personal  
17 representative has received excessive compensation, an  
18 order for the refund of the excessive compensation may  
19 be obtained only in a proceeding under Section 9684.5.

20 (e) Except as provided in subdivision (f), nothing in  
21 this section limits the right to contest the account of the  
22 personal representative under Chapter 3 (commencing  
23 with Section 11000) of Part 8.

24 (f) The petitioner and all persons to whom notice of  
25 the hearing on the petition was given pursuant to  
26 subdivision (b) are bound by the determination of the  
27 court under this section.

28 9684.5. (a) Any interested person may commence a  
29 proceeding under this section to obtain an order that a  
30 person determined by the court to have received  
31 excessive compensation make an appropriate refund.  
32 The proceeding under this section may be combined  
33 with the proceeding brought to determine whether the  
34 compensation is excessive. There shall be no additional  
35 filing fee if the petition under this section is combined  
36 with the other proceeding.

37 (b) A proceeding under this section shall be  
38 commenced by filing a petition requesting that an order  
39 be made under this section and referring to the other  
40 proceeding brought to determine whether the

1 compensation is excessive.

2 (c) Not less than 30 days before the hearing, the  
3 petitioner shall do both of the following:

4 (1) Cause notice of the hearing and a copy of the  
5 petition to be mailed to the personal representative and  
6 to any other petitioner in the other proceeding to  
7 determine whether the compensation is excessive.

8 (2) Cause a summons and a copy of the petition to be  
9 served on the person whose compensation is claimed to  
10 be excessive. The summons shall be in the form and shall  
11 be served in the manner prescribed in Title 5  
12 (commencing with Section 410.10) of Part 2 of the Code  
13 of Civil Procedure.

14 (d) If the court determines that the person who  
15 received excessive compensation should make an  
16 appropriate refund, the court shall so order. The order is  
17 a judgment that may be enforced against the person  
18 ordered to make the refund.

19 (e) An order that the attorney for the personal  
20 representative make an appropriate refund may be made  
21 without compliance with the requirements of this  
22 section.

23 9685. Nothing in this chapter limits the right of an  
24 attorney to decline to be the attorney for the personal  
25 representative or the right of an attorney to withdraw as  
26 the attorney for the personal representative, and, in such  
27 case, the attorney is entitled to reasonable compensation  
28 for the legal services actually provided.

29 9686. (a) This chapter does not apply in any  
30 proceeding for administration of a decedent's estate  
31 commenced before January 1, 1991.

32 (b) Notwithstanding its amendment or repeal by this  
33 act, the applicable law in effect before January 1, 1991,  
34 governing the subject matter of this chapter continues to  
35 apply in any proceeding for administration of a  
36 decedent's estate commenced before January 1, 1991.

37 **SEC. 2.** ~~SEC. 95.~~ Chapter 2.5 (commencing with Section  
38 9680) is added to Part 5 of Division 7 of the Probate Code  
39 proposed by Assembly Bill 750 of the 1990-91 Regular  
40 Session, to read:

*as added by Chapter 79 of the Statutes of 1990*

1  
2 CHAPTER 2.5. HIRING AND PAYING ATTORNEYS,  
3 ADVISERS, AND OTHERS  
4

5 9680. (a) Except as restricted or otherwise provided  
6 by the will or by court order and subject to subdivision  
7 (b) and to Section 10804, the personal representative,  
8 acting reasonably for the benefit of the estate and in the  
9 best interest of interested persons, may hire persons to  
10 advise or assist the personal representative in the  
11 administration of the estate, including attorneys,  
12 accountants, auditors, technical advisers, investment  
13 advisers, or other experts or agents, even if they are  
14 associated or affiliated with the personal representative.  
15 (b) A provision in the will directing the personal  
16 representative to hire a particular person to advise or  
17 assist the personal representative in the administration of  
18 the estate is not binding on the personal representative,  
19 and the personal representative may, but is not required  
20 to, hire that person.

21 9681. (a) The compensation of persons hired under  
22 Section 9680, including the attorney for the personal  
23 representative, shall be determined by agreement  
24 between the personal representative and the person  
25 hired, and, except as provided in Section 9684 and in  
26 Chapter 3 (commencing with Section 11000) of Part 8, is  
27 not subject to approval or review by the court.

28 (b) Subject to Section 9682, if the decedent's will  
29 makes provision for the compensation of a person hired  
30 under Section 9680, including the attorney for the  
31 personal representative, the compensation provided by  
32 the will shall be the full and only compensation for the  
33 services of that person.

34 9682. (a) The personal representative or a person  
35 hired under Section 9680, including the attorney for the  
36 personal representative, may petition the court to be  
37 relieved from a provision of the decedent's will that  
38 provides for the compensation of a person hired under  
39 Section 9680 or for relief from some other restriction or  
40 other limiting provision of the will on the hiring of

1 persons by the personal representative.

2 (b) Notice of the hearing on the petition shall be given  
3 as provided in Section 1220 to all of the following persons:

4 (1) Each person listed in Section 1220.

5 (2) Each known heir whose interest in the estate  
6 would be affected by the petition.

7 (3) Each known devisee whose interest in the estate  
8 would be affected by the petition.

9 (4) The Attorney General, at the office of the Attorney  
10 General in Sacramento, if any portion of the estate is to  
11 escheat to the state and its interest in the estate would be  
12 affected by the petition.

13 (c) If the court determines that it is to the advantage  
14 of the estate and in the best interest of the interested  
15 persons, the court may make an order:

16 (1) Granting relief from the restriction or other  
17 limiting provision of the will upon the terms and  
18 conditions the court specifies in the order.

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20 under Section 9680 in an amount greater than provided  
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27 the personal representative in the performance of the  
28 services of the personal representative for which the  
29 personal representative is compensated under Part 7  
30 (commencing with Section 10800), the person hired shall  
31 be paid out of the personal representative's own funds  
32 and not out of the funds of the estate, except that, at the  
33 request of the personal representative, the court may  
34 order payment out of the estate directly to the person  
35 assisting the personal representative in the performance  
36 of these services, the payment to be charged against and  
37 deducted from the compensation that otherwise would  
38 be paid to the personal representative.

