

Note. Changes may be made in this Agenda. For meeting information, please call John DeMouilly (415) 494-1335

jd10  
03/20/87

| <u>Time</u>                              | <u>Place</u>           |
|--|------------------------|
| April 9 (Thursday) 3:00 p.m. - 8:00 p.m. | State Capitol          |
| April 10 (Friday) 9:00 a.m. - 2:00 p.m.  | Room 125<br>Sacramento |

**FINAL AGENDA**

for meeting of

**CALIFORNIA LAW REVISION COMMISSION**

Sacramento

April 9-10, 1987

1. Minutes of March 12-13, 1987, Meeting (sent 3/31/87)

2. Administrative Matters

1987 Legislative Program

Oral Report at meeting

3. Study L - Probate Code - Assembly Bill 708 (as amended)

Memorandum 87-22 (to be sent)  
Assembly Bill 708 (as amended) (attached to Memorandum)

4. Study L-1035 - Amendments to AB 708 (Administration of Estates of Missing Persons)

Memorandum 87-23 (sent 3/25/87)

5. Study L-1025 - Amendments to AB 708 (Creditor Claims Against Decedent)

Memorandum 87-24 (to be sent)

6. Study L-1037 - Amendments to AB 708 (Supervised Administration)

Memorandum 87-25 (to be sent)

7. Study L-1028 - Amendments to AB 708 (Independent Administration)

Memorandum 87-26 (to be sent)

8. Study L-1029 - Amendments to AB 708 (Marital Deduction Gifts)

Memorandum 87-27 (to be sent)

9. Study L-1055 - Amendments to AB 708 (Notice)

Memorandum 87-28 (to be sent)

10. Study L-1041 - Amendments to AB 708 (Procedure)

Memorandum 87-29 (to be sent)

11. Study L-2005 - Amendments to AB 708 (Conforming Revisions and  
Miscellaneous Amendments)

Memorandum 87-30 (to be sent)

12. Study L-640 - AB 362 (Trusts)

Trusts Generally

Memorandum 87-31 (sent 3/31/87)

Change in Circumstances Justifying Change in Trustee

Memorandum 87-32 (sent 3/25/87)

13. Study L-655 - Inventory and Appraisal (Review of Comments on  
Tentative Recommendation)

Memorandum 87-10 (sent 3/23/87)

Draft of Tentative Recommendation (attached to Memorandum)

14. Study L-1040 - Public Guardian and Public Administrator

Memorandum 86-207 (sent 3/20/87)

Draft of Tentative Recommendation (attached to Memorandum)

15. Handbook of Practices and Procedures

Memorandum 87-21 (sent 3/20/87)

Draft of Handbook (attached to Memorandum)

16. Study L-1027 - Accounts

Draft of Tentative Recommendation

Memorandum 87-1 (sent 12/16/86)

Comments on Draft

First Supplement to Memorandum 87-1 (sent 2/9/87)

Second Supplement to Memorandum 87-1 (sent 3/3/87)

Third Supplement to Memorandum 87-1 (sent 3/23/87)

**17. Study L-1011 - Opening Estate Administration (Review of Comments on Tentative Recommendation)**

Memorandum 86-201 (sent 1/21/87)

Draft of Tentative Recommendation (attached to Memorandum)

First Supplement to Memorandum 86-201 (sent 3/3/87)

Second Supplement to Memorandum 86-201 (sent 3/28/87)

Third Supplement to Memorandum 86-201 (sent 3/31/87)

**MEETING SCHEDULE**  
**(AS REVISED AT THE MARCH 1987 MEETING)**

**APRIL 1987**

|              |                       |               |
|--------------|-----------------------|---------------|
| 9 (Thursday) | 3:00 p.m. - 8:00 p.m. | Sacramento    |
| 10 (Friday)  | 9:00 a.m. - 2:00 p.m. | State Capitol |

**MAY 1987**

|               |                       |               |
|---------------|-----------------------|---------------|
| 14 (Thursday) | 3:00 p.m. - 8:00 p.m. | Sacramento    |
| 15 (Friday)   | 9:00 a.m. - 2:00 p.m. | State Capitol |

**JUNE 1987**

|               |                       |           |
|---------------|-----------------------|-----------|
| 25 (Thursday) | 3:00 p.m. - 8:00 p.m. | San Diego |
| 26 (Friday)   | 9:00 a.m. - 3:00 p.m. |           |

**JULY 1987**

|               |                       |               |
|---------------|-----------------------|---------------|
| 23 (Thursday) | 3:00 p.m. - 8:00 p.m. | Newport Beach |
| 24 (Friday)   | 9:00 a.m. - 3:00 p.m. |               |

**SEPTEMBER 1987**

|               |                       |             |
|---------------|-----------------------|-------------|
| 17 (Thursday) | 3:00 p.m. - 8:00 p.m. | Los Angeles |
| 18 (Friday)   | 9:00 a.m. - 3:00 p.m. |             |

**OCTOBER 1987**

|               |                       |            |
|---------------|-----------------------|------------|
| 15 (Thursday) | 3:00 p.m. - 8:00 p.m. | Sacramento |
| 16 (Friday)   | 9:00 a.m. - 2:00 p.m. |            |

**NOVEMBER 1987**

|               |                       |               |
|---------------|-----------------------|---------------|
| 19 (Thursday) | 3:00 p.m. - 8:00 p.m. | San Francisco |
| 20 (Friday)   | 9:00 a.m. - 2:00 p.m. |               |

**DECEMBER 1987**

|               |                       |               |
|---------------|-----------------------|---------------|
| 10 (Thursday) | 3:00 p.m. - 8:00 p.m. | Newport Beach |
| 11 (Friday)   | 9:00 a.m. - 3:00 p.m. |               |

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
APRIL 9-10, 1987  
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on April 9-10, 1987.

Law Revision Commission

Present: Arthur K. Marshall, Chairperson                      Edwin K. Marzec  
Ann E. Stodden, Vice Chairperson                      Tim Paone  
Roger Arnebergh                      Forrest A. Plant  
Bion M. Gregory (Apr. 9)                      Vaughn R. Walker

Absent: Elihu M. Harris, Member of Assembly  
Bill Lockyer, Member of Senate

Staff Members

Present: John H. DeMouilly                      Robert J. Murphy III (Apr. 9)  
Nathaniel Sterling                      Stan G. Ulrich

Consultants Present

None

Other Persons Present

Edward V. Brennan, California Probate Referees' Association,  
San Diego  
Deborah DeBow, Assembly Judiciary Committee, Sacramento  
(Apr. 9)  
James D. Devine, State Bar Estate Planning, Trust and Probate  
Law Section, Monterey  
Nancy E. Ferguson, California Probate Referees' Association,  
Oroville  
Michael Harrington, California Bankers Association, San  
Francisco  
James Quillinan, Executive Committee, State Bar Estate  
Planning, Trust and Probate Law Section, Mountain View  
Richard Stack, Executive Committee, State Bar Estate  
Planning, Trust and Probate Law Section, Los Angeles  
Shirley C. Yawitz, California Probate Referees' Association,  
San Francisco

**ADMINISTRATIVE MATTERS**

**MINUTES OF MARCH 12-13, 1987, MEETING**

The Minutes of the March 12-13, 1987, Meeting were approved as submitted by the staff after the following correction was made: In the third line on page 11, "13101" was substituted for "13100."

**SCHEDULE FOR FUTURE MEETINGS**

The following is the schedule for future meetings.

**May 1987**

|               |                       |               |
|---------------|-----------------------|---------------|
| 14 (Thursday) | 3:00 p.m. - 7:00 p.m. | Sacramento    |
| 15 (Friday)   | 9:00 a.m. - 2:00 p.m. | State Capitol |

**June 1987**

|               |                       |           |
|---------------|-----------------------|-----------|
| 25 (Thursday) | 3:00 p.m. - 7:00 p.m. | San Diego |
| 26 (Friday)   | 9:00 a.m. - 3:00 p.m. |           |

**July 1987**

|               |                       |               |
|---------------|-----------------------|---------------|
| 23 (Thursday) | 3:00 p.m. - 7:00 p.m. | Newport Beach |
| 24 (Friday)   | 9:00 a.m. - 3:00 p.m. |               |

**September 1987**

|               |                       |             |
|---------------|-----------------------|-------------|
| 17 (Thursday) | 3:00 p.m. - 7:00 p.m. | Los Angeles |
| 18 (Friday)   | 9:00 a.m. - 3:00 p.m. |             |

**October 1987**

|               |                       |            |
|---------------|-----------------------|------------|
| 15 (Thursday) | 3:00 p.m. - 7:00 p.m. | Sacramento |
| 16 (Friday)   | 9:00 a.m. - 2:00 p.m. |            |

**November 1987**

|               |                       |               |
|---------------|-----------------------|---------------|
| 19 (Thursday) | 3:00 p.m. - 7:00 p.m. | San Francisco |
| 20 (Friday)   | 9:00 a.m. - 2:00 p.m. |               |

**December 1987**

|               |                       |               |
|---------------|-----------------------|---------------|
| 10 (Thursday) | 3:00 p.m. - 7:00 p.m. | Newport Beach |
| 11 (Friday)   | 9:00 a.m. - 3:00 p.m. |               |

**LEGISLATIVE PROGRAM**

The Executive Secretary made the following report on the 1987 Legislative Program:

**Passed First House**

Assembly Bill 362 (Urgency Trust Bill) (Harris) (Amendments required; these amendments will be considered at April meeting)

Senate Concurrent Resolution 12 (Continues Authority to Study Previously Authorized Topics) (Lockyer)

Approved by Policy Committee in First House

Assembly Concurrent Resolution 42 (Authorizes Study of Administrative Law) (Harris) (Approved by Assembly Judiciary Committee and re-referred to Ways and Means Committee)

Set for Hearing in First House

Assembly Bill 708 (Comprehensive Probate Bill) (Harris) (Bill amended on March 30) (Additional amendments required; these additional amendments will be considered at April meeting) (set for hearing by Assembly Judiciary Committee on May 13)

1987-88 Budget

Approved by Subcommittees in Assembly and Senate

HANDBOOK OF COMMISSION PRACTICES AND PROCEDURES

The Commission considered Memorandum 87-21 and the attached draft of the Handbook of Commission Practices and Procedures. The attention of the Commissioners was called to the Public Meeting Law, and it was noted that each member of the Commission must be familiar with this law. The Conflict of Interest provisions also were called to the attention of the Commissioners.

The Commission considered Chapters One and Two of the draft of the Handbook. The following actions were taken with respect to these chapters.

Chapter One (pages 1-2 of draft)

This chapter was approved as set out in the draft.

Chapter Two (pages 3-6)

This chapter was approved after the following revisions were made in the chapter:

(1) Under the heading "Meetings" on page 3, the following sentence was deleted: "Meetings in San Francisco should be held downtown rather than at the airport."

(2) Under the heading "Meetings" on page 3, the second paragraph was revised to read:

*Depending on plane schedules, meeting times are normally scheduled as follows:*

Thursday - 3:00 p.m. - ~~8:00~~ 7:00 p.m.

Friday - 9:00 a.m. - 4:00 p.m.

Saturday (if necessary) - 9:00 a.m. - 12:00 noon.

(3) Under the heading "Conduct of Meeting" on page 4, the first paragraph was revised to read:

**Quorum.** ~~Four~~ Five members of the Commission constitute a quorum and must be present before the Commission may attend to any business. Any action may be taken by a majority of those present if a quorum is present, but any final recommendation to the Legislature must be approved by a *majority of those present at a time when a quorum is present* with a minimum of four affirmative votes. The Chairperson is authorized to determine that fewer than ~~four~~ five members constitutes a quorum for the purposes of a particular meeting and members attending the meeting are entitled to per diem and travel expenses but *in such case the members present act as a subcommittee* and no final action shall be taken at such meeting.

(4) Under the heading "Meeting starting time" on page 5, the second sentence was revised to read:

However, meetings should not be delayed more than ~~30~~ 15 minutes from the originally scheduled meeting time to await the arrival of an absent member who is known to be planning to attend the meeting.

#### STUDY L - AMENDMENTS TO ASSEMBLY BILL 708

The Commission considered Memorandum 87-22. Attached to this Memorandum is a copy of Assembly Bill 708 as amended on March 30.

A set of amendments to Assembly Bill 708 was distributed to the Commission at the meeting. These amendments, as revised by the Commission at the meeting, are set out in Exhibit 1 attached and are to be delivered to the Legislative Counsel's office for preparation in a form in which they can be put across the desk in the Assembly so that Assembly Bill 708 can be amended to incorporate these amendments before the hearing to be held on May 13.

Additional amendments are to be made to Assembly Bill 708 after the bill has passed the Assembly. These amendments, which are indicated in the discussion in these Minutes of the subject matter of various portions of Assembly Bill 708, will be reviewed by the Commission at the May meeting.

**STUDY L-640 - AB 362 (TRUSTS)**

The Commission considered Memorandum 87-31 and the First Supplement thereto relating to amendments to AB 362, the urgency bill making technical revisions in the Trust Law. The Commission approved the amendments as set out in Exhibit 3 attached hereto and also made the following decisions:

**§ 16222. Participation in business**

The comment to this section permitting the trustee to lease four or fewer residential units that are a part of trust property without the need to obtain court approval should make clear that it does not matter whether the four residential units are in one or more buildings or on one or more lots.

