

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

Annual Report



December 1987

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

# THE CALIFORNIA LAW REVISION COMMISSION

## COMMISSION MEMBERS

ANN E. STODDEN <i>Chairperson</i>	BILL LOCKYER <i>Member of Senate</i>
FORREST A. PLANT <i>Vice Chairperson</i>	ARTHUR K. MARSHALL <i>Member</i>
ROGER ARNEBERGH <i>Member</i>	EDWIN K. MARZEC <i>Member</i>
BION M. GREGORY <i>Member</i>	TIM PAONE <i>Member</i>
ELIHU M. HARRIS <i>Member of Assembly</i>	VAUGHN R. WALKER <i>Member</i>

## COMMISSION STAFF

### Legal

JOHN H. DEMOULLY <i>Executive Secretary</i>	ROBERT J. MURPHY III <i>Staff Counsel</i>
NATHANIEL STERLING <i>Assistant Executive Secretary</i>	STAN G. ULRICH <i>Staff Counsel</i>

### Administrative-Secretarial

STEPHEN F. ZIMMERMAN <i>Administrative Assistant</i>	VICTORIA V. MATIAS <i>Word Processing Technician</i>
EUGENIA AYALA <i>Word Processing Technician</i>	

## NOTE

The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 19 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1989.

Cite this pamphlet as *Annual Report, 19 Cal L. Revision Comm'n Reports 501 (1988)*.

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## **SUMMARY OF WORK OF COMMISSION**

### **Recommendations to 1988 Legislative Session**

The California Law Revision Commission plans to submit to the 1988 legislative session a number of recommendations relating to probate law and procedure:

- Opening Estate Administration
- Inventory and Appraisal
- Interest and Income During Administration
- Litigation Involving Decedent
- Abatement
- Accounts
- Distribution and Discharge
- Nondomiciliary Decedents
- Rules of Procedure
- Public Guardians and Administrators

Recommendations relating to additional aspects of probate law and procedure will be submitted to the 1988 legislative session if work on them is completed in time to permit their submission.

### **Recommendations Enacted by the 1987 Legislative Session**

In 1987, both of the bills recommended by the Commission were enacted. These bills amended 99 sections, added 414 sections, and repealed 213 sections. They effectuated Commission recommendations relating to:

- Technical Revisions in the Trust Law
- Supervised Administration of Decedent's Estate
- Independent Administration of Estates Act
- Creditor Claims Against Decedent's Estate
- Notice in Probate Proceedings
- Notice in Guardianship and Conservatorship Proceedings
- Preliminary Provisions and Definitions of the Probate Code
- Marital Deduction Gifts
- Administration of Estates of Missing Persons

### **Commission Plans for 1988**

During 1988, the Commission plans to continue its work in preparing a new Probate Code.



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**CALIFORNIA LAW REVISION COMMISSION**

4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739  
(415) 494-1335

ANN E. STODDEN  
*Chairperson*

FORREST A. PLANT  
*Vice Chairperson*

ROGER ARNEBERGH

BION M. GREGORY

ASSEMBLYMAN ELIHU M. HARRIS

SENATOR BILL LOCKYER

ARTHUR K. MARSHALL

EDWIN K. MARZEC

TIM PAONE

VAUGHN R. WALKER

December 10, 1987

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

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1987.

Both of the bills introduced in 1987 to implement Commission recommendations were enacted. One of the bills streamlined, modernized, clarified, and improved various aspects of California probate law. The other bill made technical revisions in the new comprehensive trust law enacted in 1986. Assembly Member Harris authored these measures.

In 1987, the Legislature added an additional topic—administrative law—to the Commission's calendar of topics.

The Commission held two one-day meetings and nine two-day meetings during 1987. Meetings were held in Irvine, Los Angeles, Sacramento, San Diego, San Francisco, and San Jose.

Respectfully submitted,

Ann E. Stodden  
*Chairperson*



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# ANNUAL REPORT FOR THE YEAR 1987

## INTRODUCTION

The California Law Revision Commission<sup>1</sup> was created in 1953 (as the permanent successor to the Code Commission) with the responsibility for a continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies the California law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

- (1) Intensively studying complex and sometimes controversial subjects;
- (2) Identifying major policy questions for legislative attention;
- (3) Gathering the views of interested persons and organizations; and
- (4) Drafting recommended legislation for legislative consideration.

The efforts of the Commission permit the Legislature to determine significant policy questions rather than to concern itself with the technical problems in preparing background studies, working out intricate legal problems, and drafting needed legislation. The Commission thus enables the Legislature to accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:

—A Member of the Senate appointed by the Committee on Rules.

—A Member of the Assembly appointed by the Speaker.

—Seven members appointed by the Governor with the advice and consent of the Senate.

—The Legislative Counsel who is an ex officio member.

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 24 topics.<sup>3</sup>

Commission recommendations have resulted in the enactment of legislation affecting 10,142 sections of the California statutes:

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1. See Gov't Code §§ 8280-8297 (statute establishing Law Revision Commission).

2. See 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 7 (1957).

3. See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix 1 *infra*.

4,538 sections have been added, 2,233 sections amended, and 3,371 sections repealed. Of the 210 Commission recommendations submitted to the Legislature, 194 (92%) have been enacted in whole or in substantial part.<sup>4</sup>

The Commission's recommendations are published in softcover and later are collected in hardcover volumes. A list of past publications and information on where and how copies may be obtained may be found at the end of this Report.

## 1988 LEGISLATIVE PROGRAM

The Commission plans to recommend legislation on the following aspects of probate law to the 1988 Legislature:

- (1) Opening Estate Administration.<sup>5</sup>
- (2) Inventory and Appraisal.<sup>6</sup>
- (3) Interest and Income During Administration.<sup>7</sup>
- (4) Litigation Involving Decedent.<sup>8</sup>
- (5) Abatement.<sup>9</sup>
- (6) Accounts.<sup>10</sup>
- (7) Distribution and Discharge.<sup>11</sup>
- (8) Nondomiciliary Decedents.<sup>12</sup>
- (9) Rules of Procedure.<sup>13</sup>
- (10) Public Guardians and Administrators.<sup>14</sup>

Recommendations relating to additional aspects of probate law and procedure will be submitted to the 1988 legislative session if work on them is completed in time.

4. See list of recommendations and legislative action in Appendix 2 *infra*.

5. See *Recommendation Relating to Opening Estate Administration* (October 1987). This recommendation will be separately published.

6. See *Recommendation Relating to Inventory and Appraisal* (October 1987). This recommendation will be separately published.

7. See *Recommendation Relating to Interest and Income During Administration* (December 1987). This recommendation will be separately published.

8. See *Recommendation Relating to Litigation Involving Decedents* (November 1987). This recommendation will be separately published.

9. See *Recommendation Relating to Abatement* (November 1987). This recommendation will be separately published.

10. See *Recommendation Relating to Accounts* (November 1987). This recommendation will be separately published.

11. See *Recommendation Relating to Distribution and Discharge* (December 1987). This recommendation will be separately published.

12. See *Recommendation Relating to Nondomiciliary Decedents* (December 1987). This recommendation will be separately published.

13. See *Recommendation Relating to Rules of Procedure in Probate* (November 1987). This recommendation will be separately published.

14. See *Recommendation Relating to Public Guardians and Administrators* (September 1987). This recommendation will be separately published.



## THE PROBATE CODE STUDY

During the last few years, the Commission has been devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is drafting a new Probate Code to replace the existing Probate Code.

The Commission has made substantial progress in preparing the new code. However, there are many areas of existing law that need intensive study, and the Commission finds that it will be unable to recommend the enactment of the new code in 1988.

The Commission will not delay proposing needed probate law reforms until work on the new code is completed. Instead, the Commission plans to submit recommendations covering substantial portions of the Probate Code for enactment in 1988.<sup>15</sup> During 1988, the Commission plans to devote its time and resources almost exclusively to the task of completing the work on the new code.

The Commission is working in close cooperation with the Estate Planning, Trust, and Probate Law Section of the State Bar Association, the Probate and Trust Law Section of the Los Angeles County Bar Association, and the Probate, Trust, and Estate Planning Section of the Beverly Hills Bar Association. These groups review materials prepared for consideration at Commission meetings, and their representatives regularly attend Commission meetings to advise and assist the Commission.

The Commission has sought and obtained the views of members of the public and of lawyers, judges, court commissioners, probate referees, public administrators, public guardians, realtors, newspaper publishers, and others who work in the probate law field or are concerned with particular aspects of probate law. A special effort has been made to obtain comments and suggestions from the probate and trust law committees of local bar associations, and a number of these local bar groups have submitted comments on tentative drafts even though they do not have representatives present at Commission meetings.

The Commission has retained the following expert consultants to assist the Commission in the probate law study: Professor Paul E. Basye, Hastings College of the Law, Professor Gail Borman Bird, Hastings College of the Law, Professor Jesse Dukeminier,

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15. See "1988 Legislative Program" *supra*.

U.C.L.A. Law School, Professor Susan F. French, U.C. Davis School of Law, Professor Edward C. Halbach, Jr., U.C. Berkeley Law School, and Professor Russell D. Niles, Hastings College of the Law.

## CALENDAR OF TOPICS FOR STUDY

### Topics Authorized for Study

The Commission's calendar of topics is set out in Appendix 1 to this Report. Each of these topics has been authorized for Commission study by the Legislature.<sup>16</sup>

### Topic for Future Consideration

The Commission recommends that it be authorized to study a new topic: a study to determine whether the law relating to the payment of attorneys' fees and the shifting of attorneys' fees between litigants should be revised. The California Judges Association has requested that the Commission seek authority to study this topic with the purpose of developing a consistent and rational plan for the payment of fees and the determination of the consequences of shifting fees. The liability for fees influences the decision of potential litigants concerning whether to file an action and thus has an effect on the workload of the courts. Existing provisions bearing on attorneys' fees are scattered throughout the codes and do not appear to be drafted to accomplish a comprehensive policy.

## FUNCTION AND PROCEDURE OF COMMISSION

The principal duties of the Commission<sup>17</sup> are to:

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>18</sup> bar

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16. Section 8293 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topics which the Legislature by concurrent resolution refers to it for study.

17. Gov't Code §§ 8280-8297 (statute governing California Law Revision Commission).

18. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.

(3) Recommend such changes in law as it deems necessary to bring the law of this state into harmony with modern conditions.<sup>19</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.<sup>20</sup>

The Commission's work on a recommendation is commenced after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field of law involved who is retained as a research consultant. Using expert consultants provides the Commission with invaluable assistance and is economical because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration. Expert consultants are also retained to advise the Commission at meetings.

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what recommendation, if any, the Commission will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature (including a draft of any legislation necessary to effectuate its recommendation) is published.<sup>21</sup> The background study is generally published with the recommendation or in a law review.<sup>22</sup>

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19. See Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the Supreme Court of the United States. Gov't Code § 8290.

20. See Gov't Code § 8293. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions from enforcement of money judgments each 10 years and to recommend any needed revisions.

21. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

22. For a background study recently published in a law review, see French, *Imposing a General Survival Requirement on Beneficiaries of Future Interests: Solving the Problems Caused by the Death of a Beneficiary Before the Time Set for Distribution*, 27 Ariz. L. Rev. 801 (1985). For a list of background studies published in law reviews prior to 1986, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971), 11 Cal. L. Revision

The Commission ordinarily prepares a Comment explaining each section it recommends. These Comments are included in the Commission's report and are frequently revised by legislative committee or Commission reports to reflect amendments made after the recommended legislation has been introduced in the Legislature.<sup>23</sup> These reports, which are printed or noted in the legislative journals, state that the Comments to the various sections of the bill contained in the Commission's recommendation reflect the intent of the committee in approving the bill except to the extent that new or revised Comments are set out in the committee report itself or in a report on file with the committee.<sup>24</sup> The Comment indicates the derivation of the section and often explains its purpose, its relation to other sections, and potential problems in its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.<sup>25</sup> However, while the Commission endeavors in the Comment to explain any changes in the law made by the section, the Commission does not claim that every inconsistent case is noted in the Comment, nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>26</sup> Hence, failure

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Comm'n Reports 1008 n.5 & 1108 n.5 (1973), 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976), 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982), 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984), and 18 Cal. L. Revision Comm'n Reports 212 n.17 (1986), 18 Cal. L. Revision Comm'n Reports 1713 n.20 (1986).

23. Many amendments are made on recommendation of the Commission to deal with matters brought to the Commission's attention after its recommendation was printed. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

24. For examples of such reports, see Appendix 3 and Appendix 4 to this Report. For a description of the legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

25. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968). See also *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983) ("To ascertain the legislative intent, courts have resorted to many rules of construction. However, when the Legislature has stated the purpose of its enactment in unmistakable terms [e.g., in official comments], we must apply the enactment in accordance with the legislative direction, and all other rules of construction must fall by the wayside. Speculation and reasoning as to legislative purpose must give way to expressed legislative purpose."). The Comments are published by the Bancroft-Whitney Company and the West Publishing Company in their editions of the annotated codes.

26. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 109 Cal. Rptr. 421 (1973).

to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>27</sup>

The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.<sup>28</sup> Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.<sup>29</sup> The annual reports and the recommendations and studies of the Commission are republished in a set of hardcover volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the state. These volumes are available at most county law libraries and at some other libraries. Some hardcover volumes are out of print, but others are available for purchase.<sup>30</sup>

## PERSONNEL OF COMMISSION

As of December 1, 1987, the membership of the Law Revision Commission is:

	<i>Term Expires</i>
Ann E. Stodden, Los Angeles, Chairperson.....	October 1, 1991
Forrest A. Plant, Sacramento, Vice Chairperson.....	October 1, 1989
Roger Arnebergh, Van Nuys, Member.....	October 1, 1991
Bion M. Gregory, Sacramento, ex officio Member .....	†
Elihu M. Harris, Oakland, Assembly Member .....	*
Bill Lockyer, Hayward, Senate Member .....	*
Arthur K. Marshall, Los Angeles, Member .....	October 1, 1991
Edwin K. Marzec, Santa Monica, Member .....	October 1, 1991
Tim Paone, Newport Beach, Member.....	October 1, 1989
Vaughn R. Walker, San Francisco, Member .....	October 1, 1989

† The Legislative Counsel is an *ex officio* member of the Commission.