39 (c) Nothing in subdivision (b) limits the authority of  
40 the personal representative to pay out of funds of the



1 estate for services of tax counsel, tax auditors,  
2 accountants, or other tax experts hired for the providing  
3 of services in the computation, reporting, or making of  
4 tax returns, or in negotiations which may be necessary for  
5 the final determination and payment of taxes.

6 9684. (a) Subject to Section 10590 and to subdivision  
7 (f) of this section, on petition of the personal  
8 representative or an interested person, the court shall  
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23 (4) Each known devisee whose interests in the estate  
24 would be affected by the petition.

25 (5) The Attorney General, at the office of the Attorney  
26 General in Sacramento, if any portion of the estate is to  
27 escheat to the state and its interest in the estate would be  
28 affected by the petition.

29 (c) On hearing the petition, the court shall approve  
30 the agreed compensation unless the court determines  
31 that the agreed compensation is unreasonable in light of  
32 the work to be performed for the estate. If the work has  
33 already been performed and the court has not previously  
34 reviewed the agreed compensation, the court shall  
35 determine whether the agreed compensation is  
36 unreasonable in light of the work actually performed for  
37 the estate. In making the determination as to the  
38 reasonableness of the compensation in the case of the  
39 attorney for the personal representative, the court shall  
40 be guided by Rule 4-200 of the Rules of Professional

1 Conduct of the State Bar of California (fees for legal  
2 services). If the court determines that the agreed  
3 compensation is unreasonable, the court shall fix a  
4 reasonable amount as compensation.

5 (d) If the court determines that the attorney for the  
6 personal representative has received excessive  
7 compensation, the court shall order the attorney to make  
8 an appropriate refund. If the court determines that a  
9 person other than the attorney for the personal  
10 representative has received excessive compensation, an  
11 order for the refund of the excessive compensation may  
12 be obtained only in a proceeding under Section 9684.5.

13 (e) Except as provided in subdivision (f), nothing in  
14 this section limits the right to contest the account of the  
15 personal representative under Chapter 3 (commencing  
16 with Section 11000) of Part 8.

17 (f) The petitioner and all persons to whom notice of  
18 the hearing on the petition was given pursuant to  
19 subdivision (b) are bound by the determination of the  
20 court under this section.

21 9684.5. (a) Any interested person may commence a  
22 proceeding under this section to obtain an order that a  
23 person determined by the court to have received  
24 excessive compensation make an appropriate refund.  
25 The proceeding under this section may be combined  
26 with the proceeding brought to determine whether the  
27 compensation is excessive. There shall be no additional  
28 filing fee if the petition under this section is combined  
29 with the other proceeding.

30 (b) A proceeding under this section shall be  
31 commenced by filing a petition requesting that an order  
32 be made under this section and referring to the other  
33 proceeding brought to determine whether the  
34 compensation is excessive.

35 (c) Not less than 30 days before the hearing, the  
36 petitioner shall do both of the following:

37 (1) Cause notice of the hearing and a copy of the  
38 petition to be mailed to the personal representative and  
39 to any other petitioner in the other proceeding to  
40 determine whether the compensation is excessive.

1 (2) Cause a summons and a copy of the petition to be  
2 served on the person whose compensation is claimed to  
3 be excessive. The summons shall be in the form and shall  
4 be served in the manner prescribed in Title 5  
5 (commencing with Section 410.10) of Part 2 of the Code  
6 of Civil Procedure.

7 (d) If the court determines that the person who  
8 received excessive compensation should make an  
9 appropriate refund, the court shall so order. The order is  
10 a judgment that may be enforced against the person  
11 ordered to make the refund.

12 (e) An order that the attorney for the personal  
13 representative make an appropriate refund may be made  
14 without compliance with the requirements of this  
15 section.

16 9685. Nothing in this chapter limits the right of an  
17 attorney to decline to be the attorney for the personal  
18 representative or the right of an attorney to withdraw as  
19 the attorney for the personal representative, and, in such  
20 case, the attorney is entitled to reasonable compensation  
21 for the legal services actually provided.

22 9686. (a) This chapter does not apply in any  
23 proceeding for administration of a decedent's estate  
24 commenced before ~~January 1, 1991.~~ July

25 (b) Notwithstanding its repeal, the applicable law in  
26 effect before ~~January 1, 1991,~~ July governing the subject  
27 matter of this chapter continues to apply in any  
28 proceeding for administration of a decedent's estate  
29 commenced before ~~January 1, 1991.~~ July

~~30 9687. This chapter shall not become operative unless  
31 Assembly Bill 759 of the 1989-90 Regular Session is  
32 enacted and establishes a new Probate Code, in which  
33 case this chapter shall become operative on the same date  
34 that the Probate Code added by Assembly Bill 759  
35 becomes operative.~~

36 SEC. 10. Section 10404 is added to the Probate Code,  
37 to read:

38 10404.5. Notwithstanding any provision of the  
39 decedent's will, the personal representative is authorized  
40 to exercise under the provisions of this part the power

1 granted by Section 10565, whether or not the personal  
2 representative has been granted authority to administer  
3 the estate under this part.

4 SEC. 11. Section 10406 of the Probate Code is  
5 amended to read:

6 10406. (a) Subject to subdivision (c), this part applies  
7 in all of the following cases:

8 (1) Where authority to administer the estate is  
9 granted under this part.

10 (2) Where authority to administer the estate was  
11 granted under former Sections 591.1 to 591.9, inclusive, of  
12 the Probate Code on a petition filed after January 1, 1985.

13 (3) Where authority was granted prior to January 1,  
14 1985, to administer the estate under the Independent  
15 Administration of Estates Act and one of the following  
16 requirements is satisfied:

17 (A) A petition was filed under former Section 591.1 of  
18 the Probate Code after January 1, 1985, requesting that  
19 the personal representative be authorized to administer  
20 the estate under the Independent Administration of  
21 Estates Act in effect at the time the petition was filed, and  
22 the petition was granted.

23 (B) A petition is filed under this part requesting that  
24 the personal representative be authorized to administer  
25 the estate under this part, and the petition is granted.