**§ 16441. Measure of liability for interest**

The Commission considered written remarks of James R. Schwartz, Deputy Attorney General, suggesting that the Trust Law should still permit assessment of compound interest where there is a willful breach of trust. (See Exhibit 4 attached hereto.) The Commission disagreed with this interpretation and reaffirmed the policy that compound interest is not available under the Trust Law in light of the repeal of Civil Code Section 2262 (compound interest for willful failure to invest) and the policy of applying the new liability rules as a package. The staff was directed to make the policy of the Trust Law regarding interest clear in the comment to this section.

**STUDY L-640 - CHANGE IN CIRCUMSTANCES JUSTIFYING CHANGE IN TRUSTEE**

The Commission considered Memorandum 87-32. At the March meeting, Commissioner Harris expressed concern that corporate trustees are increasing fees. He stated that he was warned that this would happen when the legislation to remove testamentary trusts from court supervision was considered, but he did not believe that it would

happen. He asked the Commission, in cooperation with the State Bar Section and local probate and trust law committees, to develop legislation to deal with the problem.

Commissioner Harris indicated at the March meeting that he did not desire to involve the courts in the solution to the problem. He mentioned the possibility of a statutory fee schedule.

The staff draft -- attached to Memorandum 87-32 -- presented a statutory scheme that would permit a trust to be transferred from one corporate trustee to another corporate trustee if there has been a significant increase in the fees of the corporate trustee. This scheme was thought by the staff to allow the competitive forces in the market to keep fee increases under control.

Michael Harrington reported on a meeting that representatives of Wells Fargo Bank had with Commissioner Harris:

Myself and some other members of Wells Fargo met with Assemblyman Harris yesterday morning to get his more detailed perceptions on what was going on and what he expected of the bank. As a result of that meeting, Wells Fargo told Assemblyman Harris -- for our accounts and the accounts we acquired from the Bank of America -- we will hold the line on those. We will not increase the minimum fees; we will hold the ad valorem fees to what they are for the balance of the year. This is to give the Commission time to look at things more carefully.

Question: Are you going to roll back the increase in the minimum from \$10,000? Answer: Those never went into effect. We are at the same level that we were at the beginning of the year. The extensive increases in the minimum fee did not go into effect and will not for at least 1987 and probably longer.

He was concerned because a lot of the smaller trusts beneficiaries perceive themselves as having a dramatic decrease in their income if the minimum fee is increased. He said he is not necessarily on the fast track as far as having the problem looked at, but he does feel that it needs to be reviewed. He wanted the review to be done by the Commission, but he also wanted input from the bar associations and from the banks. He wanted to hear if there is a problem and, if there is, then what is the potential solution. He is also concerned about fees for individual trustees. He did not necessarily want to go back to the court supervision that was in effect prior to the enactment of AB 3612, but he did think that it may be appropriate in some instances for the court to review fees if they are excessive.

In light of the report of the meeting with Assemblyman Harris, the Commission decided to delay consideration of Memorandum 87-32 pending receipt from the State Bar Section and local bar associations of their views on whether a problem exists and, if so, what the appropriate solution to the problem is. The representative of Assemblyman Harris reported that he would be willing to include Commission recommended legislation on this problem in a bill to be enacted this session, either Assembly Bill 708 or another bill. The Commission indicated that it would prefer to give this problem careful study with a view to recommending legislation for enactment in 1988. The Commission plans to follow its usual procedure in preparing the recommendation.

Members of the Commission asked whether the agreement not to raise the minimum fees applies to all banks or just to Wells Fargo. The representative of the California Bankers Association responded that the agreement applies only to Wells Fargo. The Commission suggested that the California banks generally adopt a policy of not raising the minimum fees during 1987, and that the Commission would look with great concern on any effort to raise the minimum fees while the Commission is studying this problem. The representative of the California Bankers Association stated that he would pass this expression of concern on to the members of the Association.

#### STUDY L-655 — INVENTORY AND APPRAISAL

The Commission commenced, but did not complete, consideration of Memorandum 87-10, relating to inventory and appraisal. The Commission also considered copies of related letters from State Bar Team 1 and the State Bar Executive Committee, attached to these Minutes as Exhibit 5. The Commission made the following decisions concerning the matters considered.

##### § 400. Appointment by Controller

Subdivision (a) was revised to read: "If there are fewer than three qualified applicants to serve in a county, the State Controller may designate a probate referee from another county or make an interim appointment, to serve until the vacancy has been filled by a qualified applicant." The Comment should note that qualification of applicants is governed by Section 401 (qualifications for appointment).

§ 404. Standards for probate referee

Subdivision (a) was revised to read: "The State Controller shall establish and may amend standards of training, performance, and ethics of probate referees. The standards shall be a public record."

§ 405. Termination of authority

Subdivision (b) was revised to read: "Upon cessation of authority of a person to act as a probate referee, the State Controller shall notify the court of the county for which the probate referee was appointed. Upon receipt of notice, or if it otherwise comes to the attention of the court that the authority of a person to act as probate referee has ceased, the court shall reassign any estate for which the person had been designated as probate referee."

§ 406. Political activities of probate referee

This section was revised to read:

406. (a) A probate referee, or any person who is an applicant for or seeking appointment or reappointment to act as a probate referee, shall not, directly or indirectly, solicit, receive, or contribute, or be in any manner concerned in soliciting, receiving, or contributing, any of the following:

(1) Any assessment, subscription, or contribution to any party, incumbent, committee, or candidate exceeding two hundred dollars (\$200) in any one year for any partisan public office of this state.

(2) An assessment, subscription, contribution, or political service for the office of State Controller in any amount, notwithstanding paragraph (1).

(b) A violation of this section is a misdemeanor, and the State Controller shall revoke the appointment of a probate referee who violates this section.

(c) The State Controller may not appoint or reappoint as a probate referee any person who, within the two-year period preceding the date of the appointment or reappointment, does any act described in subdivision (a)(1) or (a)(2), and any such appointment or reappointment is void. However, all acts not otherwise invalid performed by the person before revocation of the person's appointment are valid.

The staff should also prepare a draft provision to require a probate referee to file an annual compliance disclosure statement under this section.

§ 450. General powers

The Comment should state, "For general provisions relating to referees of the court, see Sections 638 to 645.1 of the Code of Civil Procedure."

§ 451. Compelling appearance

The section should include a cross-reference to the general subpoena limitations governing discovery rules.

§ 453. Protective orders and enforcement

The staff should draft an automatic stay of the subpoena during pendency of a petition for a protective order.

§ 8800. Inventory and appraisal required

This section should be revised to allow a maximum of six months--three for the personal representative to complete the inventory and three for the probate referee to complete the appraisal.

The following language should be added to the Comment:

No inventory and appraisal of the decedent's estate is required where it is disposed of without administration under Division 8 (commencing with Section 13000) except to the extent an inventory and appraisal is required under or pursuant to Sections 13103, 13152(b), 13200(c), or 13658.

In a small estate set-aside proceeding under Chapter 6 (commencing with Section 6600) of Part 3 of Division 6, an inventory and appraisal of the decedent's estate is required as provided in Section 6608.

§ 8801. Supplemental inventory and appraisal

This section should have the same time limits as Section 8800.

§ 8802. Form of inventory and appraisal

This section should refer to the "monetary" value of each item.

§ 8804. Objection to appraisal

Subdivision (a) was revised to require an objection before the hearing on the petition for final distribution.

§ 8805. Failure to timely file inventory and appraisal

The introductory portion of this section should refer to a failure to file the inventory and appraisal "within a reasonable time." A provision should be added to the effect that filing within the time required by Sections 8800 and 8801 is presumed to be reasonable. The Comment should note that a reasonable time may be longer or shorter, depending on the circumstances of the estate.

The section should be revised to make clear that a petition under it may be filed by any interested person.

Subdivision (c) should be redrafted in a more limited way--for example, to limit liability for injuries that "directly result" from

the failure to timely file the inventory and appraisal. The court's discretion to award attorney's fees should be stated more clearly.

§ 8850. Contents of inventory

Subdivision (b)(1) should require recording information for real property securing an obligation, or if unrecorded, a legal description. This requirement is to achieve an accurate inventory for appraisal of the underlying obligation.

§ 8852. Oath of personal representative

The phrase "the personal representative has knowledge of" should be recast as "of which the personal representative has knowledge." The section should require each personal representative to sign the inventory, and should incorporate a court procedure for resolution of differences among personal representatives on property to be included in the inventory.

§ 8870. Subpoena to appear and be examined concerning decedent's property

This section should use a citation rather than a subpoena.

§ 8871. Examination

This section should be revised to allow interrogatories as an alternative to an oral examination, dealt with separately, perhaps in a separate section.

§ 8873. Wrongful taking, concealment, or disposition of property in estate

A qualification should be added to this section that the property was taken in bad faith.

§ 8901. Appraisal by personal representative

The introductory portion of this section should refer to items having a fair market value in an amount different from the face value "of the property."

Subdivision (a) should refer to instruments issued "on or before the date of the decedent's death.

Subdivision (b) was revised to refer to "Refund checks issued after the date of the decedent's death, including checks for wages earned before death, tax and utility refunds, and Medicare, medical insurance, and other health care reimbursements and payments."

The reference in Subdivision (d) to brokerage cash accounts should be revised, and possibly made into a separate subdivision, to refer to brokerage and other money market funds and cash deposits, whether in a "financial institution" or otherwise.

Subdivision (e) should refer to retirement plans "and annuities."

The Commission discussed extensively the question of valuation of publicly traded stock. After reviewing the policy considerations for and against having the probate referees appraise such stock, the Commission decided that this should remain a probate referee function, subject to a \$250 maximum fee in any estate. The cap on fees should apply only to publicly traded securities listed and reported on an established exchange on the date of the decedent's death. The Commission invited further comment on this matter from the probate referees, particularly information about the financial impact this would have on their profession, and the Commission will solicit the reaction of persons who suggested to the Commission that valuation of publicly traded stock be removed as a probate referee function altogether.

#### STUDY L-1025 — CREDITOR CLAIMS

The Commission considered Memorandum 87-24, relating to amendments to AB 708 concerning creditor claims. The Commission also considered relevant portions of a letter from Charles A. Collier, Jr., a copy of which is attached to these Minutes as Exhibit 2.

To implement the changes set out in Exhibit 1 to Memorandum 87-24, the Commission made the following amendments to AB 708 (as amended March 30, 1987):

Amendments 4-18, inclusive, as they appear in Exhibit 1 of these Minutes.

Amendments 29-62, inclusive, as they appear in Exhibit 1 of these Minutes.

Amendments 134-137, inclusive, as they appear in Exhibit 1 of these Minutes.

**STUDY L-1028 - AMENDMENTS TO AB 708 (INDEPENDENT ADMINISTRATION)**

The Commission considered Memorandum 87-26 and a letter from Charles A. Collier, Jr., which is attached to these Minutes as Exhibit 2.

Amendments 121 to 133, inclusive, (set out in Exhibit 1 attached to these Minutes) were approved. Some of these amendments were adopted in substance at the March meeting; a draft of the amendment was set out in Memorandum 87-26 which was considered at the April meeting, and the amendment in the form in which it was approved at the April meeting is set out in Exhibit 1 attached to these Minutes. Other amendments set out in Exhibit 1 attached to these Minutes were made in response to suggestions made by Mr. Collier in his letter which is attached to these Minutes as Exhibit 2.

In addition to the amendments set out in Exhibit 1 attached to these Minutes, the Commission made the following decisions. Where amendments to Assembly Bill 708 are necessary to effectuate those decisions, the amendments in draft form should be presented to the Commission for consideration at the May meeting.

**Section 10501 (pages 164-165 of amended AB 708)**

Section 10501 was amended to read as set out in Exhibit 1 attached to these Minutes.

The Comment to Section 10501 was revised to read as follows:

**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 listed 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 property of the estate to the personal representative or the personal representative's attorney.

(2) Exchange estate property with the personal representative or the personal representative's attorney for other property.

(3) Grant to the personal representative or the personal representative's attorney an option to purchase property of the estate.

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

Special supervised administration provisions govern the transactions described in paragraphs (5)-(7) of subdivision (a). 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 Section 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 Section 9885.

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 attorney for the personal representative. 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 an action described in paragraph (8) between the personal representative as such and the personal representative as an individual if the requirements of subdivision (c) of Section 10501 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) of Section 10501 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 (decendent'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 Comment should also contain a clarifying statement as to the meaning of the term "the personal representative's attorney." See the discussion under Section 9880 in these Minutes.

**Section 10534 (page 171 of amended AB 708)**

The Comment to Section 10534 should state that 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. Accordingly, the six-month period commences to run from the time the first special or general personal representative is issued letters.

**Section 10557 (page 175 of amended AB 708)**

The following amendments to this section were adopted:

**AMENDMENT**

On page 175, line 29, strike out "granted" and insert:  
devised

AMENDMENT

On page 175, line 32, strike out "granted" and insert:  
devised

Section 10588 (pages 180-181 of amended AB 708)

The staff is to draft amendments for consideration by the Commission at the next meeting to revise Section 10588 and other related provisions so that a person who is given notice of proposed action under circumstances where notice of proposed action is not required (see subdivision (b) of Section 10580) may obtain a restraining order under Section 10588.