\* The legislative members of the Commission serve at the pleasure of the appointing power.

27. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). See also 1974 Cal. Stat. ch. 227.

28. See Gov't Code § 8291.

29. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouilly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A.J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965).

30. See "Publications of the California Law Revision Commission" *infra*.

In September 1987, the Commission elected Ann E. Stodden as Chairperson (succeeding Arthur K. Marshall) and Forrest A. Plant as Vice Chairperson (succeeding Ann E. Stodden). The terms of the new officers end September 30, 1988.

In October 1987, Governor Deukmejian reappointed Roger Arnebergh, Arthur K. Marshall, Edwin K. Marzec, and Ann E. Stodden as members of the Commission. Their terms end on October 1, 1991.

As of December 1, 1987, the staff of the Commission is:

*Legal*

John H. DeMouly  
*Executive Secretary*

Robert J. Murphy III  
*Staff Counsel*

Nathaniel Sterling  
*Assistant Executive Secretary*

Stan G. Ulrich  
*Staff Counsel*

*Administrative-Secretarial*

Stephen F. Zimmerman

*Administrative Assistant*

Eugenia Ayala  
*Word Processing Technician*

Victoria V. Matias  
*Word Processing Technician*

Stephen F. Zimmerman joined the Commission's staff in May of 1987 to replace Dianne H. Dienststein as Administrative Assistant.

During 1987, James A. Kowalski, a student at the University of San Francisco Law School, and Megan A. Smith, a student at the University of Santa Clara Law School were employed as student legal assistants.

## **LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1987 LEGISLATIVE SESSION**

The Commission recommended two bills and two concurrent resolutions for enactment at the 1987 legislative session. One of the concurrent resolutions was adopted and both of the bills were enacted.

### **Probate Law and Procedure**

Assembly Bill 708, which became Chapter 923 of the Statutes of 1987, was introduced by Assembly Member Harris to effectuate eight Commission recommendations. See *Notice in Guardianship and Conservatorship Proceedings*, 18 Cal. L. Revision Comm'n Reports 1793 (1986); *Preliminary Provisions and Definitions of the Probate Code*, 18 Cal. L. Revision Comm'n Reports 1807 (1986); *Supervised Administration of Decedent's Estate*, 19 Cal. L. Revision Comm'n Reports 5 (1988);

*Independent Administration of Estates Act*, 19 Cal. L. Revision Comm'n Reports 205 (1988); *Creditor Claims Against Decedent's Estate*, 19 Cal. L. Revision Comm'n Reports 299 (1988); *Notice in Probate Proceedings*, 19 Cal. L. Revision Comm'n Reports 357 (1988); *Marital Deduction Gifts* (March 1987), published as Appendix 5 of this Report; and *Administration of Estates of Missing Persons* (April 1987), published as Appendix 6 of this Report. See also *Communication From California Law Revision Commission Concerning Assembly Bill 708* (Probate Law), reprinted as Appendix 4 of this Report. The bill was enacted after amendments were made.

### **Trust Law**

Assembly Bill 362, which became Chapter 128 of the Statutes of 1987, was introduced by Assembly Member Harris to implement the California Law Revision Commission's *Recommendation Relating to Technical Revisions in the Trust Law* (December 1986), 18 Cal. L. Revision Comm'n Reports 1823 (1986). The bill made technical and clarifying changes in the new Trust Law, and was enacted as urgency legislation to become operative at the same time as the new Trust Law. See also *Communication From California Law Revision Commission Concerning Assembly Bill 362* (Trust Law), reprinted as Appendix 3 of this Report. The bill was enacted after amendments were made.

### **Resolutions Regarding Topics for Study**

Senate Concurrent Resolution 12, introduced by Senate Member Lockyer and adopted as Resolution Chapter 47 of the Statutes of 1987, continues the Commission's authority to study topics previously authorized and adds authorization to study administrative law.

Assembly Concurrent Resolution 42, introduced by Assembly Member Harris to authorize the study of administrative law by the Commission, was not adopted. This measure became unnecessary when Senate Concurrent Resolution 12, *supra*, was amended to include authority to study administrative law.

## REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 8290 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared<sup>31</sup> and has the following to report:

(1) No decision of the United States Supreme Court or the California Supreme Court holding a statute of this state repealed by implication has been found.

(2) No decision of the United States Supreme Court holding a statute of this state unconstitutional has been found.<sup>32</sup>

(3) One decision of the California Supreme Court holding a statute of this state unconstitutional has been found.<sup>33</sup>

In *Mills v. Superior Court*, 42 Cal. 3d 951 (1986), the court held that Penal Code Section 872, which permits the prosecution to present evidence at a preliminary examination by affidavit in certain circumstances, imposes an impermissible burden on a criminal defendant's right of cross-examination in violation of the due process clause of Article 1, Section 15, of the California Constitution.

## RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized for study (see "Calendar of Topics Authorized for Study" set out as Appendix 1 to this Report) and to study the new topic the Commission recommends it be authorized to study (see Calendar of Topics for Study, *supra*).

31. This study has been carried through 43 Cal. 3d 1077 (Advance Sheet No. 28, October 20, 1987), and 107 S.Ct. 3280 (Advance Sheet No. 18, July 15, 1987).

32. In *Perry v. Thomas*, 107 S.Ct. 2520 (1987), however, the U.S. Supreme Court held that Labor Code Section 229, which permits wage collection actions to be maintained without regard to the existence of any private agreement to arbitrate, conflicts with Section 2 of the Federal Arbitration Act and is preempted by the Supremacy Clause of Article 6 of the United States Constitution.

33. In *People v. Wade*, 43 Cal. 3d 366 (1987), the court reaffirmed its holding in *People v. Superior Court (Engert)*, 31 Cal. 3d 797, 806, 183 Cal. Rptr. 800, 647 P.2d 76 (1982), that Penal Code Section 190.2(a) (14), the heinous murder special circumstances provision, is unconstitutionally vague and overbroad.



Pursuant to the mandate imposed by Section 8290 of the Government Code, the Commission recommends the repeal of the provisions referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," *supra*, to the extent that those provisions have been held unconstitutional and have not been amended or repealed.



## APPENDIX 1

### CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission has on its calendar of topics the topics listed below. Each of these topics has been authorized for Commission study by the Legislature.

**Creditors' remedies.** Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 15 (1957).)

**Probate Code.** Whether the California Probate Code should be revised, including but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**Real and personal property.** Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon termination or abandonment of a lease, powers of appointment, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic.)

**Family law.** Whether the law relating to family law (including, but not limited to, community property) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1978 Cal. Stat. res. ch. 65; 16 Cal. L. Revision Comm'n Reports 2019 (1982); 14 Cal. L. Revision Comm'n Reports 22 (1978).)

**Prejudgment interest.** Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75.)

**Class actions.** Whether the law relating to class actions should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).)

**Offers of compromise.** Whether the law relating to offers of compromise should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).)

**Discovery in civil cases.** Whether the law relating to discovery in civil cases should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).)

**Procedure for removal of invalid liens.** Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorney's fees to the prevailing party. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**Special assessment liens for public improvements.** Whether acts governing special assessments for public improvements should be simplified and unified. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**Injunctions.** Whether the law on injunctions and related matters should be revised. (Authorized by 1984 Cal. Stat. res. ch. 42.)

**Involuntary dismissal for lack of prosecution.** Whether the law relating to involuntary dismissal for lack of prosecution should be revised. (Authorized by 1978 Cal. Stat. res. ch. 85. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).)

**Statutes of limitation for felonies.** Whether the law relating to statutes of limitations applicable to felonies should be revised. (Authorized by 1981 Cal. Stat. ch. 909, § 3.)

**Rights and disabilities of minors and incompetent persons.** Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised. (Authorized by 1979 Cal. Stat. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).)

**Child custody, adoption, guardianship, and related matters.** Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised. (Authorized by 1972 Cal. Stat. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stat. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, "1956 Report" at 29 (1957).)

**Evidence.** Whether the Evidence Code should be revised. (Authorized by 1965 Cal. Stat. res. ch. 130.)

**Arbitration.** Whether the law relating to arbitration should be revised. (Authorized by 1968 Cal. Stat. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).)

**Modification of contracts.** Whether the law relating to modification of contracts should be revised. (Authorized by 1974 Cal. Stat. res. ch. 45. See also 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 21 (1957).)

**Governmental liability.** Whether the law relating to sovereign or governmental immunity in California should be revised. (Authorized by 1977 Cal. Stat. res. ch. 17. See also 1957 Cal. Stat. res. ch. 202.)

**Inverse condemnation.** Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised. (Authorized by 1971 Cal. Stat. res. ch. 74. See also 1970 Cal. Stat. res. ch. 46; 1965 Cal. Stat. res. ch. 130.)

**Liquidated damages.** Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised. (Authorized by 1973 Cal. Stat. res. ch. 39. See also 1969 Cal. Stat. res. ch. 224.)

**Parol evidence rule.** Whether the parol evidence rule should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).)

**Pleadings in civil actions.** Whether the law relating to pleadings in civil actions and proceedings should be revised. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**Administrative Law.** Whether there should be changes to administrative law. (Authorized by 1987 Cal. Stat. res. ch. 47.)

## APPENDIX 2

### LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS

(Cumulative)

#### LEGISLATIVE ACTION

Recommendation	Action by Legislature
1. <i>Partial Revision of Education Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954 at 12 (1957)	Enacted. 1955 Cal. Stat. chs. 799, 877
2. <i>Summary Distribution of Small Estates Under Probate Code Sections 640 to 646</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954 at 50 (1957)	Enacted. 1955 Cal. Stat. ch. 1183
3. <i>Fish and Game Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957 at 13 (1957); 1 Cal. L. Revision Comm'n Reports, Annual Report for 1956 at 13 (1957)	Enacted. 1957 Cal. Stat. ch. 456
4. <i>Maximum Period of Confinement in a County Jail</i> , 1 Cal. L. Revision Comm'n Reports at A-1 (1957)	Enacted. 1957 Cal. Stat. ch. 139
5. <i>Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions</i> , 1 Cal. L. Revision Comm'n Reports at B-1 (1957)	Enacted. 1957 Cal. Stat. ch. 540
6. <i>Taking Instructions to Jury Room</i> , 1 Cal. L. Revision Comm'n Reports at C-1 (1957)	Not enacted. But see Code Civ. Proc. § 612.5, enacting substance of this recommendation.
7. <i>The Dead Man Statute</i> , 1 Cal. L. Revision Comm'n Reports at D-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 1261.
8. <i>Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere</i> , 1 Cal. L. Revision Comm'n Reports at E-1 (1957)	Enacted. 1957 Cal. Stat. ch. 490
9. <i>The Marital "For and Against" Testimonial Privilege</i> , 1 Cal. L. Revision Comm'n Reports at F-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 970.

Recommendation	Action by Legislature
10. <i>Suspension of the Absolute Power of Alienation</i> , 1 Cal. L. Revision Comm'n Reports at G-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 14 (1959)	Enacted. 1959 Cal. Stat. ch. 470
11. <i>Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378</i> , 1 Cal. L. Revision Comm'n Reports at H-1 (1957)	Enacted. 1957 Cal. Stat. ch. 102
12. <i>Judicial Notice of the Law of Foreign Countries</i> , 1 Cal. L. Revision Comm'n Reports at I-1 (1957)	Enacted. 1957 Cal. Stat. ch. 249
13. <i>Choice of Law Governing Survival of Actions</i> , 1 Cal. L. Revision Comm'n Reports at J-1 (1957)	No legislation recommended.
14. <i>Effective Date of Order Ruling on a Motion for New Trial</i> , 1 Cal. L. Revision Comm'n Reports at K-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 16 (1959)	Enacted. 1959 Cal. Stat. ch. 468
15. <i>Retention of Venue for Convenience of Witnesses</i> , 1 Cal. L. Revision Comm'n Reports at L-1 (1957)	Not enacted.
16. <i>Bringing New Parties Into Civil Actions</i> , 1 Cal. L. Revision Comm'n Reports at M-1 (1957)	Enacted. 1957 Cal. Stat. ch. 1498
17. <i>Grand Juries</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 20 (1959)	Enacted. 1959 Cal. Stat. ch. 501
18. <i>Procedure for Appointing Guardians</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 21 (1959)	Enacted. 1959 Cal. Stat. ch. 500
19. <i>Appointment of Administrator in Quiet Title Action</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 29 (1959)	No legislation recommended.
20. <i>Presentation of Claims Against Public Entities</i> , 2 Cal. L. Revision Comm'n Reports at A-1 (1959)	Enacted. 1959 Cal. Stat. chs. 1715, 1724, 1725, 1726, 1727, 1728; Cal. Const., Art. XI, § 10 (1960)

<b>Recommendation</b>	<b>Action by Legislature</b>
21. <i>Right of Nonresident Aliens to Inherit</i> , 2 Cal. L. Revision Comm'n Reports at B-1 (1959); 11 Cal. L. Revision Comm'n Reports 421 (1973)	Enacted. 1974 Cal. Stat. ch. 425
22. <i>Mortgages to Secure Future Advances</i> , 2 Cal. L. Revision Comm'n Reports at C-1 (1959)	Enacted. 1959 Cal. Stat. ch. 528
23. <i>Doctrine of Worthier Title</i> , 2 Cal. L. Revision Comm'n Reports at D-1 (1959)	Enacted. 1959 Cal. Stat. ch. 122
24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 Cal. L. Revision Comm'n Reports at E-1 (1959)	Not enacted. But see 1972 Cal. Stat. ch. 92, enacting substance of a portion of recommendation relating to drunk driving.
25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 Cal. L. Revision Comm'n Reports at F-1 (1959)	Enacted. 1959 Cal. Stat. ch. 469
26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 Cal. L. Revision Comm'n Reports at G-1 (1959)	Not enacted. But see Corp. Code §§ 1001, 1002, enacting substance of recommendation.
27. <i>Evidence in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at A-1 (1961)	Not enacted. But see Evid. Code § 810 <i>et seq.</i> enacting substance of recommendation.
28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at B-1 (1961)	Enacted. 1961 Cal. Stat. chs. 1612, 1613
29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 Cal. L. Revision Comm'n Reports at C-1 (1961)	Not enacted. But see Gov't Code § 7260 <i>et seq.</i> enacting substance of recommendation.
30. <i>Rescission of Contracts</i> , 3 Cal. L. Revision Comm'n Reports at D-1 (1961)	Enacted. 1961 Cal. Stat. ch. 589
31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor In Juvenile Court Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at E-1 (1961)	Enacted. 1961 Cal. Stat. ch. 1616