26 (b) Except as provided in paragraph (3) of subdivision  
27 (a), a personal representative who was granted authority  
28 prior to January 1, 1985, to administer the estate under  
29 the Independent Administration of Estates Act shall  
30 continue to administer the estate under the provisions of  
31 the Independent Administration of Estates Act that were  
32 applicable at the time the petition was granted.

33 (c) If the personal representative was granted  
34 independent administration authority prior to July 1,  
35 1988, the personal representative may use that existing  
36 authority on and after July 1, 1988, to borrow money on  
37 a loan secured by an encumbrance upon real property,  
38 whether or not that existing authority includes the  
39 authority to sell real property.

40 (d) Sections 10404.5, 10565, and 10585.5 as enacted by

1 the act that added this subdivision, and Section 10501 as  
2 amended by the act that added this subdivision, do not  
3 apply to any proceeding for administration of a  
4 decedent's estate commenced before January 1, 1991.  
5 Section 10501, as that section existed prior to its  
6 amendment by the act that added this subdivision,  
7 continues to apply in any proceeding for administration  
8 of a decedent's estate commenced before January 1, 1991,  
9 notwithstanding its amendment by the act that added  
10 this subdivision.

11 SEC. 12. Section 10501 of the Probate Code is  
12 amended to read:

13 10501. (a) Notwithstanding any other provision of  
14 this part, whether the personal representative has been  
15 granted full authority or limited authority, a personal  
16 representative who has obtained authority to administer  
17 the estate under this part is required to obtain court  
18 supervision, in the manner provided in this code, for any  
19 of the following actions:

20 (1) Allowance of the personal representative's  
21 compensation.

22 (2) Settlement of accounts.

23 (3) Preliminary and final distributions and discharge.

24 (4) Sale of property of the estate to the personal  
25 representative or to the attorney for the personal  
26 representative.

27 (5) Exchange of property of the estate for property of  
28 the personal representative or for property of the  
29 attorney for the personal representative.

30 (6) Grant of an option to purchase property of the  
31 estate to the personal representative or to the attorney  
32 for the personal representative.

33 (7) Allowance, payment, or compromise of a claim of  
34 the personal representative, or the attorney for the  
35 personal representative, against the estate.

36 (8) Compromise or settlement of a claim, action, or  
37 proceeding by the estate against the personal  
38 representative or against the attorney for the personal  
39 representative.

40 (9) Extension, renewal, or modification of the terms of

1 a debt or other obligation of the personal representative,  
2 or the attorney for the personal representative, owing to  
3 or in favor of the decedent or the estate.

4 (b) Notwithstanding any other provision of this part,  
5 a personal representative who has obtained only limited  
6 authority to administer the estate under this part is  
7 required to obtain court supervision, in the manner  
8 provided in this code, for any of the following actions:

- 9 (1) Sale of real property.
- 10 (2) Exchange of real property.
- 11 (3) Grant of an option to purchase real property.
- 12 (4) Borrowing money with the loan secured by an  
13 encumbrance upon real property.

14 (c) Paragraphs (4) to (9), inclusive, of subdivision (a)  
15 do not apply to a transaction between the personal  
16 representative as such and the personal representative as  
17 an individual where all of the following requirements are  
18 satisfied:

19 (1) Either (A) the personal representative is the sole  
20 beneficiary of the estate or (B) all the known heirs or  
21 devisees have consented to the transaction.

22 (2) The period for filing creditor claims has expired.

23 (3) No request for special notice is on file or all persons  
24 who filed a request for special notice have consented to  
25 the transaction.

26 (4) The claim of each creditor who filed a claim has  
27 been paid, settled, or withdrawn, or the creditor has  
28 consented to the transaction.

29 (d) Subdivision (a) does not apply to the hiring and  
30 paying of persons, including the attorney for the personal  
31 representative, hired under Section 9630 to advise or  
32 assist the personal representative in the administration of  
33 the estate.

34 SEC. 13. Section 10565 is added to the Probate Code,  
35 to read:

36 10565. (a) Subject to Section 10804, the personal  
37 representative has the power to hire persons to advise or  
38 assist in the administration of the estate, including  
39 attorneys, accountants, auditors, technical advisers,  
40 investment advisers, or other experts or agents, even if

1 they are associated or affiliated with the personal  
2 representative.

3 (b) The personal representative has the power to  
4 agree to and pay the compensation of the persons  
5 described in subdivision (a) out of funds of the estate  
6 unless the person is hired to assist the personal  
7 representative in the performance of services of the  
8 personal representative for which the personal  
9 representative is compensated under Part 7  
10 (commencing with Section 10800).

11 SEC. 14. Section 10585.5 is added to the Probate Code.  
12 to read:

13 10585.5. (a) If, pursuant to subdivision (b) of Section  
14 10580, the personal representative gives notice of  
15 proposed action with respect to the exercise of the  
16 powers granted by Section 10565 (hiring and paying  
17 attorneys, advisers, and others to advise or assist in the  
18 administration of the estate):

19 (1) The notice of proposed action shall include, in  
20 addition to the information required by Section 10583, an  
21 estimate of the total amount of compensation to be paid  
22 to the person hired.

23 (2) If the person hired is an attorney, each person  
24 given notice of proposed action shall also be provided  
25 with a copy of the written fee contract made pursuant to  
26 Section 6148 of the Business and Professions Code.

27 (3) If the person hired is not an attorney, each person  
28 given notice of proposed action shall also be provided  
29 with a copy of the written contract, if any, governing the  
30 hiring and compensation.

31 (b) If it appears that the total amount of compensation  
32 to be paid to the person hired will exceed the amount of  
33 the last previous estimate given in a notice of proposed  
34 action, the personal representative may give another  
35 notice of proposed action stating a new estimate of the  
36 total amount of compensation to be paid to the person.

37 (c) Section 10590 does not apply to the extent that the  
38 compensation paid or to be paid exceeds the amount of  
39 the estimate contained in the notice of proposed action  
40 most recently given.