Section 10590 (page 182 of amended AB 708)

In addition to the amendments contained in Exhibit 1 to these Minutes, the following amendment to Section 10590 should be made:

AMENDMENT

On page 182, line 9, after "action" insert a comma

Section 10592 (page 183 of amended AB 708)

The following amendments were made to this section:

AMENDMENT

On page 183, line 23, strike out "it is grounds for removal of" and insert:  
the court in its discretion may remove

AMENDMENT

On page 183, line 32, strike out "It is grounds for removal of" and insert:  
The court in its discretion may remove

**STUDY L-1029 -- MARITAL DEDUCTION GIFTS**

The Commission considered Memorandum 87-27, together with a letter from Kathryn A. Ballsun (attached to these Minutes as Exhibit 6), relating to marital deduction gifts. The Commission made Amendments 139 to 150, inclusive, as set out in Exhibit 1 to these Minutes. In addition, the Commission made the following changes in the marital deduction gift portion of AB 708.

§ 21523. Maximum marital deduction for instrument dated September 13, 1981, or earlier

The staff should consult with Bob Mills concerning whether the date of applicability might not be a more appropriate date to use in the introductory portion of this section than the date of enactment. The staff should revise the provision so that the relevant dates are stated more clearly. The staff should also consult with Mr. Mills concerning the subdivision (a) adjustments of pre-ERTA instruments.

§ 21524. Marital deduction gift in trust

A sentence was added to subdivision (a) to read, "Nothing in this subdivision precludes exercise by the transferor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust under Section 2056(b)(6) of the Internal Revenue Code."

Language should be added to the Comment to subdivision (b) referring to the exception of the estate trust under Section 21521.

The final clause of subdivision (d) was revised to read, "unless the instrument provides a different disposition that qualifies for the marital deduction under Section 2056(b)(6) or Section 2523(f)." The staff should check with Ed Halbach on the correctness of the Internal Revenue Code references in this subdivision.

§ 21525. QTIP Election

This section was revised to refer to a good faith decision "to make any election, or not to make any election," referred to in the QTIP provisions of the Internal Revenue Code. The Comment should note that this covers a partial election.

**STUDY L-1035 - AMENDMENTS TO AB 708 (ADMINISTRATION  
OF ESTATES OF MISSING PERSONS)**

The Commission considered Memorandum 87-23 and the staff draft of the *Recommendation Relating to Administration of Estates of Missing Persons*. The Commission also considered the remarks of Team 4 of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section which were distributed at the meeting. (See Exhibit 7 attached hereto.) The Commission decided to include this material in

AB 708 in the form set out in the amendments attached hereto as Exhibit 1. The issues raised in Memorandum 87-23 concerning the relation of the missing person statute to other provisions, including Evidence Code Section 667, will be considered in the future.

**STUDY L-1037 - AMENDMENTS TO AB 708 (SUPERVISED ADMINISTRATION)**

The Commission considered Memorandum 87-25 and a letter from Charles A. Collier, Jr., which is attached to these Minutes as Exhibit 2.

Amendments 29 to 120, inclusive, set out in Exhibit 1 attached were approved as set out in the exhibit. Some of these amendments were adopted in substance at the March meeting. Others are in response to suggestions made by Mr. Collier in the letter attached to these Minutes as Exhibit 2.

The Commission made the following additional decisions. Where amendments to Assembly Bill 708 are necessary to effectuate those decisions, the amendments in draft form should be presented to the Commission for consideration at the May meeting.

**Section 9651 (page 91 of amended AB 706)**

The Commission considered the question presented by Mr. Collier's letter: "Does 'expenses' include any taxes paid on the income received from the property?" The Commission's view was that "expenses" did not include the income taxes paid by the estate on the income from the property. If the property is later determined not to be a part of the estate and is delivered to the person entitled to it, together with the net income from the property, the estate may file an amended tax return to recognize that the estate did not receive the benefit of the income previously reported from the property. If the time has passed for filing the amended return, this remedy would not be available. The Commission noted that the language of Section 9651 continues existing law. No change was made in Section 9651.

**Section 9730 (page 95 of amended AB 708)**

The first sentence of the second paragraph of the Comment to Section 9730 was revised to read:

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.

Section 9731 (page 96 of amended AB 708)

The following amendment to Section 9731 was adopted:

AMENDMENT

On page 96, line 6, strike out "pursuant to" and insert:  
under

Section 9732 (page 96 of amended AB 708)

The Comment to this section (as amended) should include a reference to Section 1208 (notice to trust beneficiaries)

Section 9733 (page 97 of amended AB 708)

The following amendments to Section 9733 were adopted:

AMENDMENT

On page 97, line 24, strike out "granted" and insert:  
devised

AMENDMENT

On page 97, line 27, strike out "granted" and insert:  
devised

Section 9737 (page 98 of amended AB 708)

The following amendment to Section 9737 was adopted:

AMENDMENT

On page 98, line 39, strike out "pursuant to" and insert:  
under

Section 9761 (page 100 of amended AB 708)

The following amendment to Section 9751 was adopted:

AMENDMENT

On page 100, line 8, strike out "the" and insert:  
any

The use of the term "surviving partner" conforms to the partnership statute in the Corporations Code. 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.

Section 9762 (pages 100-101 of amended AB 708)

The following amendment to Section 9762 was adopted:

AMENDMENT

On page 100, line 35, strike out "pursuant to" and insert:  
under

Section 9802 (page 106 of amended AB 708)

The following amendment to Section 9802 was adopted:

AMENDMENT

On page 106, line 5, strike out "pursuant to" and insert:  
under

Section 9831 (page 111 of amended AB 708)

No change was made in this section. However, the Comment to the section should include a reference to subdivision (b) of Section 9100 which indicates the meaning of the phrase "the time for filing creditor's claims has expired."

Section 9850 (page 113 of amended AB 708)

The following amendment to Section 9850 was adopted:

AMENDMENT

On page 113, line 19, strike out the second comma

Section 9861 (page 115 of amended AB 708)

The Comment to Section 9861 should include a reference to Section 1201 (notice need not be given to persons joining in petition).

Section 9880 (page 117 of amended AB 708)

Mr. Collier's letter asks whether the term "the personal representative's attorney" includes associates, partners, and of counsel of the law firm of the attorney selected by the personal representative. The Comment should contain a statement that the term

"personal representative's attorney" is to be given a broad meaning 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. Other sections where the term "the personal representative's attorney" is used (such as Section 10501) should either include a similar clarifying statement or a reference to a Comment where the clarify statement is made.

Section 9981 (page 117 of amended AB 708)

The first two sentences of the Comment to Section 9981 were replaced by the following:

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.

Section 9900 (pages 118-119 of amended AB 708)

The following amendment was made to Section 9900:

AMENDMENT

On page 118, line 39, strike out "made pursuant to" and insert:  
obtained under

Section 9901 (page 119 of amended AB 708)

The following amendment was made to Section 9901:

AMENDMENT

On page 119, line 18, strike out "pursuant to" and insert:  
under

Section 9946 (page 122 of amended AB 708)

The following amendment was made to Section 9946:

AMENDMENT

On page 122, line 15, strike out "of the following" and insert:  
one or more of the following provisions

Sections 10162.3, 10162.5, and 10162.7 (pages 132-133 of amended AB 708)

The Commission noted that three sections of the bill are numbered using a decimal system. If these sections and the following sections were to be renumbered in order to avoid using a decimal system, it would be necessary to revise the language used in a number of very long Comments. This would significantly add to the length of the report we will file and have approved by the Senate Judiciary Committee in order to revise the Comments to reflect the bill as enacted. To avoid this, the present decimal numbering system will be retained. When the new code is prepared, the sections can be given whole numbers.

Section 10206 (page 139 of amended AB 708)

The first paragraph of the Comment to Section 10206 was revised to read:

Subdivision (a) of Section 10206 restates former Section 800 without substantive change. The remainder of Section 10206 restates former Section 801 without substantive change. See also Section 10314 (assignment of contract right to purchaser after furnishing of bond and confirmation of sale).

The Comment should also state that 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.

Section 10255 (page 142 of amended AB 708)

The Comment should note that language is added to the section to permit the notice of sale to 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.

Section 10258 (page 144 of amended AB 708)

The following amendments were made to Section 10258:

AMENDMENT

On page 144, line 18, strike out "in the opinion of the court" and insert:

it is shown that

AMENDMENT

On page 144, line 28, strike out "all" and strike out lines 29 and 30 and insert:

(1) each known heir whose interest in the estate would be affected by the sale and (2) each known devisee whose interest in the estate would be affected by the sale.

Section 10261 (pages 145-146 of amended AB 708)

The following amendments to Section 10261 were adopted:

AMENDMENT

On page 146, line 5, strike out the first "the" and insert:  
any

AMENDMENT

On page 146, line 5, strike out the second "the" and insert:  
that

AMENDMENT

On page 146, between lines 13 and 14, insert:

(e) A citation may be used to compel the surviving partner to attend the hearing.

The fourth paragraph of the Comment to Section 10261 was revised to read:

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." Under former Section 774, the provision applied only where the surviving partner is able to be present at the hearing and is "in the county." Subdivision (e) is a new provision that makes clear a citation may be used to compel the surviving partner to attend the hearing.

The Comment to Section 10261 also needs to be revised to reflect the addition of new subdivision (d), which was added by the amendments made to the bill on March 30.

The use of the term "surviving partner" in Section 10261 was approved. The court has jurisdiction and discretion to order any surviving partner to appear for examination.

Section 10351 (page 155 of amended AB 708)

In response to a comment of Mr. Collier, the Commission approved an amendment set out in Exhibit 1 attached to increase the time in Section 10351 from 45 to 60 days.

**STUDY L-1045 - AMENDMENTS TO AB 708 (DEFINITIONS)**

The following amendment to Section 58 was adopted:

**AMENDMENT**

On page 8, line 22, strike out "personal representative" and insert:  
administrator

**STUDY L-2005 - AMENDMENTS TO AB 708 (CONFORMING REVISIONS AND MISCELLANEOUS AMENDMENTS)**

The Commission considered Memorandum 87-30.

Except as indicated below, the amendments set out in the memorandum were approved and are set out in Exhibit 1 attached to these Minutes.

Section 13101 (set out in Memorandum 87-30)

The Commission approved the amendment to subdivision (a) of Section 13101 set out in Memorandum 87-30 but determined not to add a provision to Section 13101 that would require a copy of the will to be attached to the affidavit or declaration. It was feared that the inclusion of such a requirement would create doubt whether the holder of the property would be protected from liability if the holder relies in good faith on the statements in the affidavit. The requirement that a copy of the will be attached might cause the holder to believe that it had a duty to determine the validity of the will and to interpret the dispositive provisions of the will.

Section 215 (page 10 of amended AB 708)

The following amendments to Section 215 were adopted in substance:

AMENDMENT

On page 10, line 20, strike out "the decedent has received or may have" and insert:

a beneficiary or a person in possession of property of the decedent knows or has reason to believe that the decedent

AMENDMENT

On page 10, line 24, strike out "a beneficiary or a" and insert:  
the beneficiary or the

APPROVED AS SUBMITTED \_\_\_\_\_

APPROVED AS CORRECTED \_\_\_\_\_ (for  
corrections, see Minutes of next  
meeting)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary

AMENDMENTS TO ASSEMBLY BILL 708  
AS AMENDED IN ASSEMBLY MARCH 30, 1987

AMENDMENT 1

In line 9 of the title, after "6611," insert:  
13101,

AMENDMENT 2

On page 2, in line 4 of the title, delete "and"

AMENDMENT 3

On page 2, in line 5 of the title, after the comma, insert:  
and Chapter 24 (commencing with Section 1350) of,

AMENDMENT 4

On page 9, between lines 35 and 36, insert:  
SEC. 22. Chapter 3 (commencing with Section 215) is added to Part  
4 of Division 2 of the Probate Code, to read:

CHAPTER 3. REPORTING FACT OF DEATH

215. If the decedent has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, a beneficiary or a person in possession of property of the decedent shall give the Director of Health Services notice of the decedent's death not later than 90 days after the date of death. The notice shall include a copy of the decedent's death certificate. The notice shall be given as provided in Section 1215, addressed to the director at the Sacramento office of the director.

AMENDMENT 5

On page 9, line 36, strike out "SEC. 22" and insert:  
SEC. 23

AMENDMENT 6

On page 10, strike out lines 15 to 31, inclusive

AMENDMENT 7

On page 13, line 20, after the second "or" insert:  
is

AMENDMENT 8

There is no Amendment 8.