Recommendation	Action by Legislature
32. <i>Survival of Actions</i> , 3 Cal. L. Revision Comm'n Reports at F-1 (1961)	Enacted. 1961 Cal. Stat. ch. 657
33. <i>Arbitration</i> , 3 Cal. L. Revision Comm'n Reports at G-1 (1961)	Enacted. 1961 Cal. Stat. ch. 461
34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 Cal. L. Revision Comm'n Reports at H-1 (1961)	Not enacted 1961. See recommendation to 1963 session (item 39 <i>infra</i> ) which was enacted.
35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 Cal. L. Revision Comm'n Reports at I-1 (1961)	Enacted. 1961 Cal. Stat. ch. 636
36. <i>Notice of Alibi in Criminal Actions</i> , 3 Cal. L. Revision Comm'n Reports at J-1 (1961)	Not enacted.
37. <i>Discovery in Eminent Domain Proceedings</i> , 4 Cal. L. Revision Comm'n Reports 701 (1963); 8 Cal. L. Revision Comm'n Reports 19 (1967)	Enacted. 1967 Cal. Stat. ch. 1104
38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 801 (1963)	Enacted. 1963 Cal. Stat. ch. 1681
39. <i>Claims, Actions and Judgments Against Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1001 (1963)	Enacted. 1963 Cal. Stat. ch. 1715
40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1201 (1963)	Enacted. 1963 Cal. Stat. ch. 1682
41. <i>Defense of Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1301 (1963)	Enacted. 1963 Cal. Stat. ch. 1683
42. <i>Liability of Public Entities for Ownership and Operation of Motor Vehicles</i> , 4 Cal. L. Revision Comm'n Reports 1401 (1963); 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 1527



Recommendation	Action by Legislature
43. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 Cal. L. Revision Comm'n Reports 1501 (1963)	Enacted. 1963 Cal. Stat. ch. 1684
44. <i>Sovereign Immunity — Amendments and Repeals of Inconsistent Statutes</i> , 4 Cal. L. Revision Comm'n Reports 1601 (1963)	Enacted. 1963 Cal. Stat. chs. 1685, 1686, 2029
45. <i>Evidence Code</i> , 7 Cal. L. Revision Comm'n Reports 1 (1965)	Enacted. 1965 Cal. Stat. ch. 299
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 653
47. <i>Evidence Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 101 (1967)	Enacted in part. 1967 Cal. Stat. ch. 650. Balance enacted. 1970 Cal. Stat. ch. 69.
48. <i>Evidence — Agricultural Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 201 (1967)	Enacted. 1967 Cal. Stat. ch. 262
49. <i>Evidence — Commercial Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 301 (1967)	Enacted. 1967 Cal. Stat. ch. 703
50. <i>Whether Damage for Personal Injury to a Married Person Should be Separate or Community Property</i> , 8 Cal. L. Revision Comm'n Reports 401 (1967); 8 Cal. L. Revision Comm'n Reports 1385 (1967)	Enacted. 1968 Cal. Stat. chs. 457, 458
51. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 Cal. L. Revision Comm'n Reports 501 (1967)	Enacted. 1967 Cal. Stat. ch. 702
52. <i>Additur</i> , 8 Cal. L. Revision Comm'n Reports 601 (1967)	Enacted. 1967 Cal. Stat. ch. 72
53. <i>Abandonment or Termination of a Lease</i> , 8 Cal. L. Revision Comm'n Reports 701 (1967); 9 Cal. L. Revision Comm'n Reports 401 (1969); 9 Cal. L. Revision Comm'n Reports 153 (1969)	Enacted. 1970 Cal. Stat. ch. 89

Recommendation	Action by Legislature
54. <i>Good Faith Improver of Land Owned by Another</i> , 8 Cal. L. Revision Comm'n Reports 801 (1967); 8 Cal. L. Revision Comm'n Reports 1373 (1967)	Enacted. 1968 Cal. Stat. ch. 150
55. <i>Suit By or Against an Unincorporated Association</i> , 8 Cal. L. Revision Comm'n Reports 901 (1967)	Enacted. 1967 Cal. Stat. ch. 1324
56. <i>Escheat</i> , 8 Cal. L. Revision Comm'n Reports 1001 (1967)	Enacted. 1968 Cal. Stat. chs. 247, 356
57. <i>Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding</i> , 8 Cal. L. Revision Comm'n Reports 1361 (1967)	Enacted. 1968 Cal. Stat. ch. 133
58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967)	Enacted. 1968 Cal. Stat. ch. 132
59. <i>Sovereign Immunity — Statute of Limitations</i> , 9 Cal. L. Revision Comm'n Reports 49 (1969); 9 Cal. L. Revision Comm'n Reports 175 (1969)	Enacted. 1970 Cal. Stat. ch. 104
60. <i>Additur and Remittitur</i> , 9 Cal. L. Revision Comm'n Reports 63 (1969)	Enacted. 1969 Cal. Stat. ch. 115
61. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 71 (1969)	Enacted. 1969 Cal. Stat. ch. 114
62. <i>Quasi-Community Property</i> , 9 Cal. L. Revision Comm'n Reports 113 (1969)	Enacted. 1970 Cal. Stat. ch. 312
63. <i>Arbitration of Just Compensation</i> , 9 Cal. L. Revision Comm'n Reports 123 (1969)	Enacted. 1970 Cal. Stat. ch. 417
64. <i>Revisions of Evidence Code</i> , 9 Cal. L. Revision Comm'n Reports 137 (1969)	Enacted in part. 1970 Cal. Stat. ch. 69. See also 1970 Cal. Stat. chs. 1396, 1397
65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 Cal. L. Revision Comm'n Reports 201 (1969)	Enacted. 1969 Cal. Stat. ch. 156

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| 66. <i>Powers of Appointment</i> , 9 Cal. L. Revision Comm'n Reports 301 (1969)   | Enacted. 1969 Cal. Stat. chs. 113, 155                                     |
| 67. <i>Evidence Code — Revisions of Privileges Article</i> , 9 Cal. L. Revision Comm'n Reports 501 (1969)   | Vetoed. But see 1970 Cal. Stat. chs. 1396, 1397                            |
| 68. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 601 (1969)   | Enacted. 1970 Cal. Stat. ch. 618   |
| 69. <i>Representation as to the Credit of Third Persons and the Statute of Frauds</i> , 9 Cal. L. Revision Comm'n Reports 701 (1969)  | Enacted. 1970 Cal. Stat. ch. 720   |
| 70. <i>Revisions of Governmental Liability Act</i> , 9 Cal. L. Revision Comm'n Reports 801 (1969)   | Enacted in part. 1970 Cal. Stat. chs. 662, 1099                            |
| 71. <i>"Vesting" of Interests Under Rule Against Perpetuities</i> , 9 Cal. L. Revision Comm'n Reports 901 (1969)  | Enacted. 1970 Cal. Stat. ch. 45  |
| 72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 Cal. L. Revision Comm'n Reports 501 (1971)  | Enacted. 1971 Cal. Stat. chs. 244, 950. See also 1973 Cal. Stat. ch. 828   |
| 73. <i>Wage Garnishment and Related Matters</i> , 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601 (1976); 13 Cal. L. Revision Comm'n Reports 1703 (1976); 14 Cal. L. Revision Comm'n Reports 261 (1978) | Enacted in part. 1978 Cal. Stat. ch. 1133. See also 1979 Cal. Stat. ch. 66 |
| 74. <i>Proof of Foreign Official Records</i> , 10 Cal. L. Revision Comm'n Reports 1022 (1971)   | Enacted. 1970 Cal. Stat. ch. 41  |
| 75. <i>Inverse Condemnation — Insurance Coverage</i> , 10 Cal. L. Revision Comm'n Reports 1051 (1971)   | Enacted. 1971 Cal. Stat. ch. 140   |

Recommendation	Action by Legislature
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 Cal. L. Revision Comm'n Reports 1147 (1971)	Enacted. 1971 Cal. Stat. ch. 1607
77. <i>Civil Arrest</i> , 11 Cal. L. Revision Comm'n Reports 1 (1973)	Enacted. 1973 Cal. Stat. ch. 20
78. <i>Claim and Delivery Statute</i> , 11 Cal. L. Revision Comm'n Reports 301 (1973)	Enacted. 1973 Cal. Stat. ch. 526
79. <i>Unclaimed Property</i> , 11 Cal. L. Revision Comm'n Reports 401 (1973); 12 Cal. L. Revision Comm'n Reports 609 (1974)	Proposed resolution enacted. 1973 Cal. Stat. res. ch. 76. Legislation enacted. 1975 Cal. Stat. ch. 25.
80. <i>Enforcement of Sister State Money Judgments</i> , 11 Cal. L. Revision Comm'n Reports 451 (1973)	Enacted. 1974 Cal. Stat. ch. 211
81. <i>Prejudgment Attachment</i> , 11 Cal. L. Revision Comm'n Reports 701 (1973)	Enacted. 1974 Cal. Stat. ch. 1516. See also 1975 Cal. Stat. ch. 200.
82. <i>Landlord-Tenant Relations</i> , 11 Cal. L. Revision Comm'n Reports 951 (1973)	Enacted. 1974 Cal. Stat. chs. 331, 332
83. <i>Pleading</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1024 (1973)	Enacted. 1972 Cal. Stat. ch. 73
84. <i>Evidence — Judicial Notice</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1025 (1973)	Enacted. 1972 Cal. Stat. ch. 764
85. <i>Evidence — "Criminal Conduct" Exception</i> , 11 Cal. L. Revision Comm'n Reports 1147 (1973)	Not enacted 1974. See recommendation to 1975 session (item 90 <i>infra</i> ) which was enacted.
86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 Cal. L. Revision Comm'n Reports 1163 (1973)	Enacted. 1974 Cal. Stat. ch. 227
87. <i>Liquidated Damages</i> , 11 Cal. L. Revision Comm'n Reports 1201 (1973); 13 Cal. L. Revision Comm'n Reports 2139 (1976); 13 Cal. L. Revision Comm'n Reports 1735 (1976)	Enacted. 1977 Cal. Stat. ch. 198

<b>Recommendation</b>	<b>Action by Legislature</b>
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 Cal. L. Revision Comm'n Reports 575 (1974)	Enacted. 1975 Cal. Stat. ch. 285
89. <i>View by Trier of Fact in a Civil Case</i> , 12 Cal. L. Revision Comm'n Reports 587 (1974)	Enacted. 1975 Cal. Stat. ch. 301
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 Cal. L. Revision Comm'n Reports 601 (1974)	Enacted. 1975 Cal. Stat. ch. 318
91. <i>Improvement Acts</i> , 12 Cal. L. Revision Comm'n Reports 1001 (1974)	Enacted. 1974 Cal. Stat. ch. 426
92. <i>The Eminent Domain Law</i> , 12 Cal. L. Revision Comm'n Reports 1601 (1974)	Enacted. 1975 Cal. Stat. chs. 1239, 1240, 1275
93. <i>Eminent Domain — Conforming Changes in Special District Statutes</i> , 12 Cal. L. Revision Comm'n Reports 1101 (1974); 12 Cal. L. Revision Comm'n Reports 2004 (1974)	Enacted. 1975 Cal. Stat. chs. 581, 582, 584, 585, 586, 587, 1176, 1276
94. <i>Oral Modification of Written Contracts</i> , 13 Cal. L. Revision Comm'n Reports 301 (1976); 13 Cal. L. Revision Comm'n Reports 2129 (1976)	Enacted. 1975 Cal. Stat. ch. 7; 1976 Cal. Stat. ch. 109
95. <i>Partition of Real and Personal Property</i> , 13 Cal. L. Revision Comm'n Reports 401 (1976)	Enacted. 1976 Cal. Stat. ch. 73
96. <i>Revision of the Attachment Law</i> , 13 Cal. L. Revision Comm'n Reports 801 (1976)	Enacted. 1976 Cal. Stat. ch. 437
97. <i>Undertakings for Costs</i> , 13 Cal. L. Revision Comm'n Reports 901 (1976)	Not enacted 1976. But see recommendation to 1979 session (item 118 <i>infra</i> ) which was enacted.
98. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2051 (1976)	Not enacted.