1    SEC. 15. Part 7 (commencing with Section 10800) is  
2 added to Division 7 of the Probate Code, to read:

3  
4            PART 7. COMPENSATION OF PERSONAL  
5            REPRESENTATIVE

6  
7            CHAPTER 1. AMOUNT OF COMPENSATION

8  
9    10800. (a) Subject to the provisions of this part, for  
10 ordinary services the personal representative shall  
11 receive compensation based on the value of the estate  
12 accounted for by the personal representative, as follows:

13        (1) Four percent on the first fifteen thousand dollars  
14 (\$15,000).

15        (2) Three percent on the next eighty-five thousand  
16 dollars (\$85,000).

17        (3) Two percent on the next nine hundred thousand  
18 dollars (\$900,000).

19        (4) One percent on the next nine million dollars  
20 (\$9,000,000).

21        (5) One-half of one percent on the next fifteen million  
22 dollars (\$15,000,000).

23        (6) For all above twenty-five million dollars  
24 (\$25,000,000), a reasonable amount to be determined by  
25 the court.

26        (b) For the purposes of this section, the value of the  
27 estate accounted for by the personal representative is the  
28 total amount of the appraisal of property in the inventory,  
29 plus gains over the appraisal value on sales, plus receipts,  
30 less losses from the appraisal value on sales, without  
31 reference to encumbrances or other obligations on estate  
32 property.

33    10801. Subject to the provisions of this part, in  
34 addition to the compensation provided by Section 10800,  
35 the court may allow additional compensation for  
36 extraordinary services by the personal representative in  
37 an amount the court determines is just and reasonable.

38    10802. (a) Except as otherwise provided in this  
39 section, if the decedent's will makes provision for the  
40 compensation of the personal representative, the



1 compensation provided by the will shall be the full and  
2 only compensation for the services of the personal  
3 representative.

4 (b) The personal representative may petition the  
5 court to be relieved from a provision of the will that  
6 provides for the compensation of the personal  
7 representative.

8 (c) Notice of the hearing on the petition shall be given  
9 as provided in Section 1220 to all of the following persons:

10 (1) Each person listed in Section 1220.

11 (2) Each known heir whose interest in the estate  
12 would be affected by the petition.

13 (3) Each known devisee whose interest in the estate  
14 would be affected by the petition.

15 (4) The Attorney General, at the office of the Attorney  
16 General in Sacramento, if any portion of the estate is to  
17 escheat to the state and its interest in the estate would be  
18 affected by the petition.

19 (d) If the court determines that it is to the advantage  
20 of the estate and in the best interest of the persons  
21 interested in the estate, the court may make an order  
22 authorizing compensation for the personal  
23 representative in an amount greater than provided in the  
24 will.

25 10803. An agreement between the personal  
26 representative and an heir or devisee for higher  
27 compensation than that provided by this part is void.

28 10804. Unless expressly authorized by the decedent's  
29 will, a personal representative who is an attorney may  
30 receive the personal representative's compensation but  
31 not compensation for services as the estate attorney.

32 10805. If there are two or more personal  
33 representatives, the personal representative's  
34 compensation shall be apportioned among the personal  
35 representatives by the court according to the services  
36 actually rendered by each personal representative or as  
37 agreed to by the personal representatives.

1 CHAPTER 2. ALLOWANCE OF COMPENSATION BY  
2 COURT  
3

4 10830. (a) At any time after four months from the  
5 issuance of letters, the personal representative may file a  
6 petition requesting an allowance on the compensation of  
7 the personal representative.

8 (b) Notice of the hearing on the petition shall be given  
9 as provided in Section 1220 to all of the following:

10 (1) Each person listed in Section 1220.

11 (2) Each known heir whose interest in the estate  
12 would be affected by the payment of the compensation.

13 (3) Each known devisee whose interest in the estate  
14 would be affected by the payment of the compensation.

15 (4) The Attorney General, at the office of the Attorney  
16 General in Sacramento, if any portion of the estate is to  
17 escheat to the state and its interest in the estate would be  
18 affected by the petition.

19 (c) On the hearing, the court may make an order  
20 allowing the portion of the compensation of the personal  
21 representative, on account of services rendered up to  
22 that time, that the court determines is proper. The order  
23 shall authorize the personal representative to charge  
24 against the estate the amount allowed.

25 10831. (a) At the time of the filing of the final  
26 account and petition for an order for final distribution,  
27 the personal representative may petition the court for an  
28 order fixing and allowing the personal representative's  
29 compensation for all services rendered in the estate  
30 proceeding.

31 (b) The request for compensation may be included in  
32 the final account or the petition for final distribution or  
33 may be made in a separate petition.

34 (c) Notice of the hearing on the petition shall be given  
35 as provided in Section 1220 to all of the following:

36 (1) Each person listed in Section 1220.

37 (2) Each known heir whose interest in the estate  
38 would be affected by the payment of the compensation.

39 (3) Each known devisee whose interest in the estate  
40 would be affected by the payment of the compensation.

1 (4) The Attorney General, at the office of the Attorney  
2 General in Sacramento, if any portion of the estate is to  
3 escheat to the state and its interest in the estate would be  
4 affected by the petition.

5 (d) On the hearing, the court shall make an order  
6 fixing and allowing the compensation for all services  
7 rendered in the estate proceeding by the personal  
8 representative. The order shall authorize the personal  
9 representative to charge against the estate the amount  
10 allowed, less any amount previously charged against the  
11 estate pursuant to Section 10830.

12 10832. Notwithstanding Sections 10830 and 10831, the  
13 court may allow compensation to the personal  
14 representative for extraordinary services before final  
15 distribution when any of the following requirements is  
16 satisfied:

17 (a) It appears likely that administration of the estate  
18 will continue, whether due to litigation or otherwise, for  
19 an unusually long time.

20 (b) Present payment will benefit the estate or the  
21 beneficiaries of the estate.

22 (c) Other good cause is shown.

23

### 24 CHAPTER 3. APPLICATION OF PART

25

26 10850. (a) This part does not apply in any proceeding  
27 for administration of a decedent's estate commenced  
28 before January 1, 1991.

29 (b) Notwithstanding its amendment or repeal by this  
30 act, the applicable law in effect before January 1, 1991,  
31 governing the subject matter of this part continues to  
32 apply in any proceeding for administration of a  
33 decedent's estate commenced before January 1, 1991.