AMENDMENT 9

On page 23, line 37, strike out "with the clerk"

**AMENDMENT 10**

On page 24, line 8, strike out "the prescribed period" and insert: four months after the date letters are first issued to a general personal representative

**AMENDMENT 11**

On page 24, line 15, strike out "the prescribed period" and insert: four months after the date letters are first issued to a general personal representative

**AMENDMENT 12**

On page 24, line 22, strike out "said prescribed period" and insert: four months after the date letters are first issued to a general personal representative

**AMENDMENT 13**

On page 24, lines 28 and 29, strike out "the prescribed time for claims" and insert: four months after the date letters are first issued to a general personal representative

**AMENDMENT 14**

On page 25, line 18, strike out "executor or administrator" and insert: personal representative

**AMENDMENT 15**

On page 25, lines 18 and 19, strike out "executor or administrator" and insert: personal representative

**AMENDMENT 16**

On page 25, line 20, strike out "executor or administrator" and insert: personal representative

**AMENDMENT 17**

On page 25, line 23, after "defended" insert: by the personal representative

**AMENDMENT 18**

On page 25, line 35, strike out "shall" and insert: shall

**AMENDMENT 19**

On page 29, line 5 strike out "the devisees" and strike out lines 6 to 9, inclusive, and insert:  
(1) each known heir whose interest in the estate is affected by the payment of the commissions, (2) each known devisee whose interest in the estate is affected by the payment of the commissions, (3) the State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the payment of the commissions, and (4) all persons

AMENDMENT 20

On page 29, line 28, strike out "the executor" and strike out lines 29 to 34, inclusive, and insert:

(1) the personal representative, (2) each known heir whose interest in the estate is affected by the payment of the fees, (3) each known devisee whose interest in the estate is affected by the payment of the fees, (4) the State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the payment of the fees, and (5) all persons who have filed a request for special notice

AMENDMENT 21

On page 30, line 4, after "issues" insert a comma

AMENDMENT 22

On page 30, strike out lines 24 to 28, inclusive, and insert: personal representative upon (1) each known heir whose interest in the estate is affected by the account and petition, (2) each known devisee whose interest in the estate is affected by the account and petition, (3) the State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the account and petition, and (4) all persons who have filed a

AMENDMENT 23

On page 42, line 38, after "written" insert: receipt or written

AMENDMENT 24

On page 45, line 37, after the first "the" insert: court

AMENDMENT 25

On page 48, line 8, after "account," insert: or other paper,

AMENDMENT 26

On page 50, line 26, after "petitioner" insert: or, if there are two or more petitioners, by any of them

AMENDMENT 27

On page 54, between lines 23 and 24, insert: SEC. 60.7. Chapter 24 (commencing with Section 1350) of Division 3 of the Probate Code is repealed.

AMENDMENT 28

On page 67, strike out lines 13 to 15, inclusive, and insert:  
(1) Each known heir whose interest in the estate is affected by the petition.  
(2) Each known devisee whose interest in the estate is affected by the petition.

AMENDMENT 29

On page 71, line 3, after "proceeding" insert: for administration of a decedent's estate

AMENDMENT 30

On page 71, line 6, after "proceeding" insert:  
for administration of a decedent's estate

AMENDMENT 31

On page 72, line 7, strike out "copies of"

AMENDMENT 32

On page 72, line 8, strike out "both the court and" and insert:  
the court and mail or deliver a copy to

AMENDMENT 33

On page 73, line 12, after "9100." insert:  
(a)

AMENDMENT 34

On page 73, line 14, strike out "(a)" and insert:  
(1)

AMENDMENT 35

On page 73, line 16, strike out "(b)" and insert:  
(2)

AMENDMENT 36

On page 73, between lines 18 and 19, insert:  
(b) Notwithstanding Section 9103, a reference in another statute to the time for filing a claim means the time provided in this section, unless the provision or context requires otherwise.

AMENDMENT 37

On page 73, line 28, strike out "provided in Section 9100" and insert:  
for filing a claim

AMENDMENT 38

On page 73, lines 38 and 39, strike out "conduct by the creditor" and insert:  
creditor's conduct

AMENDMENT 39

On page 73, line 39, strike out "this" and insert:  
the

AMENDMENT 40

On page 74, strike out lines 29 to 40, inclusive, and on page 75, strike out line 1, and insert:

(b) A claim shall be filed with the court and a copy shall be mailed to the personal representative. Failure to mail a copy to the personal representative does not invalidate a properly filed claim, but any loss that results from the failure shall be borne by the creditor.

AMENDMENT 41

On page 75, strike out lines 15 to 17, inclusive, and insert:

the claim. An original voucher may be withdrawn after a copy is provided, which shall be attached to the claim.

AMENDMENT 42

On page 75, lines 36 and 37, strike out "both the court and the personal representative." and insert:  
the court and a copy mailed or delivered to the personal representative. The claim form shall include a proof of giving notice, which may be completed by the creditor.

AMENDMENT 43

On page 78, line 20, strike out "com-" and insert:  
(com-

AMENDMENT 44

On page 78, line 23, strike out "Code" and insert:  
Code)

AMENDMENT 45

On page 78, line 26, strike out "(a)"

AMENDMENT 46

On page 78, line 33, after "215" insert:  
not later than 90 days after the date letters are first issued to a general personal representative

AMENDMENT 47

On page 78, line 34, strike out "(b) The" and insert:  
The

AMENDMENT 48

On page 78, strike out lines 36 to 40, inclusive, and insert:  
9203. (a) Failure of a person to give the written notice or request required by this chapter does not affect the

AMENDMENT 49

On page 79, line 32, after "creditor" insert:  
as provided in Section 1215

AMENDMENT 50

On page 79, line 33, strike out ", as provided in Section 1215"

AMENDMENT 51

On page 80, line 39, after "until" insert:  
notice of

AMENDMENT 52

On page 81, line 4, after "claim" insert:  
in whole or in part

AMENDMENT 53

On page 81, line 5, after "limitations" insert:  
as to the part allowed or approved

AMENDMENT 54

On page 81, line 7, strike out "Notwithstanding" and insert:  
Whether

AMENDMENT 55

On page 81, line 8, after "claim" insert:  
will expire before of after the time prescribed in Section 9257

AMENDMENT 56

On page 81, line 36, strike out "the giving of" and insert:  
giving

AMENDMENT 57

On page 82, line 2, strike out "of giving"

AMENDMENT 58

On page 82, line 3, after "rejection" insert:  
is given

AMENDMENT 59

On page 82, line 4, strike out "of giving"

AMENDMENT 60

On page 82, line 5, after "rejection" insert:  
is given

AMENDMENT 61

On page 82, strike out lines 22 and 23 and insert:  
(d) The prevailing party in the action shall be awarded court costs and, if the court determines that the prosecution or defense of the action against the prevailing party was unreasonable, the prevailing party shall be awarded reasonable

AMENDMENT 62

On page 82, line 34, strike out "Laws" and insert:  
Law

AMENDMENT 63

On page 87, delete lines 12 to 17, inclusive

AMENDMENT 64

On page 90, line 31, strike out "and" and insert:  
or

AMENDMENT 65

On page 92, line 32, strike out "(1)"

AMENDMENT 66

On page 92, strike out lines 34 to 40, inclusive, and on page 93, strike out lines 1 to 5, inclusive, and insert:  
property. The proceeds of the sale shall be

AMENDMENT 67

There is no Amendment 67.

AMENDMENT 68

On page 93, line 6, strike out "the portion" and insert:  
payment

AMENDMENT 69

On page 93, lines 7 and 8, strike out "that is to be borne by the  
estate,"

AMENDMENT 70

On page 93, lines 14 and 15, strike out "or assigned"

AMENDMENT 71

On page 95, line 22, after "States" insert:  
, or of the State of California,

AMENDMENT 72

On page 96, line 37, strike out "(1)"

AMENDMENT 73

On page 96, strike out lines 39 and 40 and insert:  
to the person nominated as trustee.

AMENDMENT 74

On page 97, line 1, strike out "trust."

AMENDMENT 75

On page 97, line 13, after the period, insert:  
Upon petition of the personal representative or any interested person,  
the order may be renewed, modified, or terminated at any time.

AMENDMENT 76

On page 100, line 15, strike out "representaive" and insert:  
representative

AMENDMENT 77

On page 102, strike out line 1

AMENDMENT 78

On page 102, line 2, strike out "of the devisee" and insert:  
(2) Each known devisee

AMENDMENT 79

On page 104, strike out lines 10 to 15, inclusive, and insert:  
(2) Serves a restraining order obtained under Section 9784 before  
whichever of the following is the later time:

(A) The date specified in the notice of proposed disposition or  
abandonment as the date on or after which the property will be disposed  
of or abandoned.

(B) The date the property has actually been disposed of or  
abandoned.

AMENDMENT 80

On page 107, line 35, after "title" insert a comma

AMENDMENT 80.5

On page 110, line 32, strike out "extend" and insert:  
extent

AMENDMENT 81

On page 111, strike out line 23 and insert:  
from month to month. For the purposes of this subdivision, if the  
lease 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.

AMENDMENT 82

On page 111, line 33, after "personal representative" insert:  
or the personal representative's attorney

AMENDMENT 83

On page 111, line 37, strike out "owing to, or running" and insert:  
or the personal representative's attorney owing to, or

AMENDMENT 84

On page 112, lines 19 and 20, strike out "and the advantage of"

AMENDMENT 85

On page 112, line 21, after "modification" insert:  
and its advantage

AMENDMENT 86

On page 115, strike out line 20

AMENDMENT 87

On page 115, line 21, strike out "of the decedent" and insert:  
(2) Each known heir

AMENDMENT 88

On page 117, strike out lines 16 to 21, inclusive, and insert:  
(a) Written consent to the purchase is signed by (1) each known  
heir whose interest in the estate is affected by the proposed purchase  
and (2) each known devisee whose interest

AMENDMENT 89

On page 118, strike out line 4

AMENDMENT 90

On page 118, line 5, strike out "of the decedent" and insert:  
(2) Each known heir

AMENDMENT 91

On page 118, strike out line 15 and insert:  
order of the

AMENDMENT 92

On page 121, line 28, strike out the second "the" and insert:  
(1) each known heir whose interest in the estate would be affected by

the proposed lease and (2) each known devisee whose interest in the estate would be affected by the proposed lease.

AMENDMENT 93

On page 121, strike out lines 29 to 32, inclusive

AMENDMENT 94

On page 122, line 1, strike out "and"

AMENDMENT 95

On page 124, strike out lines 24 and 25 and insert:  
of the hearing to be mailed as provided in Section 1220 to (1) each known heir whose interest in the estate would be affected by the granting of the option and (2) each known devisee whose interest in the estate would be affected by the granting of the option.

AMENDMENT 96

On page 126, strike out lines 5 to 8, inclusive, and insert:  
(b) The personal representative or the person given the option to purchase the property may file a petition for an order pursuant to this chapter.

AMENDMENT 97

On page 129, line 27, after "if" insert a comma

AMENDMENT 98

On page 129, line 29, after "sell" insert a comma

AMENDMENT 99

On page 131, line 28, strike out "compensation" and insert:  
commission

AMENDMENT 100

On page 132, line 2, strike out "Where" and insert:  
Subject to subdivision (b), where

AMENDMENT 101

On page 132, line 6, after "broker" insert:  
who procured the purchaser to whom the sale is confirmed

AMENDMENT 102

On page 132, line 9, strike out "Subdivision (a)" and insert:  
This section

AMENDMENT 103

On page 133, strike out lines 27 and 28 and insert:  
10163. Subject to Section 10162, the court shall allow the compensation determined under Section 10161 on the full amount for which the sale is confirmed to the agent or broker who procured the purchaser to whom the sale is confirmed if all of the following circumstances exist:

AMENDMENT 104

On page 133, line 29, strike out "(1)" and insert:  
(a)

AMENDMENT 105

On page 133, line 32, strike out "(2)" and insert:  
(b)

AMENDMENT 106

On page 133, line 34, strike out "(3)" and insert:  
(c)

AMENDMENT 107

On page 133, strike out lines 38 to 40, inclusive, and on page 134, strike out lines 1 to 3, inclusive

AMENDMENT 108

On page 134, line 39, strike out "Subject to Section 10162, the" and insert:  
The

AMENDMENT 109

On page 139, lines 13 to 15, inclusive, strike out "title to the decedent's interest in the property and under the contract does not pass to the purchaser" and insert:  
the court shall not confirm the sale

AMENDMENT 110

On page 143, line 18, after "personally" insert:  
or to the person specified in the notice of sale

AMENDMENT 111

On page 145, line 9, strike out "property" and insert:  
property

AMENDMENT 112

On page 146, line 13, strike out "10169" and insert:  
10160

AMENDMENT 113

There is no amendment 113.

AMENDMENT 114

On page 149, line 19, after "personally" insert:  
or to the person specified in the notice of sale

AMENDMENT 115

On page 149, line 20, after the first "of" insert:  
notice

AMENDMENT 116

On page 149, line 29, strike out the comma

AMENDMENT 117

On page 150, line 5, strike out the first "of" and insert:  
prior to

AMENDMENT 118

On page 150, line 37, strike out "of" and insert:  
to

AMENDMENT 119

On page 155, line 31, strike out "45" and insert:  
60

AMENDMENT 120

On page 156, line 6, strike out "45" and insert:  
60

AMENDMENT 121

On page 164, strike out lines 26 to 40, inclusive, and on page 165, strike out lines 1 to 39, inclusive, and insert:

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

- (1) Allowance of the personal representative's commissions.
- (2) Allowance of attorney's fees.
- (3) Settlement of accountings.
- (4) Preliminary and final distributions and discharge.
- (5) Sale of property of the estate to the personal representative or to the attorney for the personal representative.
- (6) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative.
- (7) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.
- (8) Allow, pay, or compromise a claim of the personal representative, or the attorney for the personal representative, against the estate.
- (9) Compromise or settle a claim, action, or proceeding by the estate against the personal representative or against the attorney for the personal representative.
- (10) Extend, renew, or modify the terms of a debt or other obligation of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate.

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

- (1) Sale of real property.
- (2) Exchange of real property.
- (3) Grant of an option to purchase real property
- (4) Borrow money with the loan secured by an encumbrance upon real property.