Recommendation	Action by Legislature
99. <i>Turnover Orders Under the Claim and Delivery Law</i> , 13 Cal. L. Revision Comm'n Reports 2079 (1976)	Enacted. 1976 Cal. Stat. ch. 145
100. <i>Relocation Assistance by Private Condemnors</i> , 13 Cal. L. Revision Comm'n Reports 2085 (1976)	Enacted. 1976 Cal. Stat. ch. 143
101. <i>Condemnation for Byroads and Utility Easements</i> , 13 Cal. L. Revision Comm'n Reports 2091 (1976)	Enacted in part (utility easements). 1976 Cal. Stat. ch. 994
102. <i>Transfer of Out-of-State Trusts to California</i> , 13 Cal. L. Revision Comm'n Reports 2101 (1976)	Enacted. 1976 Cal. Stat. ch. 144
103. <i>Admissibility of Duplicates in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2115 (1976)	Enacted. 1985 Cal. Stat. ch. 100
104. <i>Service of Process on Unincorporated Associations</i> , 13 Cal. L. Revision Comm'n Reports 1657 (1976)	Enacted. 1976 Cal. Stat. ch. 888
105. <i>Sister State Money Judgments</i> , 13 Cal. L. Revision Comm'n Reports 1669 (1976)	Enacted. 1977 Cal. Stat. ch. 232
106. <i>Damages in Action for Breach of Lease</i> , 13 Cal. L. Revision Comm'n Reports 1679 (1976)	Enacted. 1977 Cal. Stat. ch. 49
107. <i>Nonprofit Corporation Law</i> , 13 Cal. L. Revision Comm'n Reports 2201 (1976)	Not enacted. Legislation on this subject, not recommended by the Commission, was enacted in 1978.
108. <i>Use of Keepers Pursuant to Writs of Execution</i> , 14 Cal. L. Revision Comm'n Reports 49 (1978)	Enacted. 1977 Cal. Stat. ch. 155
109. <i>Attachment Law — Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 Cal. L. Revision Comm'n Reports 61 (1978)	Enacted. 1977 Cal. Stat. ch. 499
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 Cal. L. Revision Comm'n Reports 83 (1978)	Enacted. 1978 Cal. Stat. ch. 286

Recommendation	Action by Legislature
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 Cal. L. Revision Comm'n Reports 93 (1978)	Enacted. 1978 Cal. Stat. ch. 151
112. <i>Evidence of Market Value of Property</i> , 14 Cal. L. Revision Comm'n Reports 105 (1978)	Enacted in part. 1978 Cal. Stat. ch. 294. Substance of remainder enacted in 1980. See item 127 <i>infra</i> .
113. <i>Psychotherapist-Patient Privilege</i> , 14 Cal. L. Revision Comm'n Reports 127 (1978); 15 Cal. L. Revision Comm'n Reports 1307 (1980)	Enacted in part. 1985 Cal. Stat. chs. 545 (licensed educational psychologist), 1077 (repeal of Evidence Code § 1028).
114. <i>Parole Evidence Rule</i> , 14 Cal. L. Revision Comm'n Reports 143 (1978)	Enacted. 1978 Cal. Stat. ch. 150
115. <i>Attachment Law — Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action,"</i> 14 Cal. L. Revision Comm'n Reports 241 (1978)	Enacted. 1978 Cal. Stat. ch. 273
116. <i>Powers of Appointment</i> (technical changes), 14 Cal. L. Revision Comm'n Reports 257 (1978)	Enacted. 1978 Cal. Stat. ch. 266
117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 Cal. L. Revision Comm'n Reports 291 (1978)	Enacted. 1979 Cal. Stat. ch. 31
118. <i>Security for Costs</i> , 14 Cal. L. Revision Comm'n Reports 319 (1978)	Enacted. 1980 Cal. Stat. ch. 114
119. <i>Guardianship-Conservatorship Law</i> , 14 Cal. L. Revision Comm'n Reports 501 (1978); 15 Cal. L. Revision Comm'n Reports 451 (1980)	Enacted. 1979 Cal. Stat. chs. 165, 726, 730
120. <i>Effect of New Bankruptcy Law on The Attachment Law</i> , 15 Cal. L. Revision Comm'n Reports 1043 (1980)	Enacted. 1979 Cal. Stat. ch. 77
121. <i>Confessions of Judgment</i> , 15 Cal. L. Revision Comm'n Reports 1053 (1980)	Enacted. 1979 Cal. Stat. ch. 568

Recommendation	Action by Legislature
122. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 Cal. L. Revision Comm'n Reports 1101 (1980)	Enacted. 1980 Cal. Stat. ch. 122
123. <i>Assignments for the Benefit of Creditors</i> , 15 Cal. L. Revision Comm'n Reports 1117 (1980)	Enacted. 1980 Cal. Stat. ch. 135
124. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 Cal. L. Revision Comm'n Reports 1137 (1980)	Enacted. 1980 Cal. Stat. ch. 1050
125. <i>Quiet Title Actions</i> , 15 Cal. L. Revision Comm'n Reports 1187 (1980)	Enacted. 1980 Cal. Stat. ch. 44
126. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 Cal. L. Revision Comm'n Reports 1237 (1980)	Enacted. 1980 Cal. Stat. ch. 682
127. <i>Application of Evidence Code Property Valuation Rules in Noncondemnation Cases</i> , 15 Cal. L. Revision Comm'n Reports 301 (1980)	Enacted. 1980 Cal. Stat. ch. 381
128. <i>Probate Homestead</i> , 15 Cal. L. Revision Comm'n Reports 401 (1980)	Enacted. 1980 Cal. Stat. ch. 119
129. <i>Enforcement of Claims and Judgments Against Public Entities</i> . 15 Cal. L. Revision Comm'n Reports 1257 (1980)	Enacted. 1980 Cal. Stat. ch. 215
130. <i>Uniform Veterans Guardianship Act</i> , 15 Cal. L. Revision Comm'n Reports 1289 (1980)	Enacted. 1980 Cal. Stat. ch. 89
131. <i>Enforcement of Obligations After Death</i> , 15 Cal. L. Revision Comm'n Reports 1327 (1980)	Enacted. 1980 Cal. Stat. ch. 124
132. <i>Interest Rate on Judgments</i> , 15 Cal. L. Revision Comm'n Reports 7 (1980)	Enacted. 1982 Cal. Stat. ch. 150
133. <i>Married Women as Sole Traders</i> , 15 Cal. L. Revision Comm'n Reports 21 (1980)	Enacted. 1980 Cal. Stat. ch. 123



Recommendation	Action by Legislature
134. <i>State Tax Liens</i> , 15 Cal. L. Revision Comm'n Reports 29 (1980)	Enacted. 1980 Cal. Stat. ch. 600
135. <i>Guardianship-Conservatorship</i> (technical change), 15 Cal. L. Revision Comm'n Reports 1247 (1980)	Enacted. 1980 Cal. Stat. ch. 246
136. <i>Revision of Guardianship-Conservatorship Law</i> , 15 Cal. L. Revision Comm'n Reports 1463 (1980)	Enacted. 1981 Cal. Stat. ch. 9
137. <i>Enforcement of Judgments Law</i> , 15 Cal. L. Revision Comm'n Reports 2001 (1980)	Enacted. 1982 Cal. Stat. chs. 497, 1364
138. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980)	Enacted. 1981 Cal. Stat. ch. 511
139. <i>Non-Probate Transfers</i> , 15 Cal. L. Revision Comm'n Reports 1605 (1980); 16 Cal. L. Revision Comm'n Reports 129 (1982)	Enacted in part (pay-on-death accounts) 1982 Cal. Stat. ch. 269; (credit unions and industrial loan companies) 1983 Cal. Stat. ch. 92.
140. <i>Revision of the Powers of Appointment Statute</i> , 15 Cal. L. Revision Comm'n Reports 1667 (1980)	Enacted. 1981 Cal. Stat. ch. 63
141. <i>State Tax Liens</i> (technical change), 16 Cal. L. Revision Comm'n Reports 24 (1982)	Enacted. 1981 Cal. Stat. ch. 217
142. <i>Assessment Liens on Property Taken for Public Use</i> (technical change), 16 Cal. L. Revision Comm'n Reports 25 (1982)	Enacted. 1981 Cal. Stat. ch. 139
143. <i>Federal Pensions as Community Property</i> , 16 Cal. L. Revision Comm'n Reports 47 (1982)	Proposed resolution adopted. 1982 Cal. Stat. res. ch. 44
144. <i>Holographic and Nuncupative Wills</i> , 16 Cal. L. Revision Comm'n Reports 301 (1982)	Enacted. 1982 Cal. Stat. ch. 187
145. <i>Marketable Title of Real Property</i> , 16 Cal. L. Revision Comm'n Reports 401 (1982)	Enacted. 1982 Cal. Stat. ch. 1268
146. <i>Statutory Bonds and Undertakings</i> , 16 Cal. L. Revision Comm'n Reports 501 (1982)	Enacted. 1982 Cal. Stat. chs. 517, 998

Recommendation	Action by Legislature
147. <i>Attachment</i> , 16 Cal. L. Revision Comm'n Reports 701 (1982)	Enacted. 1982 Cal. Stat. ch. 1198
148. <i>Escheat</i> (technical change), 16 Cal. L. Revision Comm'n Reports 124 (1982)	Enacted. 1982 Cal. Stat. ch. 182
149. <i>Missing Persons</i> , 16 Cal. L. Revision Comm'n Reports 105 (1982)	Enacted. 1983 Cal. Stat. ch. 201
150. <i>Emancipated Minors</i> , 16 Cal. L. Revision Comm'n Reports 183 (1982)	Enacted. 1983 Cal. Stat. ch. 6
151. <i>Notice in Limited Conservatorship Proceedings</i> , 16 Cal. L. Revision Comm'n Reports 199 (1982)	Enacted. 1983 Cal. Stat. ch. 72
152. <i>Disclaimer of Testamentary and Other Interests</i> , 16 Cal. L. Revision Comm'n Reports 207 (1982)	Enacted. 1983 Cal. Stat. ch. 17
153. <i>Wills and Intestate Succession</i> , 16 Cal. L. Revision Comm'n Reports 2301 (1982)	Enacted. 1983 Cal. Stat. ch. 842
154. <i>Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage</i> , 16 Cal. L. Revision Comm'n Reports 2165 (1982)	Enacted. 1983 Cal. Stat. ch. 342
155. <i>Creditors' Remedies</i> , 16 Cal. L. Revision Comm'n Reports 2175 (1982)	Enacted. 1983 Cal. Stat. ch. 155
156. <i>Conforming Changes to the Bond and Undertaking Law</i> , 16 Cal. L. Revision Comm'n Reports 2239 (1982)	Enacted. 1983 Cal. Stat. ch. 18
157. <i>Notice of Rejection of Late Claim Against Public Entity</i> , 16 Cal. L. Revision Comm'n Reports 2251 (1982)	Enacted. 1983 Cal. Stat. ch. 107
158. <i>Liability of Marital Property for Debts</i> , 17 Cal. L. Revision Comm'n Reports 1 (1984)	Enacted. 1984 Cal. Stat. ch. 1671
159. <i>Durable Power of Attorney for Health Care Decisions</i> , 16 Cal. L. Revision Comm'n Reports 101 (1984)	Enacted. 1983 Cal. Stat. ch. 1204

Recommendation	Action by Legislature
160. <i>Effect of Death of Support Obligor</i> , 17 Cal. L. Revision Comm'n Reports 897 (1984)	Enacted in part. 1984 Cal. Stat. ch. 19. Balance enacted. 1985 Cal. Stat. ch. 362 (item 186 <i>infra</i> ).
161. <i>Vacation of Streets</i> (technical change), 17 Cal. L. Revision Comm'n Reports 825 (1984)	Enacted. 1983 Cal. Stat. ch. 52
162. <i>Marital Property Presumptions and Transmutations</i> , 17 Cal. L. Revision Comm'n Reports 205 (1984)	Enacted in part (transmutations). 1984 Cal. Stat. ch. 1733
163. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984)	Enacted. 1984 Cal. Stat. ch. 1661
164. <i>Special Appearance in Family Law Proceedings</i> , 17 Cal. L. Revision Comm'n Reports 243 (1984)	Enacted. 1984 Cal. Stat. ch. 156
165. <i>Liability of Stepparent for Child Support</i> , 17 Cal. L. Revision Comm'n Reports 251 (1984)	Enacted. 1984 Cal. Stat. ch. 249
166. <i>Awarding Temporary Use of Family Home</i> , 17 Cal. L. Revision Comm'n Reports 261 (1984)	Enacted. 1984 Cal. Stat. ch. 463
167. <i>Disposition of Community Property</i> , 17 Cal. L. Revision Comm'n Reports 269 (1984)	Not enacted.
168. <i>Statutes of Limitation for Felonies</i> , 17 Cal. L. Revision Comm'n Reports 301 (1984)	Enacted. 1984 Cal. Stat. ch. 1270
169. <i>Independent Administration of Decedent's Estate</i> , 17 Cal. L. Revision Comm'n Reports 405 (1984)	Enacted. 1984 Cal. Stat. ch. 451
170. <i>Distribution of Estates Without Administration</i> , 17 Cal. L. Revision Comm'n Reports 421 (1984)	Enacted. 1984 Cal. Stat. ch. 451
171. <i>Simultaneous Deaths</i> , 17 Cal. L. Revision Comm'n Reports 443 (1984)	Not enacted.
172. <i>Notice of Will</i> , 17 Cal. L. Revision Comm'n Reports 461 (1984)	Not enacted.

Recommendation	Action by Legislature
173. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 Cal. L. Revision Comm'n Reports 471 (1984)	Enacted. 1984 Cal. Stat. ch. 493
174. <i>Bonds for Personal Representatives</i> , 17 Cal. L. Revision Comm'n Reports 483 (1984)	Enacted. 1984 Cal. Stat. ch. 451
175. <i>Recording Affidavits of Death</i> , 17 Cal. L. Revision Comm'n Reports 493 (1984)	Enacted. 1984 Cal. Stat. ch. 527
176. <i>Execution of Witnessed Will</i> , 17 Cal. L. Revision Comm'n Reports 509 (1984)	Not enacted.
177. <i>Revision of Wills and Intestate Succession Law</i> , 17 Cal. L. Revision Comm'n Reports 537 (1984)	Enacted. 1984 Cal. Stat. ch. 892
178. <i>Uniform Transfers to Minors Act</i> , 17 Cal. L. Revision Comm'n Reports 601 (1984)	Enacted. 1984 Cal. Stat. ch. 243
179. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 Cal. L. Revision Comm'n Reports 701 (1984)	Enacted. 1984 Cal. Stat. chs. 312 (health care) and 602 (general power of attorney).
180. <i>Dismissal for Lack of Prosecution</i> , 17 Cal. L. Revision Comm'n Reports 905 (1984)	Enacted. 1984 Cal. Stat. ch. 1705
181. <i>Severance of Joint Tenancy</i> , 17 Cal. L. Revision Comm'n Reports 941 (1984)	Enacted. 1984 Cal. Stat. ch. 519
182. <i>Quiet Title and Partition Judgments</i> , 17 Cal. L. Revision Comm'n Reports 947 (1984)	Enacted. 1984 Cal. Stat. ch. 20
183. <i>Dormant Mineral Rights</i> , 17 Cal. L. Revision Comm'n Reports 957 (1984)	Enacted. 1984 Cal. Stat. ch. 240
184. <i>Creditors' Remedies</i> , 17 Cal. L. Revision Comm'n Reports 975 (1984)	Enacted. 1984 Cal. Stat. ch. 538
185. <i>Rights Among Cotenants</i> , 17 Cal. L. Revision Comm'n Reports 1023 (1984)	Enacted. 1984 Cal. Stat. ch. 241