34 SEC. 16. Section 10900 of the Probate Code is  
35 amended to read:

36 10900. (a) An account shall include both a financial  
37 statement as provided in subdivision (b) and a report of  
38 administration as provided in subdivision (c).

39 (b) The financial statement shall include a summary  
40 statement, together with supporting schedules, of:

- 1 (1) Property in all inventories.
- 2 (2) Receipts, excluding property listed in an
- 3 inventory.
- 4 (3) Gains on sales.
- 5 (4) Other acquisitions of property.
- 6 (5) Disbursements.
- 7 (6) Losses on sales.
- 8 (7) Other dispositions of property.
- 9 (8) Property remaining on hand.

10 (c) The report of administration shall state the  
11 liabilities of the estate, including creditor claims, the  
12 hiring and payment of any persons under Section 9680  
13 who have been or are to be paid out of funds of the estate,  
14 and all other matters necessary to show the condition of  
15 the estate.

16 (d) The statement of liabilities in the report of  
17 administration shall include the following information:

18 (1) Whether notice to creditors was given under  
19 Section 9050.

20 (2) Creditor claims filed, including the date of filing  
21 the claim, the name of the claimant, the amount of the  
22 claim, and the action taken on the claim.

23 (3) Creditor claims not paid, satisfied, or adequately  
24 provided for. As to each such claim, the statement shall  
25 indicate whether the claim is due and the date due, the  
26 date any notice of rejection was given, and whether the  
27 creditor has brought an action on the claim. The  
28 statement shall identify any real or personal property  
29 that is security for the claim, whether by mortgage, deed  
30 of trust, lien, or other encumbrance.

31 SEC. 17. Section 10954 of the Probate Code is  
32 amended to read:

33 10954. (a) Notwithstanding any other provision of  
34 this part, the personal representative is not required to  
35 file an account if any of the following conditions is  
36 satisfied as to each person entitled to distribution from  
37 the estate:

38 (1) The person has executed and filed a written  
39 waiver of account or a written acknowledgment that the  
40 person's interest has been satisfied.

1 (2) Adequate provision has been made for satisfaction  
2 in full of the person's interest. This paragraph does not  
3 apply to a residuary devisee or a devisee whose interest  
4 in the estate is subject to abatement, payment of  
5 expenses, or accrual of interest or income.

6 (b) A waiver or acknowledgment under subdivision  
7 (a) shall be executed as follows:

8 (1) If the person entitled to distribution is an adult and  
9 competent, by that person.

10 (2) If the person entitled to distribution is a minor, by  
11 a person authorized to receive money or property  
12 belonging to the minor. If the waiver or acknowledgment  
13 is executed by a guardian of the estate of the minor, the  
14 waiver or acknowledgment may be executed without the  
15 need to obtain approval of the court in which the  
16 guardianship proceeding is pending.

17 (3) If the person entitled to distribution is a  
18 conservatee, by the conservator of the estate of the  
19 conservatee. The waiver or acknowledgment may be  
20 executed without the need to obtain approval of the  
21 court in which the conservatorship proceeding is  
22 pending.

23 (4) If the person entitled to distribution is a trust, by  
24 the trustee, but only if the named trustee's written  
25 acceptance of the trust is filed with the court. In the case  
26 of a trust that is subject to the continuing jurisdiction of  
27 the court pursuant to Chapter 4 (commencing with  
28 Section 17300) of Part 5 of Division 9, the waiver or  
29 acknowledgment may be executed without the need to  
30 obtain approval of the court.

31 (5) If the person entitled to distribution is an estate, by  
32 the personal representative of the estate. The waiver or  
33 acknowledgment may be executed without the need to  
34 obtain approval of the court in which the estate is being  
35 administered.

36 (6) If the person entitled to distribution is  
37 incapacitated, unborn, unascertained, or is a person  
38 whose identity or address is unknown, or is a designated  
39 class of persons who are not ascertained or are not in  
40 being, and there is a guardian ad litem appointed to

1 represent the person entitled to distribution, by the  
2 guardian ad litem.

3 (7) If the person entitled to distribution has  
4 designated an attorney in fact who has the power under  
5 the power of attorney to execute the waiver or  
6 acknowledgment, by either of the following:

7 (A) The person entitled to distribution if an adult and  
8 competent.

9 (B) The attorney in fact.

10 (c) Notwithstanding subdivision (a):

11 (1) The personal representative shall file a final report  
12 of administration at the time the final account would  
13 otherwise have been required. The final report shall  
14 include the amount of compensation paid or payable to  
15 the personal representative and shall set forth the basis  
16 for determining the amount.

17 (2) A creditor whose interest has not been satisfied  
18 may petition under Section 10950 for an account.

19 SEC. 18. Section 11000 of the Probate Code is  
20 amended to read:

21 11000. (a) The personal representative shall give  
22 notice of the hearing as provided in Section 1220 to all of  
23 the following persons:

24 (1) The person listed in Section 1220.

25 (2) Each known heir whose interest in the estate  
26 would be affected by the account.

27 (3) Each known devisee whose interest in the estate  
28 would be affected by the account.

29 (4) The Attorney General, at the office of the Attorney  
30 General in Sacramento, if any portion of the estate is to  
31 escheat to the state and its interest would be affected by  
32 the account.

33 (5) If the estate is insolvent, each creditor who has  
34 filed a claim that is allowed or approved but is unpaid in  
35 whole or in part.

36 (b) If the petition for approval of the account requests  
37 allowance of all or a portion of the compensation of the  
38 personal representative, the notice of hearing shall so  
39 state.

40 (c) If the account is a final account and is filed

1 together with a petition for an order for final distribution  
2 of the estate, the notice of hearing shall so state.

3 SEC. 19. Section 11003 of the Probate Code is  
4 amended to read:

5 11003. (a) If the court determines that the contest  
6 was without reasonable cause and in bad faith, the court  
7 may award against the contestant the compensation and  
8 costs of the personal representative and other expenses  
9 and costs of litigation, including attorney's fees, incurred  
10 to defend the account. The amount awarded is a charge  
11 against any interest of the contestant in the estate and the  
12 contestant is personally liable for any amount that  
13 remains unsatisfied.