(c) Paragraphs (5) to (10), inclusive, of subdivision (a) do not apply to a transaction between the personal representative as such and

the personal representative as an individual where all of the following requirements are satisfied:

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

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

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

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

AMENDMENT 122

On page 169, line 37, after "States" insert:  
, or of the State of California,

AMENDMENT 123

On page 170, line 32, after "States" insert:  
, or of the State of California,

AMENDMENT 124

On page 171, line 23, strike out "of appointment of the" and insert:  
letters are first issued to a

AMENDMENT 125

On page 173, line 15, strike out "to the issuer"

AMENDMENT 126

On page 177, strike out line 31

AMENDMENT 127

On page 177, line 32, strike out "of the decedent" and insert:  
(b) Each known heir

AMENDMENT 128

On page 182, line 5, strike out "who has been"

AMENDMENT 129

On page 182, strike out lines 6 and 7

AMENDMENT 130

On page 182, line 8, strike out "provided in subdivision (d)"

AMENDMENT 131

On page 182, line 10, after "taken" insert:  
, if either of the following circumstances exists:

(1) The person has been given notice of a proposed action, as provided in Sections 10580 to 10586, inclusive, and fails to object as provided in subdivision (d).

(2) The person has waived notice of or consented to the proposed action as provided in Sections 10582 to 10584, inclusive

AMENDMENT 132

On page 182, lines 12 and 13, strike out "any interested person"

and insert:  
a person described in Section 10581

AMENDMENT 133

On page 186, strike out lines 24 and 25 and insert:  
Dated: \_\_\_\_\_

\_\_\_\_\_  
(SIGN HERE)

AMENDMENT 134

On page 188, line 21, strike out "Funderal" and insert:  
Funeral

AMENDMENT 135

On page 189, line 3, strike out "persoanl" and insert:  
personal

AMENDMENT 136

On page 189, line 40, strike out "(d)" and insert:  
(b)

AMENDMENT 137

On page 190, line 38, after "paid" insert:  
, whether or not included in the order for payment,

AMENDMENT 138

On page 192, between lines 33 and 34, insert:

PART 10. DISTRIBUTION OF ESTATE

PART 11. CLOSING ESTATE ADMINISTRATION

PART 12. ADMINISTRATION OF ESTATES OF  
MISSING PERSONS PRESUMED DEAD

12400. Unless the provision or context otherwise requires, as used in this part, "missing person" means a person who is presumed to be dead under Section 12401.

12401. In proceedings under this part, a person who has not been seen or heard from for a continuous period of five years by those who are likely to have seen or heard from that person, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The person's death is presumed to have occurred at the end of the period unless there is sufficient evidence to establish that death occurred earlier.

12402. Subject to the provisions of this part, the estate of a missing person may be administered in the manner provided generally for the administration of estates of deceased persons.

12403. (a) If the missing person was a resident of this state when last seen or heard from, the superior court of the county of the person's last known place of residence has jurisdiction for the purposes of this part.

(b) If the missing person was a nonresident of this state when last seen or heard from, the superior court of a county where real

property of the missing person is located, or of a county where personal property is located if the missing person has no real property in this state, has jurisdiction for the purposes of this part.

12404. (a) A petition may be filed in the court having jurisdiction under Section 12403 for the administration of the estate of a missing person.

(b) The petition may be filed by any person who may be appointed as a personal representative, other than a person described in paragraph (12) of subdivision (a) of Section 422.

(c) In addition to the matters otherwise required in a petition for administration of the estate, the petition shall state all of the following:

(1) The last known place of residence and the last known address of the missing person.

(2) The time and circumstances when the missing person was last seen or heard from.

(3) That the missing person has not been seen or heard from for a continuous period of five years by the persons likely to have seen or heard from the missing person (naming them and their relationship to the missing person) and that the whereabouts of the missing person is unknown to those persons and to the petitioner.

(4) A description of the search or the inquiry made concerning the whereabouts of the missing person.

12405. Notice of hearing shall be served and published, and proof made, in the same manner as in proceedings for administration of the estate of a decedent, except that notice of hearing on the petition shall also be sent by registered mail to the missing person at his or her last known address.

12406. (a) At the hearing, the court shall determine whether the alleged missing person is a person who is presumed to be dead under Section 12401. The court may receive evidence and consider the affidavits and depositions of persons likely to have heard from or know the whereabouts of the alleged missing person.

(b) If the court is not satisfied that a diligent search or inquiry has been made for the missing person, the court may order the petitioner to conduct a diligent search or inquiry and to report the results. The court may order the search or inquiry to be made in any manner that the court determines to be advisable, including any or all of the following methods:

(1) Inserting in one or more suitable newspapers or other periodicals a notice requesting information from any person having knowledge of the whereabouts of the missing person.

(2) Notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the missing person.

(3) Engaging the services of an investigator.

(c) The costs of a search ordered by the court pursuant to subdivision (b) shall be paid by the estate of the missing person, but if there is no administration, the court in its discretion may order the petitioner to pay the costs.

12407. (a) If the court finds that the alleged missing person is a person presumed to be dead under Section 12401, the court shall do both of the following:

(1) Appoint a personal representative for the estate of the missing person in the manner provided for the estates of deceased persons.

(2) Determine the date of the missing person's death.

(b) The personal representative shall administer the estate of the missing person in the same general manner and method of procedure, and with the same force and effect, as provided for the administration of the estates of deceased persons, except as otherwise provided in this part.

12408. (a) If the missing person reappears:

(1) The missing person may recover property of the missing person's estate in the possession of the personal representative, less fees, costs, and expenses thus far incurred.

(2) The missing person may recover from distributees any property of the missing person's estate that is in their possession, or the value of distributions received by them, to the extent that recovery from distributees is equitable in view of all the circumstances, but an action under this paragraph is forever barred five years after the time the distribution was made.

(b) The remedies available to the missing person under subdivision (a) are exclusive, except for any remedy the missing person may have by reason of fraud or intentional wrongdoing.

(c) Except as provided in subdivisions (a) and (b), the order for final distribution, when it becomes final, is conclusive as to the rights of the missing person, the rights of the beneficiaries of the missing person, and the rights of all other persons interested in the estate.

(d) If a dispute arises as to the identity of a person claiming to be a reappearing missing person, the person making the claim or any other interested person may file a petition under Section 1080, notwithstanding the limitations of time prescribed in Section 1080, for the determination of the identity of the person claiming to be the reappearing missing person.

12409. (a) This part applies only to cases where a petition is filed under Section 12404, or under former Section 1354, after December 31, 1983. If a petition is filed under Section 12404, or under former Section 1354, the required period of absence of the alleged missing person may include a period of absence that commenced to run before the operative date of the applicable section.

(b) This part does not apply to any proceeding under former Sections 280 to 294, inclusive, that was pending on December 31, 1983, and the law that applied to that proceeding on December 31, 1983, continues to apply after that date.

SEC. 93.1. Section 13101 of the Probate Code is amended to read:

13101. (a) To collect money, receive tangible personal property, or have evidences of a debt, obligation, interest, right, security, or chose in action transferred under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the holder of the decedent's property stating all of the following:

(1) The decedent's name.

(2) The date and place of the decedent's death.

(3) "At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death

certificate attached to this affidavit or declaration."

(4) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(5) "The gross value of the decedent's real and personal property in California, excluding the property described in Section 13050 of the California Probate Code, does not exceed sixty thousand dollars (\$60,000)."

(6) A description of the property of the decedent that is to be paid, transferred, or delivered to the affiant or declarant.

(7) The name of the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the described property.

(8) Either of the following, as appropriate:

(A) "The affiant or declarant is the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the decedent's interest in the described property."

(B) "The affiant or declarant is authorized under Section 13051 of the California Probate Code to act on behalf of the successor of the decedent (as defined in Section 13006 of the California Probate Code) with respect to the decedent's interest in the described property."

(9) "No other person has a right to the interest of the decedent in the described property."

(10) "The affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant."

(11) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

#### AMENDMENT 139

On page 197, line 22, strike out "satisfy" and insert:  
satisfy

#### AMENDMENT 140

On page 198, strike out lines 18 and 19, and insert:  
any or all of the provisions of this part. The effect of incorporating a provision of this part in an

#### AMENDMENT 141

On page 198, strike out lines 26 to 33, inclusive, and insert:

21502. (a) If an instrument includes a formula intended to eliminate the federal estate tax, the formula shall be applied to eliminate or to reduce to the maximum extent possible the federal estate tax.

(b) If an instrument includes a formula that refers to a maximum fraction or amount that will not result in a federal estate tax, the formula shall be construed to refer to the maximum fraction or amount that will not result in or increase the federal estate tax.

AMENDMENT 142

There is no Amendment 142.

AMENDMENT 143

On page 200, line 6, after the period, insert:  
Nothing in this subdivision precludes exercise by the transferor's spouse of a general power of appointment included in the trust.

AMENDMENT 144

On page 200, line 22, strike out "otherwise" and insert:  
a different disposition that qualifies under Section 2056(b)(6) or Section 2523(f)

AMENDMENT 145

On page 200, strike out lines 23 to 31, inclusive, and insert:  
21525. (a) If an instrument that makes a marital deduction gift includes a condition that the transferor's spouse survive the transferor by a period that exceeds six months, other than a condition described in subdivision (b), the condition shall be limited to six months as applied to the marital deduction gift.

(b) If an instrument that makes a marital deduction gift includes a condition that the transferor's spouse survive a common disaster that results in the death of the transferor, the condition shall be limited to the time of the final audit of the federal estate tax return for the transferor's estate, if any, as applied to the marital deduction gift.

AMENDMENT 146

There is no Amendment 146.

AMENDMENT 147

On page 201, line 3, strike out "internal" and insert:  
Internal

AMENDMENT 148

On page 201, lines 12 and 13, strike out "After the death of the transferor, the" and insert:  
The

AMENDMENT 149

On page 201, line 24, strike out "comform" and insert:  
conform

AMENDMENT 150

On page 201, line 27, strike out "After the death of the transferor, the" and insert:  
The

LAW OFFICES

IRELL & MANELLA

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1800 AVENUE OF THE STARS

SUITE 900

LOS ANGELES, CALIFORNIA 90067

(213) 277-1010 AND 879-2600

April 6, 1987

CABLE ADDRESS RELLA  
TELEX 181258  
TELECOPIER  
(213) 277-5804 AND 553-9276

WRITER'S DIRECT DIAL NUMBER

ORANGE COUNTY OFFICE  
840 NEWPORT CENTER DRIVE, SUITE 500  
NEWPORT CENTER  
NEWPORT BEACH, CALIFORNIA 92660  
TELEPHONE (714) 760-0891

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94303-4739

VIA EXPRESS MAIL

Re: AB-708, as Amended March 30, 1987

Dear John:

The following are some miscellaneous comments on Assembly Bill 708 as amended March 30, 1987. Most of these are of a technical nature. I hope they will be of assistance to the Commission. References are to section number, page and line of the amended bill.

Section 333, page 15, line 6: Since the hearing under Section 327 has to be set not less than 15 days nor more than 30 days after filing, it does not seem necessary to change the period of publication from 10 to 15 days. Although changes generally are to 15 days' written notice, I think publication should remain at 10 as a matter of expediency.

Section 333, page 15, line 18, line 24, and line 28: These all refer to the "community" in which a decedent resides if he or she does not reside in a city. Is the word "community" appropriate? Should it not refer to the "area of the county" in which the decedent resided?

Section 333, page 16, line 38: Is the request for special notice to be sent to the executor or his attorney or to the court?

Section 333, page 18, line 5: Is the request for special notice to be sent to executor or his attorney or to the court?

Section 422, page 18, line 29: Should this not also refer to Section 6600 and subsequent, the set aside procedures?

Section 541.1, page 20, line 5: Is it not appropriate to refer to the personal representative rather than the executor or administrator?

Mr. John H. DeMouilly  
April 6, 1987  
Page Two

Section 608.5, page 21, line 15: Because there may be a delay after the time of the court hearing on a petition for final distribution before the actual order or decree is signed, I believe this should be changed to refer to "at any time prior to the hearing on the petition for final distribution."

Section 707, page 23, lines 23-25: Is the intent to limit this section to situations where the assets are under \$60,000, since the word "and" is used on line 23?

Section 709, page 24, line 33: The word "shall" would indicate that if, for example, some general creditors have been paid and the amount remaining would not be sufficient to pay in full a late claim with other creditors, that that late claim would be denied. Is not more appropriate to simply let the late claim share in whatever remains?

Section 709.1, page 25, lines 15 and 16: Does this change existing law under Probate Code Section 950(8) which refers to judgments which were not liens before date of death? Judgments which were not liens prior to date of death were treated as general creditors. I assume the numbering of Section 709.1 is only temporary as decimals were not going to be used in the new code.

Section 751, page 28, line 13: Is the word "a" appropriate? Should it not refer to "the residuary legatees?"

Section 904, page 29, lines 7 and 8: Should this not be changed for consistency to refer to the heirs whose interest is affected by the payment or to the State of California if its interest would be affected by the payment?

Section 911, page 29, lines 31 and 32: Same comment as above with reference to Section 904.

Section 926, page 30, lines 26 and 27: Same comment as above with reference to Section 904.

Section 1206, page 42, lines 37 and 38: Does "written acceptance" include a receipt from the devisee? If so, is not a reference to receipt either appropriate as an addition to or in place of written acceptance?

Section 1280, page 49, lines 13-15, and lines 33-34: While the rules of procedure are independently being reviewed and revised, I again state my concern over the language which refers to issues of fact being tried in conformity with the requirements of Rules of Practice in Civil Action. This has often given lawyers an argument that certain issues should be tried by jury, even though there is no specific section of

Mr. John H. DeMouilly  
April 6, 1987  
Page Three

the Probate Code that provides for a jury as to a particular proceeding. Can this be clarified at this time?

Section 1284, page 50, line 25: I believe it is the practice to allow verification by one of several co-executors or co-petitioners. Does this section recognize that?