Recommendation	Action by Legislature
186. <i>Provision for Support if Support Obligor Dies</i> , 18 Cal. L. Revision Comm'n Reports 119 (1986)	Enacted. 1985 Cal. Stat. ch. 362
187. <i>Transfer of State Registered Property Without Probate</i> , 18 Cal. L. Revision Comm'n Reports 129 (1986)	Enacted. 1985 Cal. Stat. ch. 982
188. <i>Dividing Jointly Owned Property Upon Marriage Dissolution</i> , 18 Cal. L. Revision Comm'n Reports 147 (1986)	Enacted. 1985 Cal. Stat. ch. 362
189. <i>Probate Law</i> (clarifying revisions), 18 Cal. L. Revision Comm'n Reports 216 (1986)	Enacted. 1985 Cal. Stat. ch. 359
190. <i>Creditors' Remedies</i> (technical change), 18 Cal. L. Revision Comm'n Reports 217 (1986)	Enacted. 1985 Cal. Stat. ch. 41
191. <i>Uniform Transfers to Minors Act</i> (technical change), 18 Cal. L. Revision Comm'n Reports 218 (1986)	Enacted. 1985 Cal. Stat. ch. 90
192. <i>Protection of Mediation Communications</i> , 18 Cal. L. Revision Comm'n Reports 241 (1986)	Enacted. 1985 Cal. Stat. ch. 731
193. <i>Recording Severance of Joint Tenancy</i> , 18 Cal. L. Revision Comm'n Reports 249 (1986)	Enacted. 1985 Cal. Stat. ch. 157
194. <i>Abandoned Easements</i> , 18 Cal. L. Revision Comm'n Reports 257 (1986)	Enacted. 1985 Cal. Stat. ch. 157
195. <i>Distribution Under a Will or Trust</i> , 18 Cal. L. Revision Comm'n Reports 269 (1986)	Enacted. 1985 Cal. Stat. ch. 982
196. <i>Effect of Adoption or Out of Wedlock Birth on Rights at Death</i> , 18 Cal. L. Revision Comm'n Reports 289 (1986)	Enacted. 1985 Cal. Stat. ch. 982
197. <i>Durable Powers of Attorney</i> , 18 Cal. L. Revision Comm'n Reports 305 (1986)	Enacted. 1985 Cal. Stat. ch. 403

Recommendation	Action by Legislature
198. <i>Litigation Expenses in Family Law Proceedings</i> , 18 Cal. L. Revision Comm'n Reports 351 (1986)	Enacted. 1985 Cal. Stat. ch. 362
199. <i>Civil Code Sections 4800.1 and 4800.2</i> , 18 Cal. L. Revision Comm'n Reports 383 (1986)	One of two recommended measures enacted (Application of Civil Code Sections 4800.1 and 4800.2). 1986 Cal. Stat. ch. 49
200. <i>Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 501 (1986)	Enacted. 1986 Cal. Stat. ch. 820.
201. <i>Disposition of Estate Without Administration</i> , 18 Cal. L. Revision Comm'n Reports 1005 (1986)	Enacted. 1986 Cal. Stat. ch. 783
202. <i>Small Estate Set-Aside</i> , 18 Cal. L. Revision Comm'n Reports 1101 (1986)	Enacted. 1986 Cal. Stat. ch. 783
203. <i>Proration of Estate Taxes</i> , 18 Cal. L. Revision Comm'n Reports 1127 (1986)	Enacted. 1986 Cal. Stat. ch. 783
204. <i>Notice in Guardianship and Conservatorship</i> , 18 Cal. L. Revision Comm'n Reports 1793 (1986)	Enacted. 1987 Cal. Stat. ch. 923
205. <i>Preliminary Provisions and Definitions</i> , 18 Cal. L. Revision Comm'n Reports 1807 (1986)	Enacted. 1987 Cal. Stat. ch. 923
206. <i>Revisions in Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 1823 (1986)	Enacted. 1987 Cal. Stat. ch. 128
207. <i>Supervised Administration</i> , 19 Cal. L. Revision Comm'n Reports 5 (1988)	Enacted. 1987 Cal. Stat. ch. 923
208. <i>Independent Administration</i> , 19 Cal. L. Revision Comm'n Reports 205 (1988)	Enacted. 1987 Cal. Stat. ch. 923
209. <i>Creditor Claims Against Decedent's Estate</i> , 19 Cal. L. Revision Comm'n Reports 299 (1988)	Enacted. 1987 Cal. Stat. ch. 923
210. <i>Notice in Probate Proceedings</i> , 19 Cal. L. Revision Comm'n Reports 357 (1988)	Enacted. 1987 Cal. Stat. ch. 923
211. <i>Marital Deduction Gifts</i> (March 1987), published as Appendix 5 of this Report.	Enacted. 1987 Cal. Stat. ch. 923
212. <i>Estates of Missing Persons</i> (April 1987), published as Appendix 6 of this Report.	Enacted. 1987 Cal. Stat. ch. 923

## APPENDIX 3

### COMMUNICATION FROM THE CALIFORNIA LAW REVISION COMMISSION CONCERNING ASSEMBLY BILL 362

[Noted in Assembly J. Aug. 18, 1987, and Senate J. Aug. 26, 1987]

Assembly Bill 362 was introduced to effectuate the California Law Revision Commission's *Recommendation Relating to Technical Revisions in the Trust Law*, 18 Cal. L. Revision Comm'n Reports 1823 (1986). The comments in the Commission's recommendation to the sections contained in Assembly Bill 362 remain applicable except to the extent that they are replaced or supplemented by the revised and new comments set out below. This report includes comments revised to reflect amendments made in the Senate.

#### **Probate Code § 1201 (technical amendment). Exception to notice involving parent-child relationship**

**Comment.** Subdivision (a) of Section 1201 is revised to apply to the entire code rather than just Division 3. This amendment reflects the removal of provisions from Division 3 to Division 7. For example, see Section 13655 (notice of hearing on petition for determination or confirmation of property passing or belonging to surviving spouse) in Division 7, which replaces the notice provisions of former Sections 653 and 654 which were in Division 3.

#### **Probate Code § 15405 (amended). Guardian ad litem**

**Comment.** Section 15405 is amended to make clear that it applies to a minor and to replace the phrase "legally incapacitated" with "lacks legal capacity" for conformity with guardianship and conservatorship law. See, e.g., Section 2582. This is a nonsubstantive revision.

#### **Probate Code § 15410 (amended). Disposition of property upon termination**

**Comment.** Subdivision (d) of Section 15410 is revised to provide a default rule for disposition of trust property upon termination of a trust worth less than \$20,000.

**Probate Code § 15803 (technical amendment). Rights of holder of power of appointment or withdrawal**

**Comment.** Section 15803 is revised to substitute the broader phrase “person holding the power to revoke the trust” for “settlor.” This is a technical revision to conform the language of this section to Sections 15800-15802.

**Probate Code § 15805 (added). Attorney General subject to limitations on rights of beneficiary of revocable trust**

**Comment.** Section 15805 is intended to make clear that the Attorney General is treated the same as a beneficiary of a revocable living trust for the purposes of the provisions limiting such beneficiaries’ rights. This section is consistent with Section 24 which defines beneficiary to include any person entitled to enforce a charitable trust, taking into account the provision of Section 15800 that beneficiaries of revocable trusts do not have the rights normally afforded beneficiaries so long as the charitable trust is revocable and the person holding the power to revoke remains competent. This section recognizes that the Attorney General’s rights to receive notice under Section 17203(c) and to petition under Section 17210 are limited just as in the case of individual beneficiaries.

**Probate Code § 16082 (added). Use of discretionary power to discharge personal obligations**

**Comment.** Section 16082 restates former Civil Code Section 2269(e) without substantive change, as applied to trusts. This provision is intended to deal with problems that may arise under federal tax law. See I.R.C. §§ 674(a), 678(c), 2036.

**Probate Code § 16222 (amended). Participation in business; change in form of business**

**Comment.** Subdivision (b) of Section 16222 is revised to exclude the lease of four or fewer residential units from the requirement that the trustee obtain court approval to continue operation of a business or other enterprise that is a part of trust property. It is irrelevant whether the residential units are located in one or more buildings or on one or more lots.

Subdivision (d) is added to limit the rule in subdivision (b) requiring court authorization for the trustee to operate a business or other enterprise that is a part of trust property. This is a special application of the rule stated in Section 16203.



**Probate Code § 16441 (amended). Measure of liability for interest**

**Comment.** Subdivision (a) of Section 16441 is revised to clarify the interest rate applicable to a determination of liability for a breach occurring before the operative date of the Trust Law. Under this rule, the legal rate of interest on judgments in effect when the liability accrued is applied. Thus, the rate is 7% per year until January 1, 1983, when the interest rate on judgments was raised to 10% per year. See Code Civ. Proc. § 685.010(a); *American Nat'l Bank v. Peacock*, 165 Cal. App. 3d 1206, 1210-12, 212 Cal. Rptr. 97 (1985). Notwithstanding Section 16442, interest is not compounded under the Trust Law as it was under former Civil Code Section 2262.

For example, if a breach of trust that occurred in 1980 is the subject of proceedings commenced or pending on the operative date of the Trust Law (July 1, 1987), and if the trustee is found liable for interest at the rate provided in subdivision (a) of this section, interest is determined at the rate of 7% from 1980 until December 31, 1982, and then at the rate of 10% from January 1, 1983, until the date of judgment. After judgment, interest accrues at the rate of 10% pursuant to Code of Civil Procedure Section 685.010.

**Probate Code § 17457 (amended). Administration of transferred trust**

**Comment.** The second sentence is added to Section 17457 to distinguish rules governing the validity of a trust and the construction of its beneficial provisions from the procedural and administrative provisions covered by the first sentence of this section. See also Section 15400 (limitation on California rule that trust is revocable unless it provides otherwise).

**Probate Code § 20114.5 (added). Excess retirement accumulations**

**Comment.** Section 20114.5 is a new provision that specifies the manner of proration of the 15% tax on excess retirement accumulations imposed by Internal Revenue Code Section 4981. See Tax Reform Act of 1986, Pub. L. No. 99-514, § 1133(a).



## APPENDIX 4

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

[Noted in Assembly J. Aug. 18, 1987, and Senate J. Aug. 26, 1987]

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

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

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

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

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

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

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

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

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

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

Subdivision (b) is drawn from Section 465 and former Section 700, and from the second sentence of Section 1-201(30) of the Uniform Probate Code. The term “general personal representative” is used in Sections 9050 (notice required), 9051 (time of notice), 9100 (claim period), 9103 (late claims), 9104 (amended or revised claim), 9154 (waiver of formal defects), 9202 (notice to Director of Health Services), and 11422 (payment of debts on court order).

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

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

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

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

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

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

The cross-reference to the section governing the mailing of notice of hearing is revised to refer to Section 1220. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The provision that excuses giving notice to a person who joins in the petition is generalized in Section 1201. Subdivision (b) is revised by adding the reference to "known" devisees. This revision conforms to Section 1206 (notice to known heirs or devisees).

The cross-reference to the section relating to special notice is revised to refer to Section 1250.

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

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

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

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

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

**§ 300 (amended). Jurisdiction in superior court**

**Comment.** Section 300 is amended to recognize that administration of the decedent's estate is also governed by provisions in this code other than this division. See Division 6 (commencing with Section 6100) (wills and intestate succession); Division 7 (commencing with Section 7000) (administration of estates of decedents).

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

**Comment.** The 10-day notice period in the first sentence of Section 328 is increased to 15 days to conform to the general notice period provided in Section 1220. The cross-reference to the procedure for requesting special notice is revised. See Sections 1250-1252. The description of the procedure for requesting special notice in subdivision (a) is deleted because it is incomplete. The recipient of the notice should refer to Section 1250.

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

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

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

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

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

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

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

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

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

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

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

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

**§ 573 (repealed). Survival of actions**

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

**§ 573 (added). Survival of actions**

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

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

**Comment.** Former Section 580 is restated in subdivisions (b) and (c) of Section 9653, with the addition of authority for the court to require the creditor to pay the personal representative's

attorney's fees, and for application of sale proceeds first to payment of costs and expenses of suit. See also Section 58 ("personal representative" defined).

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The new notice provisions referred to in Section 1000 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a

case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

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

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

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

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

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

The new notice provisions referred to in Section 1020 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

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

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

The new notice provisions referred to in Section 1025.5 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a

case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

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

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

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

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

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

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

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

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

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

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

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

The new notice provisions referred to in Section 1067 do not apply to a particular notice where the notice was delivered,

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

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

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

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

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

**Comment.** Section 1191 is amended to revise the cross-reference to the procedure for mailing notice of hearing. Fifteen days’ notice is required under Section 1220, instead of ten days’ notice as required under former Section 1200.5. The new notice provisions referred to in Section 1191 do not apply to a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. In such a case, the applicable law in effect before July 1, 1988, continues to apply to the giving of the notice. Section 1200(d).

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

**§ 1200. Application of chapter**

**Comment.** Section 1200 prescribes the scope of the provisions relating to notice in this chapter. Subdivision (b) supersedes subdivisions (c) and (d) of former Section 1200 and subdivisions (d) and (e) of former Section 1200.5. Notice under the

guardianship and conservatorship provisions and under the Trust Law is governed by special provisions. See Sections 1460-1469 (guardianship and conservatorship) and 17100-17107 (trusts).

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

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

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

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

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

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

Subdivision (e) makes clear that notice must be given to persons who have requested special notice. See Section 1252 (notice required to be given to person requesting special notice). This is consistent with the approach taken in Section 1460 (guardianship and conservatorship).

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

The person required to give notice by mail as provided in this section can satisfy that requirement by personal delivery of the

notice to the person required to be given the notice. See Section 1216. As to shortening the time of notice, see Section 1203. The court may order additional notice. See Section 1202.

### § 1230. Manner of posting notice of hearing

**Comment.** Section 1230 restates subdivision (a) of former Section 1200 and former Section 1210 with the following significant revisions:

(1) Former Section 1200 listed the petitions to which the posting requirement applied. This list is not continued in Section 1230. Instead, a reference to Section 1230 is included in each provision that provides for notice by posting. See Sections 1469, 9944, 9963, 10200, 10258, 10260, 10308.

(2) Former Section 1200 required posting at least 10 days before the hearing. Section 1230 requires posting at least 15 days before the hearing. The 15-day posting requirement conforms to the requirement that notice be mailed 15 days before the hearing. See Section 1220.

(3) The portion of former Section 1200 requiring the clerk to set the petition for hearing by the court has been omitted as unnecessary. See Section 1285 (clerk to set petitions for hearing).