14 (b) If the court determines that the opposition to the  
15 contest was without reasonable cause and in bad faith, the  
16 court may award the contestant the costs of the  
17 contestant and other expenses and costs of litigation,  
18 including attorney's fees, incurred to contest the account.  
19 The amount awarded is a charge against the  
20 compensation or other interest of the personal  
21 representative in the estate and the personal  
22 representative is liable personally and on the bond, if any,  
23 for any amount that remains unsatisfied.

24 SEC. 20. Section 12205 of the Probate Code is  
25 amended to read:

26 12205. (a) The court may reduce the compensation  
27 of the personal representative or the attorney for the  
28 personal representative by an amount the court  
29 determines to be appropriate if the court makes all of the  
30 following determinations:

31 (1) The time taken for administration of the estate  
32 exceeds the time required by this chapter or prescribed  
33 by the court.

34 (2) The time taken was within the control of the  
35 personal representative or attorney whose compensation  
36 is being reduced.

37 (3) The delay was not in the best interest of the estate  
38 or interested persons.

39 (b) An order under this section reducing  
40 compensation may be made regardless whether:

1 (1) The compensation otherwise allowable under Part  
2 7 (commencing with Section 10800) would be reasonable  
3 compensation for the services rendered by the personal  
4 representative.

5 (2) The compensation otherwise paid or to be paid to  
6 the attorney for the personal representative would be  
7 considered reasonable compensation for the services  
8 rendered by the attorney.

9 (c) An order under this section may be made on any  
10 of the following hearings:

11 (1) The hearing for final distribution.

12 (2) The hearing for an allowance on the compensation  
13 of the personal representative.

14 (3) The hearing under Section 9634 to review the  
15 compensation of the attorney for the personal  
16 representative.

17 (d) In making a determination under this section, the  
18 court shall take into account any action taken under  
19 Section 12202 as a result of a previous delay.

20 (e) If the court determines that the attorney for the  
21 personal representative has received compensation in  
22 excess of the reduced amount allowed under this section,  
23 the court shall order the attorney to make an appropriate  
24 refund.

25 SEC. 21. Section 15640 of the Probate Code is  
26 amended to read:

27 15640. A trustee who has accepted the trust may  
28 resign only by one of the following methods:

29 (a) As provided in the trust instrument.

30 (b) In the case of a revocable trust, with the consent  
31 of the person holding the power to revoke the trust.

32 (c) In the case of a trust that is not revocable, with the  
33 consent of all adult beneficiaries who are receiving or are  
34 entitled to receive income under the trust or to receive  
35 a distribution of principal if the trust were terminated at  
36 the time consent is sought. If a beneficiary has a  
37 conservator, the conservator may consent to the trustee's  
38 resignation on behalf of the conservatee without  
39 obtaining court approval. Without limiting the power of  
40 the beneficiary to consent to the trustee's resignation, if



1 the beneficiary has designated an attorney in fact who has  
2 the power under the power of attorney to consent to the  
3 trustee's resignation, the attorney in fact may consent to  
4 the resignation.

5 (d) Pursuant to a court order obtained on petition by  
6 the trustee under Section 17200. The court shall accept  
7 the trustee's resignation and may make any orders  
8 necessary for the preservation of the trust property,  
9 including the appointment of a receiver or a temporary  
10 trustee.

11 SEC. 22. Section 15642 of the Probate Code is  
12 amended to read:

13 15642. (a) A trustee may be removed in accordance  
14 with the trust instrument by the court on its own motion,  
15 or on petition of a settlor, cotrustee, or beneficiary under  
16 Section 17200.

17 (b) The grounds for removal of a trustee by the court  
18 include the following:

19 (1) Where the trustee has committed a breach of the  
20 trust.

21 (2) Where the trustee is insolvent or otherwise unfit to  
22 administer the trust.

23 (3) Where hostility or lack of cooperation among  
24 cotrustees impairs the administration of the trust.

25 (4) Where the trustee fails or declines to act.

26 (5) Where the trustee's compensation is excessive  
27 under the circumstances.

28 (6) For other good cause.

29 (c) If it appears to the court that trust property or the  
30 interests of a beneficiary may suffer loss or injury pending  
31 a decision on a petition for removal of a trustee and any  
32 appellate review, the court may, on its own motion or on  
33 petition of a cotrustee or beneficiary, compel the trustee  
34 whose removal is sought to surrender trust property to a  
35 cotrustee or to a receiver or temporary trustee. The court  
36 may also suspend the powers of the trustee to the extent  
37 the court deems necessary.

38 SEC. 23. Section 15645 is added to the Probate Code,  
39 to read:

40 15645. If the trustee of a trust that is not revocable has

1 refused to transfer administration of the trust to a  
2 successor trust company on request of the beneficiaries  
3 described in subdivision (c) of Section 15640 and the  
4 court in subsequent proceedings under Section 17200  
5 makes an order removing the existing trustee and  
6 appointing a trust company as successor trustee, the court  
7 may, in its discretion, award costs and reasonable  
8 attorney's fees incurred by the petitioner in the  
9 proceeding to be paid by the trustee or from the trust as  
10 ordered by the court.

11 SEC. 24. Section 15660 of the Probate Code is  
12 amended to read:

13 15660. (a) If the trust has no trustee or if the trust  
14 instrument requires a vacancy in the office of a cotrustee  
15 to be filled, the vacancy shall be filled as provided in this  
16 section.

17 (b) If the trust instrument provides a practical method  
18 of appointing a trustee or names the person to fill the  
19 vacancy, the vacancy shall be filled as provided in the  
20 trust instrument.

21 (c) If the vacancy in the office of trustee is not filled  
22 as provided in subdivision (b), the vacancy may be filled  
23 by a trust company that has agreed to accept the trust on  
24 agreement of all adult beneficiaries who are receiving or  
25 are entitled to receive income under the trust or to  
26 receive a distribution of principal if the trust were  
27 terminated at the time the agreement is made. If a  
28 beneficiary has a conservator, the conservator may agree  
29 to the successor trustee on behalf of the conservatee  
30 without obtaining court approval. Without limiting the  
31 power of the beneficiary to agree to the successor trustee,  
32 if the beneficiary has designated an attorney in fact who  
33 has the power under the power of attorney to agree to  
34 the successor trustee, the attorney in fact may agree to  
35 the successor trustee.