Section 1292, page 52, lines 12 and 13: I had understood that in the case of an order of distribution that it would be possible to record either a deed or the order of distribution. In many cases the order of distribution may be extremely long setting forth the provisions of a trust, for example, and listing all of the assets distributed. It may be 40 or 50 pages long. In that case or because of privacy requirements, recording of a deed would seem appropriate. This section does not seem to permit that.

Section 6541, page 67, lines 13-15: Is it not appropriate to require notice only to those whose interest is affected by the petition? Also with reference to consistency of language, I would think that (c)(2) on lines 14 and 15 could state as follows: "All known heirs of the decedent in the case of intestacy, whose interest is affected."

Section 9004, page 71, lines 3 and 4: I assume the words "any proceeding" relate to the commencement of probate and not a proceeding involving a creditor's claim alone.

Section 9052, page 72, line 14: Since there are three alternatives, is the word "later" appropriate or it should be "latest?"

Section 9150, page 74, lines 35-37: Is the claim effective on mailing (as is the notice of hearing) or must it be delivered to the personal representative or attorney before it is effective? You might want to clarify the point that service of the claim is effective upon mailing in this instance.

Section 9253, page 80, lines 38-40, and page 81, lines 7-10: Is there any inconsistency between these provisions? If the statute of limitations is tolled until the claim is rejected but would otherwise run, for example, ten days thereafter, is it then barred or is there an additional extension for the 90 days until suit is brought on the rejected claim? This might be clarified.

Section 9614, page 87, line 15: The word "modify" is troublesome in light of Section 9612 which attempts to give finality to orders. The right to modify is not limited to the person who filed the petition who seeks clarification of an order, for example, but refers to any person who is authorized

Mr. John H. DeMouilly  
April 6, 1987  
Page Four

to file an initial petition. That might be a personal representative or any interested party. The right of modification, as I have indicated in some prior letters, I think should be severely limited or the term "modify" deleted from this section.

Section 9630, page 88, lines 25-27: This merely highlights the inconsistency between the provisions for executors where a majority may act and trustees who must act unanimously. Personally I believe that either executors or trustees should be able to act by majority decision. The change therefore would be in the trust law and not in this bill.

Section 9651, page 91, line 22: Does "expenses" include any taxes paid on the income received from the property?

Section 9653, page 92, lines 38-40: If a creditor has brought additional assets into the estate, it would seem that the creditor would only receive a prorata share of the entire estate as augmented, and therefore the chance of the value of the particular property being brought in being applied to the creditor would be most unique, unless the creditor was the only creditor of the estate. Also, I believe the creditor's right to share would be dependent upon the priority among creditors for payment of claims. Does this need any clarification?

Section 9732, page 96, lines 39 and 40: There would appear to be no reason to serve notice of the proposed investment on all persons who participated in the corpus or income of the trust. Is not the language in Section 1208(b) which provides for notice to the trustee or, if the trustee is also the personal representative, to the persons who would then share in the income or, if there are none, who would then share in the distribution on termination, adequate?

Section 9733, page 97, lines 24-27: The word "granted" appears awkward.

Section 9761, page 100, line 8: Is the phrase "the surviving partner" adequate where there are multiple partners? Perhaps it should refer to the surviving or managing partner.

Section 9782, page 102, lines 1-3: As noted earlier, I believe this language would be more consistent if it were phrased "each known heir of the devisee if the estate is an intestate estate, whose interest in the estate is affected by the proposed action." That structure would be more consistent with subparts (1) and (3). There are a number of other sections in the bill which could similarly be changed simply for clarification.

Mr. John H. DeMouilly  
April 6, 1987  
Page Five

Section 9782, page 102, line 25: Is the notice intended to be 10 days or 15 days?

Section 9831, page 111, line 2: Presumably this does not refer to approval or rejection of a creditor's claim as such. Is that correct?

Section 9832, page 111, lines 15-23: Under Section 9940 and 10536(b), the length of a lease includes the option periods. Does that require clarification in this section?

Section 9834, page 111, line 37: The word "running" should be deleted.

Section 9861, page 115, lines 3-9: Presumably 30 days is intended because this is more in the nature of a contested matter. Is that correct? Line 8 refers to notice being given to "all" of the following persons. Presumably either the personal representative or the third party would be the petitioner. Should a phrase be added in each subparagraph that the person would receive notice, if not the petitioner?

Section 9861, page 115, lines 20-22: See suggested change in wording earlier in this letter.

Section 9880, page 117, lines 5-10: Clarification is needed of the meaning of the term "the personal representative's attorney." Does this include the law firm of which the attorney is an associate, partner or of counsel? If so, it disqualifies all of those persons from dealing with the property without court order. If this is the intent, I believe it should be clarified.

Section 9883, page 117, line 40: Why is the language at line 40 different from the language in Section 9881 at line 17 on the same page? Section 9881 refers to known devisees of the property which is proposed to be sold. Line 40 refers to each known devisee whose interest in the estate is affected by the proposed purchase.

Section 9883, page 118, lines 4-6: See my comments elsewhere as to the wording of this provision.

Section 9883, page 118, lines 14-17: Does this suggest that the consents referred to in Section 9881 can provide for waiver of court confirmation?

Mr. John H. DeMouilly  
April 6, 1987  
Page Six

Section 9944, page 121, lines 29-32: Should not this be modified to refer to those persons whose interest is affected by the proposed lease?

Sections 10162.3 and 10162.5, page 132, lines 13 and 27: Should not the use of decimals be eliminated by renumbering sections as necessary?

Section 10162.7, page 133, line 7: Same comment on use of decimal.

Section 10206, page 139, line 21: Presumably the amount referred to in that sentence includes interest. Does this need clarification?

Section 10255, page 143, lines 15-20: Is it appropriate to have the bid or offer delivered either to the personal representative or the personal representative's attorney?

Section 10259, page 145, line 9: The word "property" is misspelled.

Section 10261, page 146, line 5: This again refers to "the surviving partner." Perhaps it should refer to the surviving partner or the managing partner if there are multiple partners.

Section 10351, page 155, line 31: Is the 45 day limitation, which is now found in current law, appropriate? Because of delays in getting appraisals on property, many escrows now run somewhat longer. This would seem to deprive the court of jurisdiction if the matter is not filed within 45 days. Some clarification may be appropriate.

Section 10501, pages 164 and 165, lines 27 and subsequent: While Memorandum 87-26 provides a rewording of this section, the question of who constitutes the personal representative's attorney, which I raised with reference to an earlier section, also relates to this section. Does it include the law firm, for example, of which the attorney is a partner or with which the attorney is associated?

Section 10533, page 170, lines 31-35: I don't understand the relation of this language to the authority granted in this section under (a)(2)(A) which seems to give direct authority in this area.

Section 10534, page 171, lines 23 and 24: Should this refer to the date of the appointment of the first personal representative?

Mr. John H. DeMouilly  
 April 6, 1987  
 Page Seven

Section 10537, page 172, lines 33-36: The structure of this section is the reverse of a number of other sections in this same article. The other sections, such as 10531, state that the personal representative, except as provided in (b), has the power without giving notice to do certain acts. This language is the reverse and says except as provided in (b), notice must be given. In short, I think the structure of the section is in reverse.

Section 10537, page 173, line 15: On further thought, I believe the words "to the issuer" should be deleted because of mergers, consolidations, etc., that take place.

Section 10557, page 175, lines 29-32: The word "granted" appears awkward as noted earlier.

Section 10580, page 177, lines 7-10, and 20-23: Is the sentence at lines 7-10 necessary? Would it not be appropriate to put a period after the phrase "subdivision (a)" on line 20?

Section 10581, page 177, lines 31-33: See my notes elsewhere on proposed language.

Section 10589, page 181, lines 30-33: This would suggest that no temporary restraining order is available in these situations where notice was given, though not required.

Section 10590, page 182, line 8: I believe the following language should be inserted after (d) "or any person who has waived notice or who has consented in writing waives the right."

Section 10590, page 182, line 13: I believe in a supplement the language is being changed to refer to a person described in Section 10581.

I hope the above will be of assistance to the Staff and to the Commission.

Sincerely,

Charles A. Collier, Jr.

CAC:vjd

cc: James Quillinan, Esq.  
 James Devine, Esq.  
 James Opal, Esq.  
 Irwin D. Goldring, Esq.  
 Lloyd Homer, Esq.

## AMENDMENTS TO ASSEMBLY BILL 362

## AMENDMENT 1

In line 2 of the title, after "15003," insert:  
15405, 15410, 15803,

## AMENDMENT 2

In line 2 of the title, strike out "and" and insert:  
16222,

## AMENDMENT 3

In line 3 of the title, strike out "of" and insert:  
, 16441, and 17457 of, to add Sections 15805 and 16082 to,

## AMENDMENT 4

On page 7, between lines 30 and 31, insert:

SEC. 9. Section 15405 of the Probate Code is amended to read:

15405. For the purposes of Section 15403 and 15404, the consent of a beneficiary who ~~is legally incapacitated,~~ lacks legal capacity, including a minor, or who is an unascertained, or unborn person may be given in proceedings before the court by a guardian ad litem, if it would be appropriate to do so. In this case determining whether to give consent, the guardian ad litem may rely on general family benefit accruing to living members of the beneficiary's family as a basis for approving a modification or termination of the trust.

SEC. 10. Section 15410 of the Probate Code is amended to read:

15410. At the termination of a trust, the trust property shall be disposed of as follows:

(a) In the case of a trust that is revoked by the settlor, as directed by the settlor.

(b) In the case of a trust that is terminated by the consent of the settlor and all beneficiaries, as agreed by the settlor and all beneficiaries.

(c) In any other case, as provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the settlor as expressed in the trust instrument.

(d) If a trust is terminated by the trustee pursuant to subdivision (b) of Section 15408, the trust property ~~shall~~ may be distributed as determined by the trustee pursuant to ~~this subdivision,~~ the standard provided in subdivision (c) without the need for a court order. Where the trust instrument does not provide a manner of distribution at termination and the settlor's intent is not adequately expressed in the trust instrument, the trustee may distribute the trust property to the living beneficiaries on an actuarial basis.

SEC. 11. Section 15803 of the Probate Code is amended to read:

15803. The holder of a presently exercisable general power of appointment or power to withdraw property from the trust has the rights of a ~~settlor~~ person holding the power to revoke the trust that are provided by Sections 15800 to 15802, inclusive, to the extent of the holder's power over the trust property.

SEC. 12. Section 15805 is added to the Probate Code, to read:  
15805. Notwithstanding any other statute, the Attorney General is subject to the limitations on the rights of beneficiaries of revocable trusts provided by Sections 15800 to 15802, inclusive.

AMENDMENT 5

On page 7, line 31, strike out "9" and insert:

13

AMENDMENT 6

On page 7, line 33, strike out "provided" and insert:  
otherwise provided in this section and

AMENDMENT 7

On page 7, strike out lines 39 and 40, and on page 8, strike out lines 1 to 16, inclusive, and insert:

(b) A trustee of a living trust created by an instrument executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a).

(c) A trustee of a trust created by a will executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a), except that if the trust is removed from continuing court jurisdiction pursuant to Article 2 (commencing with Section 17350) of Chapter 4 of Part 5, the duty to account provided by subdivision (a) applies to the trustee.

(d) Except as provided in Section 16064, the duty of a trustee to account pursuant to former Section 1120.1a of the Probate Code (as repealed by Chapter 820 of the Statutes of 1986), under a trust created by a will executed before July 1, 1977, which has been removed from continuing court jurisdiction pursuant to former Section 1120.1a, continues to apply after July 1, 1987. The duty to account under former Section 1120.1a may be satisfied by furnishing an account that satisfies the requirements of Section 16063.

AMENDMENT 8

On page 8, line 17, strike out "10" and insert:

14

AMENDMENT 9

On page 8, between lines 39 and 40, insert:

SEC. 15. 16082 is added to the Probate Code, to read:

16082. Except as otherwise specifically provided in the trust instrument, a person who holds a power to appoint or distribute income or principal to or for the benefit of others, either as an individual or as trustee, may not use the power to discharge the legal obligations of the person holding the power.

SEC. 16. Section 16222 of the Probate Code is amended to read:

16222. (a) Subject to subdivision (b), the trustee has the power to continue or participate in the operation of any business or other enterprise that is part of the trust property and may effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

(b) Except as provided in subdivision (c), the trustee may continue the operation of a business or other enterprise only as

authorized by the trust instrument or by the court. For the purpose of this subdivision, the lease of four or fewer residential units is not considered to be the operation of a business or other enterprise.

(c) The trustee may continue the operation of a business or other enterprise for a reasonable time pending a court hearing on the matter or pending a sale of the business or other enterprise.

(d) The limitation provided in subdivision (b) does not affect any power to continue or participate in the operation of a business or other enterprise that the trustee has under a trust created by an instrument executed before July 1, 1987.

AMENDMENT 10

On page 8, line 40, strike out "11" and insert:

17

AMENDMENT 11

On page 10, between lines 22 and 23, insert:

SEC. 18. Section 16441 of the Probate Code is amended to read:

16441. If the trustee is liable for interest pursuant to Section 16440, the trustee is liable for the greater of the following amounts:

(a) The amount of interest that accrues at the legal rate on judgments in effect during the period when the interest accrued.

(b) The amount of interest actually received.