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

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

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

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

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

**§ 1285. Clerk to set matter for hearing**

**Comment.** Section 1285 generalizes provisions found in Sections 203, 233, 327, 441, 605, 653, 718.5, 1000, 1004, 1041, 1068, 1102, 1191, 1200, 1355, 6501, 6511, and 6525 and in former Sections 578, 578a, 584, 584.2, 584.3, 584.5, 591.1, 591.7, 643, 755, 758, 771, 771.3, 773, 810, 831, 841, 851, 851.5, 854, and 1172. It is comparable to Sections 1451 (guardianship and conservatorship law) and 17201(b) (trust law).

**§ 1354 (repealed). Petition for administration or probate**

**Comment.** Subdivisions (a)-(c) of former Section 1354 are restated in Section 12404 (petition for administration) without substantive change, except as noted in the Comment to Section 12404. Subdivision (d) is restated and generalized in Section 1284 (verification required).

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

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

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

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

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

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



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

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

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

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

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

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

**Comment.** Section 6246 is amended to correct a cross-reference in subdivision (b).

### **§ 6247 (amended). Inclusion of clauses as existing on date of execution**

**Comment.** Section 6247 is amended to add subdivision (d). Subdivision (d) makes clear that a California statutory will executed on a form which incorporates a reference to former Section 1120.2 of the Probate Code is not invalid for that reason.

### **§ 6327 (technical amendment). Appealable orders**

**Comment.** Section 6327 is amended to revise the cross-reference to former Section 1240 and to add subdivision (c).

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

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

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

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

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

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

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

**Comment.** Section 6525 is amended to revise the cross-reference to the procedure for mailing notice of a hearing. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The provision formerly in Section 6521 requiring the clerk to set the petition for hearing is generalized in Section 1285.

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

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

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

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

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

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

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

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

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

The new notice provisions referred to in Section 6607 do not apply to a particular notice where the notice was delivered,

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

### § 9000. “Claim” defined

**Comment.** Section 9000 is new. It is drawn from former Probate Code Section 707 and Section 1-201(4) of the Uniform Probate Code (1982). A claim not filed as provided in this part is barred. Section 9002 (claim requirement).

Subdivision (a)(1) defines “claim” broadly to include all claims against the decedent whether in contract, tort, or otherwise, including claims for damages for injuries to or death of a person or injury to property and all claims against the personal representative of a decedent who in his or her lifetime has wasted, destroyed, taken or carried away, or converted to his or her own use, the property of another person or committed any trespass on the real property of another person. See former Section 707(a).

Subdivision (a)(2) restates former Section 707.5(c), with clarifying changes relating to tax liability of the decedent. A claim for a tax liability is required only as to liabilities incurred by the decedent up until the time of death, whether or not the actual assessment for the tax liability was made before or after the time of death. See Chapter 5 (commencing with Section 9200) (claims by public entities). Those arising after death as estate and gift taxes are not subject to claim requirements. Secured property taxes and assessments, whether incurred before or after death, are not subject to claim requirements.

While the term “claim” does not include administration expenses such as personal representative and attorney fees, it does include funeral expenses under subdivision (a)(3). This restates a provision of former Section 707(a) without substantive change.

A claim need not be filed in the case of foreclosure of a lien on property in the decedent’s estate. See Section 716 (enforcement of security interest). With regard to title to property, see Sections 9860-9868 (conveyance or transfer of property claimed to belong to decedent or other person).

### § 9050. Notice required

**Comment.** Section 9050 is new. It is designed to satisfy due process requirements by ensuring reasonable notice to creditors within the practicalities of administration of the estate of a

decedent. Notice may be given either by mail or personal delivery. See Sections 1215-1216.

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

The personal representative is not required to notify persons who are potentially creditors because of possible liability of the decedent, but only creditors who have made their claims known. In a case where there is doubt whether notice to a particular person is required under this standard, the personal representative should give notice. The personal representative is protected from liability in this event. Section 9053(a).

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

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

### § 9100. Claim period

**Comment.** Section 9100 supersedes the last portion of subdivision (a) and all of subdivision (c) of former Section 700. If letters are issued by more than one court or if subsequent letters are issued by the same court, the four month period of paragraph (1) of subdivision (a) commences on the first issuance of letters to a general personal representative. In the case of a special administrator granted the powers of a general personal representative, the claim period commences to run on first issuance of letters reciting the general powers of the special administrator. See Section 58(b) (“general personal representative” defined).

### § 9103. Late claims

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

A creditor has knowledge of the administration of an estate within the meaning of subdivision (a)(2) if the creditor has actual knowledge of the administration through receipt of notice given under Section 9050 or otherwise, such as information from a newspaper clipping service. Constructive knowledge through publication of a notice of death or other information that does not come to the attention of the creditor is not knowledge for the purpose of subdivision (a)(2).

### § 9150. How claim is filed

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

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

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

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

### § 9201. Claims governed by special statutes

**Comment.** Section 9201 restates former Section 707.5(b) and a portion of the first sentence of subdivision (a) of former Section 700.1. Section 9201 makes explicit the authority of the public entity to use an appropriate form for efficient administration of the relevant law under which collection is sought, notwithstanding Section 9052 (form of notice). Section 9201 also makes explicit the authority of the public entity to use available statutory remedies to enforce the liability where it has not been given notice of estate administration.

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

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

### § 9203. Distribution before claim

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

**§ 9250. Procedure by personal representative**

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

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

**§ 9257. Action on rejected claim**

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

Subdivision (b) is new.

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

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

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

**Comment.** Section 9645 makes clear that on and after the operative date (July 1, 1988) this part applies to pending petitions and other pending matters unless the court with respect to a particular matter determines that application of a particular provision of this part would substantially interfere with the effective conduct of the matter or with the rights of the parties



or other interested persons. If the court makes such a determination, the matter is governed by prior law which is preserved for this purpose. Section 9645 is drawn from Section 1484 (guardianship and conservatorship law).

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

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

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

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

The authority in paragraph (2) of subdivision (a) for a creditor to recover a gift made in view of death (Civ. Code § 1149) is qualified by the requirement in the introductory clause of subdivision (a) that there be insufficient estate assets to pay creditors. This continues a provision in former Section 579. See also *Adams v. Prather*, 176 Cal. 33, 40-42, 167 P. 534 (1917) (gift rendering estate insolvent); Civ. Code §§ 1149-1153 (gifts in view of death).

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

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

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

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

### § 9705. Interest on deposits by trust company

**Comment.** Subdivision (a) of Section 9705 restates former Section 920.5 without substantive change. The reference in Section 9705 to an "association" is new. See Fin. Code § 1502 (national banking association authorized to transact trust business). The type of account into which moneys of the estate are to be deposited depends on the type of account which best serves the needs of the estate. The time within which the estate may be distributed, the time of the receipt of the funds, and the immediate need for funds in order to meet the requirements of administration are all factors to be considered in determining the type of account in which the funds should be deposited. For example, where there is a substantial sum in excess of the immediate requirements and the sum is to be held over a period of time, the personal representative should deposit the funds in an account (which would include purchase of a certificate of deposit where appropriate under the circumstances) which not only would safeguard the funds but also allow a rate of interest on the funds that is advantageous to the estate. See *In re Estate of Smith*, 112 Cal. App. 680, 685-86, 297 P. 927 (1931). See also *Estate of Buchman*, 138 Cal. App. 2d 228, 238-39, 291 P.2d 547 (1955); Fin. Code § 6515 (saving association as personal representative); Prob. Code Sections 2453.5 (trust company as guardian or conservator), 9600 (duty of personal representative to manage estate using ordinary care and diligence), 16225 (trustee's power to deposit trust funds).

Subdivision (b) of Section 9705 is new. Consistent with subdivision (b) of Section 9652, subdivision (b) of Section 9705 makes clear that a noninterest bearing checking account may be maintained where it is to the advantage of the estate to do so. It may, for example, be to the advantage of the estate to maintain a noninterest bearing checking account where the net cost of a checking account that would bear interest (service charges less interest) would be more than the cost of a checking account that would not bear interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9760 requires court authorization to continue operation of the decedent's nonpartnership business for a period of more than six months from the date letters are first issued to any personal representative, whether the personal representative is a special personal representative or a general personal representative. The six-month period commences to run from the time the first special or general personal representative is issued letters. The six-month limitation recognizes that operation of the business may result in the loss of estate assets if the business proves to be unprofitable. Section 9760 permits but does not require a court order for the personal representative to continue operation of the decedent's nonpartnership business for a period not exceeding six months from the date letters are first issued to any personal representative. Under prior law, if the personal representative continued the operation of the decedent's business without a court order, but acted in good faith and as a cautious and prudent person would act under similar circumstances, the personal representative was not personally liable for expenses of operating the business. *In re Estate of Maddalena*, 42 Cal. App. 2d 12, 18, 108 P.2d 17 (1940).

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

Although Section 9760 makes clear that the personal representative may continue to operate the decedent's nonpartnership business without prior court authorization for the six-month period, it is generally advisable for the personal representative to obtain an order under Section 9760 authorizing continued operation of the business. See Abel & Price, *First Steps in Handling Decedents' Property*, in 1 California Decedent Estate Administration § 6.29, at 218 (Cal. Cont. Ed. Bar 1971). If

the personal representative operates the decedent's business without prior authorization of the court, the court may nonetheless ratify the acts and expenditures of the personal representative after the fact. *In re Estate of Maddalena*, 42 Cal. App. 2d at 19. Under Section 9760, the personal representative can obtain such ratification only upon the showing that it was to the advantage of the estate and in the best interest of interested persons to continue the operation of the decedent's business. See subdivision (b).

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

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

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

**Comment.** Section 9761 replaces the authority provided in former Section 571 to order an accounting where necessary and to enforce the order "by attachment." The standard for ordering an accounting is provided in the statutes governing partnerships. As to a general partnership, see Corp. Code §§ 15022 (right to formal accounting where "just and reasonable"), 15043 (right to account of deceased partner's interest accrues to personal representative); see also Corp. Code §§ 15019 (right to inspect partnership books), 15020 (right to information on demand). As to a limited partnership, see Corp. Code §§ 15510(1)(a)-(b) (right to information), 15521 (personal representative's exercise of rights), 15634 (right to information), 15675 (personal representative's exercise of rights). The court has jurisdiction and discretion to order any surviving partner to render an account to the extent provided in the sections of the Corporation Code referred to in Section 9761.

The order to account under this section is enforceable by the power to punish for contempt under Code of Civil Procedure Section 717.010. Only the personal representative may apply for

an accounting under Section 9761. An interested person may neither make application under this section nor petition for instructions under Section 9611.

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

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

Section 9831 requires court authorization only for a compromise or settlement of a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate. The section does not require court authorization in order to extend, renew, or in any manner modify the terms of an obligation owing to or running in favor of the decedent or the estate. See generally Section 9830(a)(2).

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

**Comment.** Section 9834 is new and is the same in substance as Section 2503 (guardianship-conservatorship law) except that Section 9834 also covers transactions involving the personal representative's attorney. Section 9834 requires authorization by order of court obtained under Sections 9836-9837 for a compromise, settlement, extension, renewal, or modification described in the section. Section 9834 requires court authorization because the section involves matters that may involve a conflict of interest for the personal representative.

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

**§ 9861. Notice of hearing**

**Comment.** Subdivision (a) of Section 9861 replaces the last portion of the second sentence of former Section 851 and the fourth sentence of former Section 851.5. Subdivision (a) expands

the cases where service under the Code of Civil Procedure is required: Service is required in that manner on the personal representative (if not the petitioner) and on any person claiming an interest in or having title to or possession of the property. Under former Section 851.5, heirs and devisees (whether or not claiming an interest in the property) and the personal representative received mailed notice.

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

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

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

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

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



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

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

Subdivision (b) is new.

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

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

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

**§ 9923. Error does not invalidate proceedings**

**Comment.** Section 9923 is new, and is comparable to Sections 9948(d) (leases), 9966 (option to purchase real property), 10264 (sale of personal property), 9983 (option to purchase given in will), and 10316 (sale of real property). Section 9923 assumes that the court has proper jurisdiction. If the court lacks jurisdiction, Section 9923 does not cure the defect. See *Texas Co. v. Bank of America National Trust & Savings Association*, 5 Cal. 2d 35, 53 P.2d 127 (1935). Section 9923 does not limit the court's authority to set aside an order made through mistake, inadvertence, surprise, or excusable neglect. See Code Civ. Proc. § 473; *Estate of Lee*, 159 Cal. App. 2d 109, 111-12, 323 P.2d 448 (1958); *Estate of Herz*, 147 Cal. App. 2d 100, 106-07, 305 P.2d 278 (1956); *Estate of McCrae*, 133 Cal. App. 2d 634, 637-39, 284 P.2d 914 (1955); *Estate of Moreland*, 49 Cal. App. 2d 484, 487-88, 121 P.2d 867 (1942).

### § 9944. Notice of hearing

**Comment.** Subdivisions (a) and (b) of Section 9944 restate a portion of the second sentence and all of the third sentence of former Section 841 without substantive change, except that (1) under subdivision (a), notice must be given at least 15 days before the hearing pursuant to Section 1220, instead of the 10-day notice under former Section 1200.5, and (2) the provision in subdivision (b) dispensing with notice is expanded to include the case where the will authorizes or directs sale of the property as well as authorizing or directing its leasing. Persons who requested special notice also must be given notice. See Sections 1250-1252.

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

### § 9948. Effectiveness of lease

**Comment.** Subdivisions (a), (b), and (c) of Section 9948 restate the first, second, and third sentences of former Section 843 without substantive change.

Subdivision (d) restates the last sentence of former Section 843 without substantive change. Subdivision (d) assumes that the court has proper jurisdiction. If the court lacks jurisdiction, subdivision (d) does not cure the defect. See *Texas Co. v. Bank of America National Trust & Savings Association*, 5 Cal. 2d 35, 53 P.2d 127 (1935). Subdivision (d) does not limit the court's authority to set aside an order made through mistake, inadvertence, surprise, or excusable neglect. See Code Civ. Proc. § 473; *Estate of Lee*, 159 Cal. App. 2d 109, 111-12, 323 P.2d 448 (1958); *Estate of Herz*, 147 Cal. App. 2d 100, 106-07, 305 P.2d 278 (1956); *Estate of McCrae*, 133 Cal. App. 2d 634, 637-39, 284 P.2d 914 (1955); *Estate of Moreland*, 49 Cal. App. 2d 484, 487-88, 121 P.2d 867 (1942). For provisions comparable to subdivision (d), see Sections 9923 (exchanges), 9966 (option to purchase real property), 9983 (option to purchase given in will), 10264 (sale of personal property), and 10316 (sale of real property).