36 (d) If the vacancy in the office of trustee is not filled  
37 as provided in subdivision (b) or (c), on petition of a  
38 cotrustee or beneficiary, the court may, in its discretion,  
39 appoint a trustee to fill the vacancy. If the trust provides  
40 for more than one trustee, the court may, in its discretion,

1 appoint the original number or any lesser number of  
2 trustees. In selecting a trustee, the court shall give  
3 consideration to the wishes of the beneficiaries who are  
4 14 years of age or older.

5 SEC. 25. Section 15686 is added to the Probate Code,  
6 to read:

7 15686. (a) As used in this section, "trustee's fee"  
8 includes, but is not limited to, the trustee's periodic base  
9 fee, rate of percentage compensation, minimum fee,  
10 hourly rate, and transaction charge, but does not include  
11 fees for extraordinary services.

12 (b) A trustee may not charge an increased trustee's  
13 fee for administration of a particular trust unless the  
14 trustee first gives at least 60 days' written notice of that  
15 increased fee to each beneficiary of the trust whose  
16 interest may be affected by the increased fee.

17 (c) If a beneficiary files a petition under Section 17200  
18 for review of the increased trustee's fee or for removal of  
19 the trustee and serves a copy of the petition on the  
20 trustee before the expiration of the 60-day period, the  
21 increased trustee's fee does not take effect as to that trust  
22 until otherwise ordered by the court or the petition is  
23 dismissed.

24 SEC. 26. Section 17200 of the Probate Code is  
25 amended to read:

26 17200. (a) Except as provided in Section 15800, a  
27 trustee or beneficiary of a trust may petition the court  
28 under this chapter concerning the internal affairs of the  
29 trust or to determine the existence of the trust.

30 (b) Proceedings concerning the internal affairs of a  
31 trust include, but are not limited to, proceedings for any  
32 of the following purposes:

33 (1) Determining questions of construction of a trust  
34 instrument.

35 (2) Determining the existence or nonexistence of any  
36 immunity, power, privilege, duty, or right.

37 (3) Determining the validity of a trust provision.

38 (4) Ascertaining beneficiaries and determining to  
39 whom property shall pass or be delivered upon final or  
40 partial termination of the trust, to the extent the

1 determination is not made by the trust instrument.

2 (5) Settling the accounts and passing upon the acts of  
3 the trustee, including the exercise of discretionary  
4 powers.

5 (6) Instructing the trustee.

6 (7) Compelling the trustee to report information  
7 about the trust or account to the beneficiary, if (A) the  
8 trustee has failed to submit a requested report or account  
9 within 60 days after written request of the beneficiary  
10 and (B) no report or account has been made within six  
11 months preceding the request.

12 (8) Granting powers to the trustee.

13 (9) Fixing or allowing payment of the trustee's  
14 compensation or reviewing the reasonableness of the  
15 trustee's compensation.

16 (10) Appointing or removing a trustee.

17 (11) Accepting the resignation of a trustee.

18 (12) Compelling redress of a breach of the trust by any  
19 available remedy.

20 (13) Approving or directing the modification or  
21 termination of the trust.

22 (14) Approving or directing the combination or  
23 division of trusts.

24 (15) Amending or conforming the trust instrument in  
25 the manner required to qualify a decedent's estate for the  
26 charitable estate tax deduction under federal law,  
27 including the addition of mandatory governing  
28 instrument requirements for a charitable remainder trust  
29 as required by final regulations and rulings of the United  
30 States Internal Revenue Service, in any case in which all  
31 parties interested in the trust have submitted written  
32 agreement to the proposed changes or written disclaimer  
33 of interest.

34 (16) Authorizing or directing transfer of a trust or  
35 trust property to or from another jurisdiction.

36 (17) Directing transfer of a testamentary trust subject  
37 to continuing court jurisdiction from one county to  
38 another.

39 (18) Approving removal of a testamentary trust from  
40 continuing court jurisdiction.

1 (19) Reforming or excusing compliance with the  
2 governing instrument of an organization pursuant to  
3 Section 16105.

4 SEC. 27. (a) The following sections of the Probate  
5 Code, as amended by this act, do not apply in any  
6 proceeding for administration of a decedent's estate  
7 commenced before January 1, 1991:

8 (1) Section 7623.

9 (2) Section 7662.

10 (3) Section 7666.

11 (4) Section 8547.

12 (5) Section 9651.

13 (6) Section 10900.

14 (7) Section 10954.

15 (8) Section 11000.

16 (9) Section 11003.

17 ~~(9)~~

18 (10) Section 12205.

19 (b) The sections listed in subdivision (a), as those  
20 sections existed prior to their amendment by this act,  
21 continue to apply in any proceeding for administration of  
22 a decedent's estate commenced before January 1, 1991,  
23 notwithstanding their amendment by this act.

24 (c) Sections 900, 901, 902, 903, 904, 910, and 911 of the  
25 Probate Code continue to apply in any proceeding for  
26 administration of a decedent's estate commenced before  
27 January 1, 1991, notwithstanding their repeal by this act.

28 SEC. 28. Section 9.5 of this act shall become operative  
29 on July 1, 1991, and on that date the remaining sections  
30 of this act, other than Section 1, Section 27, and this  
31 section, are repealed.

new material  
follows

SEC. 3. Section 10406 of the Probate Code, as added by Chapter 79 of the Statutes of 1990, is amended to read:

10406. (a) Subject to subdivision (b), this part applies in any case where authority to administer the estate is granted under this part or where independent administration authority was granted under prior law.

(b) 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 the authority to sell real property.

(c) Sections 10404.5, 10501, 10565, and 10585.5 ~~of the former Probate Code (repealed by the act enacting this code), as these sections existed on January 1, 1991,~~ do not apply in any proceeding for administration of a decedent's estate commenced before January July 1, 1991. Notwithstanding its repeal, Section 10501 of the former Probate Code (repealed by the act enacting this code), as that section existed on December 31, 1990, continues to apply in any proceeding for administration of a decedent's estate commenced before January July 1, 1991.