SEC. 19. Section 17457 of the Probate Code is amended to read:

17457. A trust transferred to this state pursuant to this chapter shall be administered in the same manner as a trust of that type created in this state. The validity of a trust and the construction of the beneficial provisions of a trust transferred to this state are not affected by this section.

AMENDMENT 12

On page 10, line 23, strike out "12" and insert:

18

AMENDMENT 13

On page 10, line 25, strike out "13" and insert:

19

Minutes  
April 9-10, 1987

Exhibit 4

JOHN K. VAN DE KAMP  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



350 McALLISTER STREET, ROOM 6000  
SAN FRANCISCO 94102  
(415) 557-2544

April 8, 1987

Stan Ullerich  
Staff Counsel  
Law Revision Commission  
4000 Middlefield Road  
Room D-2  
Palo Alto, CA 94303

Re: Memo 87-31  
(AB 362 - Trusts)

Dear Stan:

This is to confirm our telephone conversation of April 8, 1987 regarding the comment to section 16441 contained in the above-entitled memorandum. As we discussed, my concern deals with the comment's statement that "Under the trust law, interest is not compounded as it was under former Civil Code section 2262." This is at odds with my understanding of the new law.

It is my recollection that section 16442 was intended to expressly reserve all remedies available under common law. Pursuant to the common law, compound interest is available for all willful breaches of trust. Estate of Cousins, 111 Cal.441 (1896). As such, the deletion of Civil Code section 2262 (dealing solely with interest liability in those limited cases involving a failure to invest trust monies) would not affect a court's ability to award compound interest where such was awardable at common law.

As we discussed, I do not have any problem with the specific language contained in alternative #1 with the exception of the comment language in the first paragraph. If there remains some ambiguity regarding this issue, or if the commission's view is different than ours, we would welcome the opportunity to discuss this matter further.

Very truly yours,

JAMES R. SCHWARTZ  
Deputy Attorney General  
JRS:my

April 9-10, 1987

ESTATE PLANNING, TRUST AND  
 PROBATE LAW SECTION  
 THE STATE BAR OF CALIFORNIA

LLOYD W. HOMER, *Campbell*D. KEITH BILTER, *San Francisco*

HONOR K. BROWN, *Los Angeles*  
 DORE J. CRANSTON, *La Jolla*  
 SID DEVINE, *Monterey*  
 SID GOLDRING, *Beverly Hills*  
 ETHEL M. KLUG, *Fresno*  
 G. OPEL, *Los Angeles*  
 ARD W. POLLARD II, *San Diego*  
 S V. QUILLINAN, *Mountain View*  
 S F. ROGERS, *Los Angeles*  
 I NEAL WELLS III, *Travis*



355 FRANKLIN STREET  
 SAN FRANCISCO, CA 94102-4498  
 (415) 561-8200

## Executive Committee

KATHRYN A. BALLSUN, *Los Angeles*  
 D. KEITH BILTER, *San Francisco*  
 OWEN C. FIORE, *San Jose*  
 JOHN A. GROMALA, *San Jose*  
 ANNE K. HILKER, *Los Angeles*  
 WILLIAM HOISINGTON, *San Francisco*  
 LLOYD W. HOMER, *Campbell*  
 JAY ROSS Mac MAHON, *San Rafael*  
 STERLING L. ROSS, JR., *Mill Valley*  
 WILLIAM V. SCHMIDT, *Costa Mesa*  
 CLARE H. SPRINGS, *San Francisco*  
 ANNE STODDEN, *Los Angeles*  
 JAMES A. WILLETT, *Sacramento*  
 JANET L. WRIGHT, *Davis*  
 DIANE C. YU, *Oakland*

Rely to: Post Office Box 2229  
 Monterey, CA 93942  
 (408) 372-7535

April 6, 1987

Nathaniel Sterling, Esq.  
 Assistant Executive Secretary  
 California Law Revision Commission  
 4000 Middlefield Road, Suite D-2  
 Palo Alto, California 94303-4739

Dear Nat:

Enclosed is a copy of Study Team No. 1's report on Memorandum 87-10.

At our Executive Committee meeting on Saturday, April 4th, we re-considered two items which were raised in public comment.

1. Section 8800. The requirement that the inventory be filed within four months was discussed. The Executive Committee voted to change the section to require filing within a reasonable time after letters are issued. Most times four months is too short, but there may be times when four months is too long. If the person interested in the estate may now petition to compel the personal representative to act (which we believe was part of another recommendation), this would be adequate protection to those interested in the estate.

2. Sections 8901 and 8902, dealing with what the personal representative may appraise, were also discussed. The Executive Committee voted to permit the personal representative to appraise checks dated after death as well as before death, and refund and reimbursement checks. The Executive Committee believes those are basically cash items.

Very truly yours,

James D. Devine

JDD:dv

cc: James V. Quillinan, Esq.  
 Irwin Goldring, Esq.  
 James Opel, Esq.  
 Charles A. Collier, Jr., Esq.  
 Lloyd Homer, Esq.  
 D. Keith Bilter, Esq.

R E P O R T

TO: JAMES V. QUILLINAN  
LLOYD W. HOMER  
D. KEITH BILTER  
CHARLES A. COLLIER, JR.  
JAMES D. DEVINE  
IRWIN D. GOLDRING  
JAMES C. OPEL  
THE EXECUTIVE COMMITTEE IN GENERAL

87-10

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: APRIL 2, 1987

SUBJECT: REPORT OF STUDY TEAM NO. 1 on STUDY L-655, INVENTORY AND APPRAISAL (REVIEW OF COMMENTS ON TENTATIVE RECOMMENDATION); New Estate and Trust Code §§ 400-453 and 8800-8963

---

Study Team No. 1 had a conference call on April 2, 1987. Charles A. Collier, Jr., Richard S. Kinyon and William V. Schmidt were the only members of the team to participate. Study Team No. 1 has the following comments in regard to this Tentative Recommendation and the comments thereto:

Section 400: We approve of the suggested language by the staff in the second paragraph of its note.

Sections 401 and 402: Satisfactory.

Section 403(a): This Section has apparently been reworded in response to comments, and we have no objection to its rewording.

Section 404: We agree with the concept that the appraisal standards should be uniform throughout the state, and we recommend that such a suggestion be made to the State Controller. We do not believe, however, that any change should be made in this Section.

Section 405(b): It is not clear to us how the cessation of authority of a person to act as referee is brought to the

attention of the court or what procedure initiates the court to reassign the estate to another probate referee. Should this be only on the petition of the personal representative? In some estates the work of the probate referee may be over and there may be no need for a new referee to be assigned.

Section 406: The proposed revision by the staff is a good one and, in our opinion, clarifies the intent of the Section.

We wonder if the two year waiting period established under subsection (c) is a strong enough penalty for the violation of the requirements of this Section.

Section 450: The additional language to the comment proposed by the staff is satisfactory.

Sections 451 and 452: We are concerned that the power to issue a subpoena is very broad and does not contain the jurisdictional and distance limits set forth in the Civil Code of Procedure. Should there be a cross-reference to the applicable provisions of the Civil Code of Procedure?

Section 453(a): The 15 day period of time concerns us. Subpoenas to appear or to produce documents often have a shorter period of time than 15 days. If a petition to obtain a protective order against such a subpoena cannot be heard for at least 15 days, the hearing date will be too late. We suggest the consideration of a temporary restraining order to fill this gap in time, or perhaps a change in the Section which automatically stays the appearance or production of documents ordered by the subpoena to a time after the hearing by the court requesting the protective order.

Section 8800: We are again concerned with the four month time requirement in the statute. We agree that four months is better than three, but we are concerned with enacting into law a time requirement that has been and probably will be, for the most part, ignored. One reason which in the past has been advanced for the retention of such a time requirement was that it furnishes a ground to remove or reprimand a personal representative who is not

working with reasonable diligence. However, we understand that there are now new remedies available to take care of such a personal representative. If we are correct, then we see no reason for a specific time limit.

In many situations where a Federal Estate Tax Return is to be filed, a reasonable, diligent and prudent personal representative will not submit the Inventory to the referee for appraisal until on or about the time the Federal Estate Tax Return is filed or Federal Estate Tax values are known. On the other hand, in those situations where a Federal Estate Tax Return will not be filed, an Inventory and Appraisal could certainly be filed sooner than the filing date of the Federal Estate Tax Return. We intend to bring this matter up for discussion before the Executive Committee at its April 4, 1987, meeting. Our representatives should know the result of that discussion.

Section 8801: Satisfactory.

Section 8802: We approve of the return of the words "dollars and cents" to this Section.

Section 8803: Satisfactory.

Section 8804: We understand that in Los Angeles County an Order for Final Distribution, which is to be prepared by the attorney, will not be dated and, therefore, entered prior to the time that it is signed by the judge. This could be several days or weeks after the order is made orally from the bench and the date of the minute order. In this situation, an interested person should not have the right to file written objections to the appraisal. Should reference be made to the date of the minute order?

We note that Section 8804(e) is new. We approve it as a matter of policy.

Section 8805: We are concerned that a personal representative who intentionally, but reasonably, fails to file the inventory within the four months specified by Section 8800, would be subject to the sanctions of this Section. Again, in those situations requiring the filing of a Federal Estate Tax Return, the prudent and reasonable personal representative would

"intentionally fail" to file the inventory within this period of time. We propose that the words "without reasonable cause" be inserted into the first sentence of the Section or some similar language or concept be adopted.

In regard to subsection (a), we wonder on whose motion or petition this matter is brought before the court?

Section 8850-8852: Satisfactory.

Section 8870: We feel that a judge of a superior court may not wish to take his or her time sitting through the examination contemplated by this Section and that the judge may wish to assign a judge pro tem to supervise the examination. Perhaps the Section could authorize this examination to be either before the court or its designated representative.

Section 8871: We feel that the comment of Professor Frantz is very good. In practice, it is our experience that these examinations are oral examinations in court. In the event that written interrogatories are submitted, we believe that the answers certainly should be in writing, signed by the person, examined and filed with the court. However, none of that should apply to the oral examination. We, therefore, suggest that the Section be reworded to state the concept that interrogatories can be submitted in addition to, or perhaps in lieu of, the oral examination, but certainly the examination could be oral and not limited to written interrogatories.

Section 8872: Satisfactory.

Section 8873: We note that existing Probate Code Section 612 uses the words "embezzles, conceals, smuggles or fraudulently disposes of." These are stronger words than "wrongfully taken." We approve of the staff's suggested additional language "without claim of title or other good cause."

Section 8900: Satisfactory.

Sections 8901 and 8902: It is our intention to bring a question of appraisal of checks and other cash equivalents before the Executive Committee at its April 4, 1987, meeting. We feel

that the referee should appraise accounts receivables and publically traded its stock.

Section 8903: We are concerned that the first sentence of subsection (b) seems to imply that a probate referee must be appointed because it refers to the time that the personal representative delivers the inventory to the referee. In Los Angeles and other counties, a referee may never be appointed if the appointment procedure requires affirmative action on behalf of the personal representative. Perhaps this sentence should be qualified to apply only where a referee has been appointed.

We suggest that the words "whose interests are affected by the waiver" be added to subsection (c)(2). If the concept applies to devisees under (c)(1), then it should apply to heirs in an intestate estate as well. An example would be a situation where an heir had already received his or her intestate share prior to the time the personal representative applies for the waiver.

We do not understand the words "notwithstanding Section 8901" in subsection (d). It seems confusing to us. Would not the sentence be satisfactory if these words were deleted?

Section 8904-8906: Satisfactory.

Section 8907: We are concerned with the second sentence in subsection (a). We are not sure what type of information and under what circumstances a referee might receive information subject to a statutory provision for confidentiality. We are concerned that referees might assert confidentiality in failing to disclose information in many cases which were not intended by this statute. We are, however, unclear as to what is exactly intended by this language.

Section 8908: Satisfactory.

Sections 8920-8922: Satisfactory.

Sections 8923: Subsection (c) is difficult to read, and we wonder if it cannot be drafted in a manner which makes it easier to read and understand.

Sections 8924: The words "shall be mailed" in the last sentence to subsection (a)(1) are in error and should be deleted. We are also concerned about the language of subsection (a)(2). We feel that that could be reworded to read more smoothly. We also feel that the word "demand" or the words "demands removal" are perhaps inappropriate and perhaps too harsh. We prefer words something along these lines: "The personal representative shall have the right to remove the first probate referee who is designated by the court, regardless of cause. This removal shall be made by an affidavit or declaration under penalty of perjury filed with the court with a copy mailed to the probate referee. Thereupon, the court shall remove the probate referee without any further act or proof."

Section 8940: We wonder whether subsection (b)(1) should read "Return the completed appraisal to the personal representative." It would serve no purpose for the referee to be able to return an uncompleted or partially completed appraisal to the personal representative. We note that the word "complete" is used in subsection (b)(2).

Section 8941: We feel that subsection (a) is somewhat ambiguous. There is no need to have a Notice of Hearing served on the personal representative if he or she is the petitioner or on the probate referee if he or she is the petitioner.

Sections 8960-8963: Satisfactory.

Respectfully submitted,

STUDY TEAM NO. 1

By:

  
WILLIAM V. SCHMIDT, Captain

STANTON AND BALLSUN

A LAW CORPORATION

AVCO CENTER, SIXTH FLOOR

10860 WILSHIRE BOULEVARD

LOS ANGELES, CALIFORNIA 90024-4318

(213) 474-6267

TELEX/FAX (213) 474-1246

KATHRYN A. BALLSUN  
PAUL L. STANTON  
LESLIE K. STUART

ELECTRONIC MAIL VIA  
ABA/NET I.D. # ABA2769  
PLEASE REFER TO  
FILE NO.