Section 9948 does not deal with the rights of the lessee and a subsequent lessee or purchaser of the property except to the extent that the section protects the lessee from a claim by a third party that there was an omission, error, or irregularity in the proceedings under this chapter; Section 9948 is limited to defining the relationship between the personal representative and the beneficiaries and creditors of the estate, the relationship between the personal representative and the lessee, and the relationship between the personal representative and the court from which the personal representative derives his or her authority.

A certified copy of the order shall be recorded. Section 1292.

### § 9963. Notice of hearing

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

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

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

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

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

### § 9966. Error does not invalidate proceedings

**Comment.** Section 9966 is new, and is comparable to Sections 9923 (exchanges), 9948(d) (leases), 9983 (option to purchase given in will), 10264 (sale of personal property), and 10316 (sale of real property). Section 9966 assumes that the court has proper jurisdiction. If the court lacks jurisdiction, Section 9966 does not cure the defect. See *Texas Co. v. Bank of America National Trust & Savings Association*, 5 Cal. 2d 35, 53 P.2d 127 (1935). Section 9966 does not limit the court’s authority to set aside an order made through mistake, inadvertence, surprise, or excusable neglect. See Code Civ. Proc. § 473; *Estate of Lee*, 159 Cal. App. 2d 109, 111-12, 323 P.2d 448 (1958); *Estate of Herz*, 147 Cal. App. 2d 100, 106-07, 305 P.2d 278 (1956); *Estate of McCrae*, 133 Cal. App. 2d 634, 637-39, 284 P.2d 914 (1955); *Estate of Moreland*, 49 Cal. App. 2d 484, 487-88, 121 P.2d 867 (1942).

**§ 9981. Order; petition; notice**

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

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

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

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

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

**Comment.** Section 10207 restates subdivision (b) of former Section 794 with the addition of subdivision (b) and language that makes clear that the sale may be made only with the consent

of the “known” heirs and the “known” devisees. As to the meaning of known heirs and devisees, see Section 1206. Persons who requested special notice also must be given notice. See Sections 1250-1252.

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

### § 10255. Private sale

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

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

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

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

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

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

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

**Comment.** The first sentence of subdivision (a) of Section 10261 is a new provision drawn from a portion of the first sentence of former Section 785 (real property). Section 10000 provides that real or personal property of the estate may be sold (1) when the sale is necessary to pay debts, devise, family allowance, expenses of administration, or taxes, (2) when the sale

is to the advantage of the estate and in the best interest of the interested persons, (3) when the property is directed by the will to be sold, or (4) when authority is given in the will to sell the property.

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

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

Subdivision (c) restates the second sentence of former Section 774 but provides for examination of the surviving partner if the surviving partner is able to be present at the hearing and is "a resident within the state at the time of the hearing" and includes a new provision that makes clear that the court may issue a citation to compel the surviving partner to attend the hearing. The court has jurisdiction and discretion to order any surviving partner to appear for examination. Under former Section 774, the provision for examination of the surviving partner applied only where the surviving partner is able to be present at the hearing and is "in the county."

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

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

#### § 10264. Error does not invalidate proceedings

**Comment.** Section 10264 is new, and is comparable to Sections 9923 (exchanges), 9948(d) (leases), 9966 (option to purchase real property), 9983 (option to purchase given in will), and 10316 (sale of real property). Section 10264 assumes that the court has proper jurisdiction. If the court lacks jurisdiction, Section 10264 does not cure the defect. See *Texas Co. v. Bank of America National Trust & Savings Association*, 5 Cal. 2d 35, 53 P.2d 127 (1935). Section 10264 does not limit the court's authority to set aside an order made through mistake, inadvertence,

surprise, or excusable neglect. See Code Civ. Proc. § 473; Estate of Lee, 159 Cal. App. 2d 109, 111-12, 323 P.2d 448 (1958); Estate of Herz, 147 Cal. App. 2d 100, 106-07, 305 P.2d 278 (1956); Estate of McCrae, 133 Cal. App. 2d 634, 637-39, 284 P.2d 914 (1955); Estate of Moreland, 49 Cal. App. 2d 484, 487-88, 121 P.2d 867 (1942).

### § 10306. Private sale

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

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

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

### § 10316. Error does not invalidate proceedings

**Comment.** Section 10316 is new, and is comparable to Sections 9923 (exchanges), 9948(d) (leases), 9966 (option to purchase real property), 9983 (option to purchase given in will), and 10264 (sale of personal property). Section 10316 assumes that the court has proper jurisdiction. If the court lacks jurisdiction, Section 10316 does not cure the defect. See *Texas Co. v. Bank of America National Trust & Savings Association*, 5 Cal. 2d 35, 53 P.2d 127 (1935). Section 10316 does not limit the court's authority to set aside an order made through mistake, inadvertence, surprise, or excusable neglect. See Code Civ. Proc. § 473; Estate of Lee, 159 Cal. App. 2d 109, 111-12, 323 P.2d 448 (1958); Estate of Herz, 147 Cal. App. 2d 100, 106-07, 305 P.2d 278 (1956); Estate of McCrae, 133 Cal. App. 2d 634, 637-39, 284 P.2d 914 (1955); Estate of Moreland, 49 Cal. App. 2d 484, 487-88, 121 P.2d 867 (1942).

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

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

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

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

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

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

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

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

**Comment.** Section 10351 restates former Sections 776 and 789 without substantive change, except that Section 10351 increases the 45-day period provided in the former sections to 60 days. The



time is increased in recognition of the unavoidable delay that sometime occurs in closing an escrow. Increasing the time gives the personal representative more opportunity to use the option of confirming the sale to the new higher bidder but does not require that the personal representative delay until the 60 days have expired before petitioning the court for an order directing the resale of the property. See Section 10350.

### § 10403. “Limited authority” defined

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

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

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

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

### § 10406. Application of part

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

Under subdivision (b), a personal representative who was granted authority prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act is governed by the provisions of the Independent Administration of Estates Act that were applicable at the time the petition requesting independent administration authority was granted.

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

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

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

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

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

Subdivision (b) of Section 10450 permits the petitioner either (1) to request full authority (this authority permits the personal representative to administer the estate using all of the powers granted by this part) or (2) to request limited authority. Limited authority permits the personal representative to exercise all of the powers granted by this part except the power to sell, exchange, or grant an option to purchase real property or to borrow money with the loan secured by an encumbrance upon real property. See Section 10403 (defining "limited authority"). For example, the personal representative granted limited authority cannot use the independent administration procedure to sell or exchange real property but is authorized to use independent administration authority to sell listed and certain over the counter securities without giving notice of proposed action (see paragraphs (1) and (2) of subdivision (b) of Section 10537) and to invest in certain securities using the notice of proposed action procedure (see subdivision (c) of Section 10533).

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

The personal representative, despite the grant of independent administration authority, may seek court supervision of the transaction. See Section 10500(b). Hence, for example, even though the personal representative has been granted full authority (independent administration authority that encompasses real property transactions), the personal representative may decide to sell real property under the supervised administration procedures (using the statutory procedure that governs a real property sale when independent administration authority has not been granted). See the Comment to Section 10500. Likewise, the personal representative may decide to seek court approval or instructions concerning a transaction rather than to use independent administration authority in a case where there is a lack of agreement as to the desirability of the transaction among the persons interested in the estate or where some of the heirs or devisees who would receive notice of proposed action lack the capacity to object to the proposed action (see subdivision (c) of Section 10590) or for some other reason.

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

### § 10451. Notice of hearing

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

Subdivision (b) restates subdivision (d) of former Section 591.1 with the following additions and changes. The requirement that notice be given to each known heir whose interest in the estate is affected by the petition replaces the former requirement of notice to "all known heirs of the decedent." The requirement that notice be given to each known devisee whose interest in the estate is affected by the petition replaces the former

requirement of notice to “all legatees and devisees.” See Section 34 (defining “devisee”). See also Section 1206 (notice to known devisees). The requirement that notice be given to each person named as personal representative in the will of the decedent is new.

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

The reference in former Section 591.1 to former Section 1200 (notice by posting) is corrected in subdivision (b) to refer to Section 1220 (notice by mail). Under Section 1220, 15 days’ notice is required, instead of the ten days’ notice required under former Sections 1200 and 1200.5.

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

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

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

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

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

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

**Comment.** Subdivision (a) of Section 10500 restates the first sentence and the first portion of the second sentence of subdivision (a) of former Section 591.2 without substantive

change. See also Section 10401 (defining “court supervision”). Subdivision (b) restates the first sentence of subdivision (b) of former Section 591.2 without substantive change.

As the introductory clause of subdivision (a) of Section 10500 recognizes, a personal representative who has been granted only limited authority under this part may not exercise authority with respect to matters not included within the scope of the authority granted. See Section 10501 (b) (limited authority excludes power to sell, exchange, or grant option to purchase real property, or to borrow money with the loan secured by an encumbrance upon real property, using independent administration procedure). See also Sections 10403, 10450(b)(2) and 10452(c) (limited authority); Section 10502 (decedent’s will may restrict powers exercisable under independent administration authority). Notwithstanding that full authority has been granted, some actions can be taken only under court supervision. See Section 10501 (court supervision required for allowance of commissions of personal representative, allowance of attorney’s fees, settlement of accountings, preliminary and final distributions and discharge, and certain transactions involving a possible conflict of interest on the part of the personal representative or the personal representative’s attorney).

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

Subdivision (b) of Section 10500 makes clear that the personal representative may obtain court supervision of an action even though the personal representative is authorized to take the action using the independent administration procedure. For example, even though the personal representative has been granted full authority (full authority includes the power to sell real property using the independent administration procedure), the personal representative may nevertheless determine to sell the real property using the court supervised procedure for a real property sale. If the personal representative determines to use the court supervised procedure, all the requirements of the court supervised procedure apply to the same extent that they would

apply if the personal representative had not been granted independent administration authority. See Section 10401 (defining “court supervision”). For example, except as provided in Sections 10301 to 10303, inclusive, the requirement that notice of sale be published must be satisfied. See Section 10300. See also Section 10303 (notice of sale need not be published where decedent’s will directs or authorizes the sale).

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

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

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

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

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

- (1) Sell estate property to the personal representative or the personal representative’s attorney.
- (2) Exchange of estate property for property of the personal representative or the personal representative’s attorney.

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

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

Special supervised administration provisions govern the transactions described in paragraphs (5)-(7). See, e.g., Sections 9880-9885. A purchase by or exchange with the personal representative or the personal representative's attorney's may be accomplished only to the extent allowed under these special provisions and is subject to their limitations and requirements. Under these provisions, the purchase is permitted only if all known heirs or devisees give written consent to the purchase and the court approves the purchase. See Sections 9881 and 9883. The personal representative or personal representative's attorney may purchase property of the estate pursuant to a contract made during the lifetime of the decedent only if the statutory supervised administration requirements are satisfied. See Sections 9860-9868, 9884. The personal representative or personal representative's attorney may exercise an option to purchase property of the estate given in the will of the decedent only if the statutory supervised administration requirements are satisfied. See Sections 9885, 9980-9983.

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

Paragraphs (9) and (10) preclude the use of independent administration to compromise or settle a claim, action, or proceeding of the estate against the personal representative or the personal representative's attorney or to modify the terms of a debt or similar obligation of the personal representative or the personal representative's attorney to the estate. A special



provision governs these transactions. See Sections 9830 and 9834. Independent administration procedure may be used for the actions described in paragraphs (9) and (10) between the personal representative as such and the personal representative as an individual if the requirements of subdivision (c) are satisfied.

Paragraphs (1)-(3) of subdivision (b) restate without substantive change clause (4) of the second sentence of subdivision (a) of former Section 591.2. Paragraph (4) of subdivision (b) is new and requires court supervision if the personal representative has limited authority and proposes to borrow money with the loan secured by an encumbrance upon real property of the estate. Under former law, the personal representative with limited authority could use independent administration authority to borrow money with the loan secured by an encumbrance upon real property. The new limitation on borrowing money does not affect the powers of a personal representative who was granted independent administration authority prior to July 1, 1988. See Section 10406(c). In connection with subdivision (b), see Sections 10403, 10450(b) (2), and 10452(c) (limited authority). See also Section 10502 (decedent's will may restrict powers exercisable under independent administration authority).

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

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

## § 10502. Powers exercisable under independent administration authority

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

A reference to Section 9600 (duty to manage estate using ordinary care and diligence) has been added to Section 10502 to recognize that the personal representative acts in a fiduciary capacity in exercising the powers under this part. This reference continues and generalizes the substantive effect of the phrase “the applicable fiduciary duties” which appeared in former Section 591.9. The personal representative is required to exercise the power granted under this part to the extent that ordinary care and diligence requires that the power be exercised and may not exercise the power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612. See also Section 10590 (court review of action taken pursuant to independent administration authority).

As the introductory clause of subdivision (a) of Section 10502 recognizes, the powers of the personal representative are subject to the conditions and limitations of this part. Thus, a personal representative who has been granted only limited authority under this part may not exercise independent administration authority with respect to matters not included within the scope of the authority granted. See Section 10501(b) (limited authority excludes power to sell, exchange, or grant option to purchase real property, or to borrow money secured by encumbrance on real property, using independent administration procedure). See also Sections 10403, 10450(b)(2), and 10452(c) (limited authority); Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority).

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

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

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

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

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

Section 10503 is designed to make clear that sales under independent administration authority are not subject to the statutory requirements that apply to sales made under court supervision. Thus, for example, the commission of the realtor who lists or obtains the purchaser of real property sold under independent administration authority is not subject to the approval of the court and the provisions concerning contracts

and commissions of agents or brokers (Sections 10150-10166) are not applicable. Nor does the 90-percent-of-appraised-value requirement apply when a sale is made under independent administration authority. Nor does the court examine into the efforts of the personal representative to obtain the highest and best price for the property reasonably attainable as is the case where there is a court hearing on the confirmation of a real property sale. Publication of notice of sale is not required where the sale is made under independent administration authority. Likewise, notice of sale, court confirmation, and approval of the commission of the agent, broker, or auctioneer is not required where a sale of personal property is made under independent administration authority.