SEC. 4. Section 10585.5 of the Probate Code, as added by Chapter 79 of the Statutes of 1990, is amended to read:

10585.5. (a) If, pursuant to subdivision (b) of Section 10580, the personal representative gives notice of proposed action with respect to the exercise of any of the powers granted by Section 10565 (hiring and paying attorneys, advisers, and others to advise or assist in the administration of the estate):

(1) The notice of proposed action shall include, in addition to the information required by Section 10585, an estimate of the total amount of compensation to be paid to the person hired.

(2) If the person hired is an attorney, each person given notice of proposed action shall also be provided with a copy of the written fee contract made pursuant to Section 6148 of the Business and Professions Code.

(3) If the person hired is not an attorney, each person given notice of proposed action shall also be provided with a copy of the written contract, if any, governing the hiring and compensation.

(b) If it appears that the total amount of compensation to be paid to the person hired will exceed the amount of the last previous estimate given in a notice of proposed action, the personal representative may give another notice of proposed action stating a new estimate of the total amount of compensation to be paid to the person.

(c) Section 10590 does not apply to the extent that the compensation paid or to be paid exceeds the amount of the estimate contained in the notice of proposed action most recently given.

SEC. 5. Section 10850 of the Probate Code, as added by Chapter 79 of the Statutes of 1990, is amended to read:

10850. (a) This part does not apply in any proceeding for administration of a decedent's estate commenced before January July 1, 1991.

(b) Notwithstanding its repeal, the applicable law in effect before January July 1, 1991, governing the subject matter of this part continues to apply in any proceeding for administration of a decedent's estate commenced before January July 1, 1991.

SEC. 6. Section 10900 of the Probate Code, as added by Chapter 79 of the Statutes of 1990, is amended to read:

10900. (a) An account shall include both a financial statement as provided in subdivision (b) and a report of administration as provided in subdivision (c).

(b) The financial statement shall include a summary statement, together with supporting schedules, of:

- (1) Property in all inventories.
- (2) Receipts, excluding property listed in an inventory.
- (3) Gains on sales.
- (4) Other acquisitions of property.
- (5) Disbursements.
- (6) Losses on sales.
- (7) Other dispositions of property.

(8) Property remaining on hand.

(c) The report of administration shall state the liabilities of the estate, including creditor claims, the hiring and payment of and compensation paid or payable to any persons hired under Section 9680 who have been or are to be paid out of funds of the estate, and all other matters necessary to show the condition of the estate.

(d) The statement of liabilities in the report of administration shall include the following information:

(1) Whether notice to creditors was given under Section 9050.

(2) Creditor claims filed, including the date of filing the claim, the name of the claimant, the amount of the claim, and the action taken on the claim.

(3) Creditor claims not paid, satisfied, or adequately provided for. As to each such claim, the statement shall indicate whether the claim is due and the date due, the date any notice of rejection was given, and whether the creditor has brought an action on the claim. The statement shall identify any real or personal property that is security for the claim, whether by mortgage, deed of trust, lien, or other encumbrance.

SEC. 7. This act shall become operative on July 1, 1991.



Amendment 17

On page 14, line 24, strike out "SEC. 17." and insert:  
SEC. 15.

Amendment 18

On page 15, line 12, strike out "SEC. 18." and insert:  
SEC. 16.

Amendment 19

On page 15, line 23, strike out "SEC. 19." and insert:  
SEC. 17.

Amendment 20

On page 16, line 13, strike out "SEC. 20." and insert:  
SEC. 18.

Amendment 21

On page 16, line 28, strike out "SEC. 21." and insert:  
SEC. 19.

Amendment 22

On page 17, between lines 8 and 9, insert:

SEC. 20. Chapter 2.5 (commencing with Section 9680) is added to Part 5 of Division 7 of the Probate Code, as added by Chapter 79 of the Statutes of 1990, to read:

CHAPTER 2.5. COMPENSATION OF ESTATE ATTORNEY

9680. (a) The compensation of the attorney for the personal representative shall be determined in the same manner as was provided in Sections 900 to 911, inclusive, of the Probate Code repealed by Section 13 of Chapter 79 of the Statutes of 1990.

(b) Any rules adopted by the Judicial Council to implement this section shall apply notwithstanding any other provision of this code.

Amendment 23

On page 17, line 9, strike out "SEC. 22." and insert:  
SEC. 21.

Amendment 24

On page 17, line 39, strike out "SEC. 23." and insert:  
SEC. 22.

Amendment 25

On page 18, line 14, strike out "SEC. 24." and insert:  
SEC. 23.

Amendment 26

On page 18, line 20, strike out "SEC. 25." and insert:  
SEC. 24.

Amendment 27

On page 19, line 11, strike out "SEC. 26." and insert:  
SEC. 25.

Amendment 28

On page 20, line 20, strike out "SEC. 27." and insert:  
SEC. 26.

Amendment 29

On page 20, line 38, strike out "SEC. 28." and insert:  
SEC. 27.

Amendment 30

On page 21, line 4, strike out "SEC. 29." and insert:  
SEC. 28.

Amendment 31

On page 21, between lines 10 and 11, insert:

SEC. 29. Section 37 of Chapter 79 of the Statutes of 1990 is  
amended to read:

SEC. 37. ~~This act shall become operative only if Assembly Bill 831 of the 1989-90 Regular Session is chaptered and takes effect on or before January 1, 1991, in which case this bill shall become operative on July 1, 1991.~~

SEC. 30. Chapter 2.5 (commencing with Section 9680), as added by Section 20 of this Act, to Part 5 of Division 7 of the Probate Code enacted by Chapter 79 of the Statutes of 1990, shall become operative only if Assembly Bill 831 of the 1989-90 Regular Session is not enacted, and if Assembly Bill 831 of the 1989-90 Regular Session is enacted, Chapter 2.5 (commencing with Section 9680), as added by Section 20 of this Act, to Part 5 of Division 7 of the Probate Code enacted by Chapter 79 of the Statutes of 1990, shall be repealed on the date that Chapter 79 of the Statutes of 1990 becomes operative.

Amendment 32

On page 21, line 11, strike out "SEC. 30." and insert:  
SEC. 31.