April 7, 1987

FEDERAL EXPRESS

James Quillinan, Esq.  
444 Castro Street, #900  
Mountain View, CA 94041

Re: Memorandum 87-27, Marital Deduction Gifts

Dear Jim:

Enclosed is a copy of pages 197 through 202 of Assembly Bill 708. The comments should be attributed solely to me as opposed to Team 4. I hope that you can read my handwritten comments and that they are useful.

Hope all is well.

Cordially,

*Kathryn A. Ballsun*

KATHRYN A. BALLSUN  
A Member of  
STANTON AND BALLSUN  
A Law Corporation

KAB/kf  
Encl.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39

**PART 1. GENERAL PROVISIONS**

**CHAPTER 1. SCOPE AND DEFINITIONS**

21100. Unless the provision or context otherwise requires, as used in this division:

(a) "Fiduciary" means personal representative, trustee, guardian, conservator or other legal representative.

(b) "Instrument" means a will, trust, deed, or other writing that designates a beneficiary or makes a donative transfer of property.

(c) "Transferor" means the testator, settlor, grantor, owner, or other person who executes an instrument.

21101. Unless the provision or context otherwise requires, this division applies to a will, trust, deed, and any other instrument.

**CHAPTER 2. MISCELLANEOUS PROVISIONS**

21120. (a) If an instrument authorizes a fiduciary to satisfy a pecuniary gift wholly or partly by distribution of property other than money, property selected for that purpose shall be valued at its fair market value on the date of distribution, unless the instrument expressly provides otherwise. If the instrument permits the fiduciary to value property selected for distribution as of a date other than the date of distribution, then, unless the instrument expressly provides otherwise, the property selected by the fiduciary for that purpose shall have an aggregate fair market value on the date or dates of distribution which, when added to any cash distributed, will amount to no less than the amount of the pecuniary gift as stated in, or determined by, the instrument.

(b) As used in this section, "pecuniary gift" means a transfer of property made in an instrument that either is expressly stated as a fixed dollar amount or is a dollar amount determinable by the provisions of the instrument.

1 PART 5. COMPLIANCE WITH INTERNAL  
2 REVENUE CODE

3  
4 CHAPTER 1. GENERAL PROVISIONS  
5

6 21500. As used in this part, "Internal Revenue Code"  
7 means the Internal Revenue Code of 1986, as amended  
8 from time to time. A reference to a provision of the  
9 Internal Revenue Code includes any subsequent  
10 provision of law enacted in its place.

11 21501. (a) This part applies to a distribution made on  
12 or after January 1, 1983, whether the transferor died  
13 before, on, or after that date. However, this part does not  
14 apply to an instrument the terms of which expressly or by  
15 necessary implication make this part inapplicable.

Need parallel language

16 (b) By an appropriate statement made in an  
17 instrument, the transferor may incorporate by reference  
18 the terms of this part, or any of its provisions. The effect  
19 of incorporating this part or any of its provisions in an  
20 instrument is to make the incorporated provision a part  
21 of the instrument as though the language of the  
22 incorporated provision were set forth verbatim in the  
23 instrument. Unless an instrument incorporating a  
24 provision of this part provides otherwise, the instrument  
25 automatically incorporates the provision's amendments.

amb

26 21502. If an instrument makes a transfer of property  
27 under a formula intended to eliminate or reduce the  
28 federal estate tax or the federal gift tax, a transfer of  
29 property under the formula shall be applied only to that  
30 portion of the federal estate or gift tax that is subject to  
31 elimination or reduction and shall not be applied to that  
32 portion of the federal estate or gift tax that is not subject  
33 to elimination or reduction.

34  
35 CHAPTER 2. MARITAL DEDUCTION GIFTS  
36

37 21520. As used in this chapter:

38 (a) "Marital deduction" means the federal estate tax  
39 deduction allowed for transfers under Section 2056 of the  
40 Internal Revenue Code or the federal gift deduction

1 allowed for transfers under Section 2523 of the Internal  
2 Revenue Code.

3 (b) "Marital deduction gift" means a transfer of  
4 property that is intended to qualify for the marital  
5 deduction.

6 21521. This chapter does not apply to a trust that  
7 qualifies for the marital deduction under Section  
8 20.2056(e)-2(b) of the Code of Federal Regulations  
9 (commonly referred to as the "estate trust").

10 21522. If an instrument contains a marital deduction  
11 gift:

12 (a) The provisions of the instrument, including any  
13 power, duty, or discretionary authority given to a  
14 fiduciary, shall be construed to comply with the marital  
15 deduction provisions of the Internal Revenue Code.

16 (b) The fiduciary shall not take any action or have any  
17 power that impairs the deduction as applied to the  
18 marital deduction gift.

19 (c) The marital deduction gift may be satisfied only  
20 with property that qualifies for the marital deduction.

21 21523. If an instrument executed on or before  
22 September 13, 1981, indicates the transferor's intention to  
23 make a gift that will provide the maximum allowable  
24 marital deduction, the instrument passes to the recipient  
25 an amount equal to the maximum amount of the marital  
26 deduction that would have been allowed as of the date of  
27 the gift under federal law as it existed before August 13,  
28 1981, (before the applicability of the Economic Recovery  
29 Tax Act of 1981), with adjustments for the following, if  
30 applicable:

31 (a) The provisions of Section 2056(c) (1) (B) and (C)  
32 of the Internal Revenue Code in effect immediately  
33 before the Economic Recovery Tax Act of 1981.

34 (b) To reduce the amount passing under the gift by  
35 the final federal estate tax values of any other property  
36 that passes under or outside of the instrument and  
37 qualifies for the marital deduction. This subdivision does  
38 not apply to qualified terminable interest property under  
39 Section 2056(b) (7) of the Internal Revenue Code.

40 21524. If a marital deduction gift is made in trust, in

1 addition to the other provisions of this chapter, each of  
 2 the following provisions also applies to the marital  
 3 deduction trust:

4 (a) The transferor's spouse is the only beneficiary of  
 5 income or principal of the marital deduction property as  
 6 long as the spouse is alive.

7 (b) Subject to subdivision (d), the transferor's spouse  
 8 is entitled to all of the income of the marital deduction  
 9 property not less frequently than annually, as long as the  
 10 spouse is alive.

11 (c) The transferor's spouse has the right to require  
 12 that the trustee of the trust make unproductive marital  
 13 deduction property productive or to convert it into  
 14 productive property within a reasonable time.

15 (d) Notwithstanding subdivision (d) of Section 16304,  
 16 in the case of qualified terminable interest property  
 17 under Section 2056(b)(7) or Section 2523(f) of the  
 18 Internal Revenue Code, on termination of the interest of  
 ✓19 the transferor's spouse in the trust, all of the remaining  
 20 accrued or undistributed income shall pass to the estate  
 21 of the transferor's spouse, unless the instrument provides  
 22 otherwise.

23 21525. If an instrument includes a requirement that  
 24 the transferor's spouse survive the transferor by a  
 25 specified period or that the transferor's spouse survive a  
 26 common disaster that results in the transferor's death, or  
 27 either of these requirements, the survival requirement,  
 28 as applied to property passing under a marital deduction  
 29 gift, shall be limited to the shorter of the period expressed  
 30 in the instrument or a six-month period beginning with  
 31 the transferor's death.

✓  
 32 21526. A fiduciary is not liable for a good faith decision  
 33 to make the election or not to make the election referred  
 34 to in Section 2056(b)(7) or Section 2523(f) of the Internal  
 35 Revenue Code.  
 36

### 37 CHAPTER 3. CHARITABLE GIFTS

38  
 39 21540. If an instrument indicates the transferor's  
 40 intention to comply with the Internal Revenue Code

1 requirements for a charitable remainder unitrust of a  
2 charitable remainder annuity trust as each is defined in  
3 Section 664 of the internal Revenue Code, the provisions ✓  
4 of the instrument, including any power, duty, or  
5 discretionary authority given to a fiduciary, shall be  
6 construed to comply with the charitable deduction  
7 provisions of Section 2055 or Section 2522 of the Internal  
8 Revenue Code and the charitable remainder trust  
9 provisions of Section 664 of the Internal Revenue Code in  
10 order to conform to that intent. In no event shall the  
11 fiduciary take an action or have a power that impairs the  
12 charitable deduction. After the death of the transferor,  
13 the provisions of the instrument may be augmented in  
14 any manner consistent with Section 2055(e) or Section  
15 2522(c) of the Internal Revenue Code on a petition  
16 provided for in Section 17200.

17 21541. If an instrument indicates the transferor's  
18 intention to comply with the requirements for a  
19 charitable lead trust as described in Section 170(f)(2)(B)  
20 and Section 2055(e)(2) or Section 2522(c)(2) of the  
21 Internal Revenue Code, the provisions of the instrument,  
22 including any power, duty, or discretionary authority  
23 given to a fiduciary, shall be construed to comply with the  
24 provisions of that section in order to conform to that ✓  
25 intent. In no event shall the fiduciary take any action or  
26 have any power that impairs the charitable deduction.  
27 After the death of the transferor, the provisions of the  
28 instrument may be augmented in any manner consistent  
29 with that intent upon a petition provided for Section  
30 17200.

31 SEC. 94.6. Section 19265 of the Revenue and Taxation  
32 Code is amended to read:

33 19265. Every fiduciary who pays in whole or in part ?  
34 any claim, other than claims for taxes, expenses of  
35 administration, funeral expenses, expenses of last illness,  
36 and family allowance, or wage claims as defined in  
37 Section 11402 of the Probate Code, against the person,  
38 estate, or trust for whom or for which he the fiduciary  
39 acts, or who makes any distribution of the assets of the  
40 person, estate, or trust, before he satisfies and pays

1 *satisfaction and payment of taxes, interest, and penalties,*  
2 *except penalties due from a decedent, which are imposed*  
3 *by this part on the person, estate, or trust for whom or for*  
4 *which he the fiduciary acts, or which constitute a claim*  
5 *against such the person, estate, or trust, or which are a*  
6 *lien or charge on or against the assets of such the person,*  
7 *estate, or trust, is personally liable to the State state for*  
8 *the taxes, interest, and penalties to the extent of such the*  
9 *payments and distributions.*

10 SEC. 95. (a) Sections 1 to 94 94.6, inclusive, of this act  
11 shall become operative on July 1, 1988.

12 (b) On and after January 1, 1988, the Judicial Council  
13 may adopt any necessary forms so that the forms may be  
✓14 used when this act becomes operative.

15 (c) On and after January 1, 1988, the courts may adopt  
16 any necessary rules so that the rules will be effective  
17 when this act becomes operative.

O

## STANTON AND BALLSUN

A LAW CORPORATION

KATHRYN A. BALLSUN  
PAUL L. STANTON  
LESLIE K. STUARTAVCO CENTER, SIXTH FLOOR  
10860 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024-4318  
(213) 474-6257  
TELEX/FAX (213) 474-1246ELECTRONIC MAIL VIA  
ABA/NET I.D. # ABA2769PLEASE REFER TO  
FILE NO.

FEDERAL EXPRESS

April 7, 1987

James Quillinan, Esq.  
444 Castro Street, #900  
Mountain View, CA 94041Re: Memorandum 87-23, Administration of Estates of  
Missing Persons

Dear Jim:

On April 1, 1987, Team 4 (Harley Spitler, William Hoisington, Janet Wright and I) discussed Memorandum 87-23, Administration of Estates of Missing Persons. Team 4's comments about the above-referenced Memorandum are as follows:

## 1. Timing of Amendment.

Team 4 strongly suggests that the Missing Persons statute revisions which have been published and discussed in prior Memorandums be enacted into law this year. The revisions clarify and improve the statute and will be of assistance to practitioners. Although (as discussed below) Memorandum 87-23 raises valid issues, these issues can be addressed by amendments to the revised statute.

## 2. Relation to Evidence Code Section 667.

Team 4 believes that the Evidence Code Section and the Probate Code Section dealing with missing persons should be the same. Since Team 4 believes that the Probate Code standard will be articulated more clearly, Team 4 believes that the Evidence Code should be revised to conform to the Probate Code.

## 3. Relation to Probate Code Sections 200-204 (Proceedings to Establish Death).

Team 4 agrees that it would be useful to locate (physically juxtapose) the "establishing the fact of death" sections with the missing person statute. Team 4 does not believe that the statutes should be combined.

James Quillinan, Esq.  
April 7, 1987  
Page 2

4. Procedure Applicable to Nonprobate Assets.

Team 4 agrees that a set of consistent provisions in the Probate Code to deal with both probate and nonprobate property would be useful.

5. Recovery of Nonprobate Assets on Reappearance.

Team 4 agrees that it would be useful to apply similar rules to the recovery of and rights in nonprobate assets upon the reappearance of a missing person.

If Team 4 may be of further assistance, please do not hesitate to contact us.

Hope all is well.

Cordially,

*Kathryn A. Ballsun*

KATHRYN A. BALLSUN  
A Member of  
STANTON AND BALLSUN  
A Law Corporation  
KAB/kf

c: Richard Polse, Esq.  
Harley Spitler, Esq.  
Janet Wright, Esq.  
Clare Springs, Esq.  
William Hoisington, Esq.  
Lloyd Homer, Esq.  
Chuck Collier, Esq.  
James Willett, Esq.  
Irv Goldring, Esq.  
Jim Devine, Esq.  
Jim Opel, Esq.  
Keith Bilter, Esq.