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

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

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

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

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

The personal representative is required to exercise a power granted under this article to the extent that ordinary care and diligence requires that the power be exercised and may not exercise the power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600(b). See also Section 10502 (introductory clause) and the Comment to that section. As to the effect of court authorization or approval, see Section 9612. See also Section 10590 (court review of action taken pursuant to independent administration authority).

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

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

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

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

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

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

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

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

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

has power to execute any conveyance needed to effectuate the power granted by Section 10512. See Section 10555. As to the power to continue the operation of the decedent's business, see Section 10534.

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

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

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

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

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10514 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510.

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

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

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

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

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

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

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

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10516 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. The personal representative has the power to execute any conveyance needed to effectuate the power granted by Section 10516. See Section 10555. The personal representative has the specific power described in Section 10516 even though the personal representative has only limited authority. The limitations of Section 10501 that independent administration authority may not be used for certain transactions involving the transfer of estate property to the personal representative or the personal representative's attorney do not apply to the exercise of the power granted by Section 10516.



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

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

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

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

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

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10518 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. Except in certain narrowly limited circumstances, independent administration authority may not be used to compromise or settle a claim of the personal representative or the personal representative's attorney against the estate. See Section 10501 and the Comment to that section.

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

**Comment.** Section 10533 supersedes subdivision (b) of former Section 591.6 (powers of personal representative) and subdivision (b) (8) of former Section 591.3 (notice of proposed action required—with certain specified exceptions—for

investing funds of the estate). Section 10533 uses language from the supervised administration provisions. See Sections 9700 (investment in insured account in a financial institution in this state), 9730 (investment in direct obligations of United States or the State of California, money market mutual fund, investment vehicle authorized for the collective investment of trust funds, units of common trust fund).

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

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

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

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

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

run from the time the first special or general personal representative is issued letters.

Although notice of proposed action is not required in order to continue the operation of the decedent's business for the first six months, the personal representative has the option of giving notice of proposed action if the personal representative plans to continue the business during this period. See Section 10580(b). If notice of proposed action is given, a person who fails to object to the proposed action waives the right to have the court later review the action taken. See Section 10590 and the Comment to that section. See also the Comment to Section 10530.

The phrase "to such extent as he or she shall deem to be for the best interest of the estate and those interested therein" which was found in former Section 591.6 has been omitted as unnecessary. The introductory clause of Section 10502 recognizes that the personal representative is required to exercise a power granted under this chapter to the extent that ordinary care and diligence requires that the power be exercised and may not exercise the power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600(b). See also the Comment to Section 10502.

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

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

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority). For a general provision concerning the power to sell property under independent administration, see Section 10503. Except in certain narrowly limited circumstances, independent administration authority may not be used for the sale of property to the personal representative or the personal representative's attorney or the exchange of property of the estate for property of the personal representative or the personal representative's attorney. See Section 10501.

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

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

Paragraph (2) of subdivision (b), which authorizes the sale of certain over-the-counter stocks, is new. No notice of sale is required, nor is court confirmation required, for the sale of these over-the-counter stocks under supervised administration. See Section 10200. Quotations for these over-the-counter stocks are published daily in newspapers.

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

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

(2) Former Section 771.5 is restated without substantive change in new Section 10202. The reference to Section 10202 in paragraph (3) of subdivision (b) of Section 10537 makes clear that notice of proposed action is not required to sell security subscription or conversion rights when sold for cash. If rights are not sold for cash, Section 10537 requires that notice of proposed action be given for the sale. Under supervised administration, the sale of subscription rights for the purchase of securities is permitted without court supervision. See Section 10202. As to the sale or surrender for redemption or conversion of securities under supervised administration, see Section 10200. As to the exercise of a security subscription or conversion right under

independent administration authority, see Sections 10550 and 10562 (notice of proposed action not required).

Paragraph (4) of subdivision (b) is new. This paragraph makes clear that a security described in Section 10200 may be surrendered for redemption or conversion without giving notice of proposed action. Section 10200 governs the surrender of securities for redemption or conversion.

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

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

Paragraph (2) of subdivision (a) is new and makes clear that the exclusive right to sell agreement can be extended, each extension being for a period not to exceed 90 days. This addition conforms the independent administration authority under Section 10538 to the supervised administration provision found in Section 10150(c). Subdivisions (b) and (c) of Section 10538 are new provisions.

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority). For a general provision governing the manner of sale of property, see Section 10503. Notice of proposed action is required for (1) selling or exchanging real property and for (2) selling or exchanging personal property (with certain exceptions). See Sections 10510, 10511, and 10537.

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

The personal representative does not have the power to sell real property using independent administration procedures if

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

The phrase “where necessary and advantageous to the estate” which was found in subdivision (o) of former Section 591.6 has been omitted as unnecessary. The introductory clause of Section 10502 recognizes that the personal representative is required to exercise the power granted under this article to the extent that ordinary care and diligence requires that the power be exercised and may not exercise the power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600(b). See also the Comment to Section 10502.

### § 10552. Acting on claims against estate

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

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

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

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

Notice of proposed action is not required to exercise the power granted by Section 10552. See Section 10550 and the Comment to that section. Notice of proposed action is required (1) for determining third-party claims to real or personal property if the decedent died in possession of, or holding title to, the property and (2) for determining decedent’s claim to real or personal property title to or possession of which is held by another. See Section 10518.

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

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

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

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

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

**Comment.** Section 10553 restates without substantive change the portion of subdivision (j) of former Section 591.6 which authorized the personal representative to "institute" and "defend" actions and proceedings. The language used in Section 10553 conforms to the language used in the provision relating to supervised administration. See Section 9820. The authority with respect to actions and proceedings is not limited and includes, for example, commencing, maintaining, or defending partition actions. See Section 9823 (supervised administration).

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

Notice of proposed action is not required to exercise the power granted by Section 10553. See Section 10550. Notice of proposed action is required for determining third-party claims to real or personal property if the decedent died in possession of, or holding title to, the property and for determining decedent's claim to real or personal property title to or possession of which is held by another. See Section 10518.

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

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

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

**§ 10554. Modifying terms of obligation**

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

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

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

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

**§ 10582. Consent to proposed action**

**Comment.** Section 10582 restates subdivision (c) of former Section 591.3 without substantive change. Section 10582 provides a method that can be used to avoid the delay that otherwise would result from the requirement (see Sections 10586 and 10587) that a person given notice of proposed action be allowed at least 15 days within which to object to the proposed action. Concerning the effect of a consent, see Section 10590. Concerning revocation of a consent, see Section 10584.

**§ 10583. Waiver of notice**

**Comment.** Subdivision (a) of Section 10583 restates subdivision (d) of former Section 591.3 without substantive change. The subdivision permits waiver of notice of proposed action only with respect to a particular proposed action. A person



entitled to notice of proposed action may execute a written waiver under subdivision (a) that would, for example, permit notice of a particular proposed real property transaction to be given to the person by telephone so that the proposed action can be expeditiously completed if the person does not object. In such a case, if the person is agreeable to the sale of the real property, the waiver could be drafted in terms that would permit the personal representative to call the person on the telephone to notify the person of an offer to buy the property and to permit the sale of the property at the price and on the terms offered if the person called is agreeable or at a price and on the terms of a counter-offer that is agreeable to the person called.

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

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

### § 10588. Restraining order

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

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

proposed action. If other persons have been given a notice of proposed action under subdivision (b) of Section 10580 but the person who objects to the proposed action has not been given the notice, the person entitled to notice under Section 10581 can object to the proposed action as provided in Section 10587 but may not obtain a restraining order under Section 10588.

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

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

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

Subdivision (a) of Section 10589 applies not only to a case where notice of proposed action is required but also to a case where notice of proposed action is not required to be given for a proposed action that would require court supervision if independent administration authority had not been granted. See Section 10580(b) (personal representative may give notice of proposed action with respect to a proposed action that could be taken without giving notice of proposed action). If the personal representative elects to give notice of proposed action in such a case, even though not required, subdivision (a) permits the personal representative to take the proposed action only under court supervision if the personal representative has notice of a written objection to the proposed action or of a restraining order issued with respect to the proposed action.

Subdivision (b) applies where the personal representative determines to give notice of proposed action in a case where the

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

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

What are the consequences if the personal representative goes ahead with the proposed transaction without court supervision after the personal representative has notice of a written objection to the transaction? As far as the third party to the transaction is concerned, the third party is protected if the third party is a bona fide purchaser or a third person dealing in good faith with the personal representative who changes his or her position in reliance upon the action, conveyance, or transfer, without actual notice of the failure of the personal representative to comply with the court supervision requirements. See Section 10591. As far as the personal representative is concerned, there are two sanctions that would apply where the personal representative goes ahead with a transaction knowing that there is a written objection to the transaction. First, the personal representative can be surcharged if the personal representative violates the standard of ordinary care and diligence established by Section 9600. In view of the objection, the burden is on the personal representative to establish that the action taken satisfied the requirements of Section 9600. Second, taking an action without obtaining court supervision where there has been an objection to the proposed action is grounds for removal of the personal representative. See Section 10592 and the Comment to that section. If the objection was made by serving a restraining order with respect to the proposed action, the personal representative also would be subject to sanctions for violation of the court order.

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

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

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

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

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

Subdivision (c) of Section 10590 supersedes the portion of the third sentence of subdivision (d) of former Section 591.5 which permitted the court to review the proposed action on its own motion. Subdivision (c) narrows the situations where the court can review the action of the personal representative on its own motion to cases where necessary to protect the interests of an

heir or devisee who lacked capacity to object to the proposed action or was a minor. As to the right of a person having capacity who failed to object to the action to obtain court review, see subdivision (b).

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

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

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

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

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

#### **§ 13116 (added). Chapter supplemental to other procedures**

**Comment.** Section 13116 is a new provision that makes clear that this chapter is supplemental and in addition to other procedures. Property may be delivered to a person under these other procedures without compliance with the requirements of this chapter. See, e.g., Sections 13600-13605 (right of surviving spouse to collect salary owing to deceased spouse without waiting for a 40-day period to elapse). See also Fin. Code § 6950 (payment of deposit account of nonresident decedent); Gov't Code § 27491.3 (property of deceased at scene of death; sealing of premises of deceased); Health & Safety Code § 18102 and Veh. Code §§ 5910 and 9916 (transfer upon affidavit of manufactured home, mobilehome, commercial coach, truck camper, floating home, vehicle, or vessel). Section 13106, which protects the transferor from liability, does not apply where the property is

released pursuant to other procedures. Other procedures may, however, protect the transferor from liability. See, e.g., Fin. Code § 6951 (protection of certain financial institutions); Veh. Code § 5910 (protection of Department of Motor Vehicles and its officers and employees).

**§ 13152 (amended). Contents of petition; inventory and appraisal**

**Comment.** Section 13152 is amended to recognize that the petitioner (rather than the court) selects the probate referee. This is because the inventory and appraisal must be attached to the petition when filed, but most—if not all—courts will not designate a probate referee until after a petition is filed. The new sentence added to Section 13152 is the same as the last sentence of Section 13103 (affidavit procedure for collection or transfer of personal property) and the last sentence of subdivision (c) of Section 13200 (affidavit procedure for real property of less than \$10,000 in value).

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

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

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

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

**Comment.** The second sentence of subdivision (b) of Section 13655 is amended to conform to the general notice period provided in Section 1220. Subdivision (b)(3) is amended to revise the cross-reference to the procedure for requesting special

notice. See Sections 1250-1252. The last paragraph relating to the version of this section that becomes operative is deleted since it is no longer needed.

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

### **§ 21501. Application of part**

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

### **§ 21502. Effect of instrument on application of part**

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

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

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

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

### **§ 21523. Maximum marital deduction for instrument dated before September 12, 1981**

**Comment.** Section 21523 restates former Sections 1030(c) and 1034(a) and (c) with the addition in subdivision (b) of a provision to make it possible to make a "QTIP" trust election in a pre-September 13, 1981, instrument under Internal Revenue Code Section 2056(b)(7) without thereby reducing the formula

marital deduction gift on a dollar-for-dollar basis. Subdivision (b) of former Section 1034 is omitted in conformity with the change in the generation-skipping transfer tax made by the Tax Reform Act of 1986, Pub. L. No. 99-514.

**§ 21525. Survival requirement for marital deduction gift**

**Comment.** Subdivision (a) of Section 21525 restates former Probate Code Section 1036 without substantive change. Subdivision (b) is new. See I.R.C. § 2056(b)(3); 26 C.F.R. § 20.2056(b)-3.



APPENDIX 5

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Marital Deduction Gifts

March 1987

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

#### NOTE

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

Cite this recommendation as *Recommendation Relating to Marital Deduction Gifts*, 19 Cal. L. Revision Comm'n Reports 615 (1988).

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VAUGHN R. WALKER

March 12, 1987

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

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new code to replace the existing Probate Code.

The Commission has decided not to delay submitting all recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the entire code.

The recommended legislation replaces the existing provisions governing marital deduction gifts (existing Prob. Code §§ 1030-1039). The Commission wishes to express special appreciation to Robert A. Mills of San Francisco and Professor Edward C. Halbach, Jr., of Boalt Hall, for their substantial help in the development of this recommendation. Kenneth M. Klug of Fresno also assisted the Commission and its staff on this project.

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

Respectfully submitted,  
Arthur K. Marshall  
Chairperson



# RECOMMENDATION

*relating to*

## MARITAL DEDUCTION GIFTS

Existing law governing construction of marital deduction gifts in wills<sup>1</sup> applies to marital deduction gifts in trusts as well.<sup>2</sup> To help make this relationship more clear, the proposed law relocates the marital deduction gift provisions to a new division of the code devoted to construction of wills, trusts, and other instruments, whether inter vivos or testamentary. The proposed law also reorganizes the marital deduction gift provisions to group them separately from other unrelated provisions<sup>3</sup> governing compliance with Internal Revenue Code requirements, and makes other technical and clarifying revisions.<sup>4</sup>

The existing marital deduction gift provisions apply only to the estate tax; the proposed law extends the provisions to the gift tax as well. This will help effectuate a disposition of property intended to satisfy the gift tax marital deduction.<sup>5</sup>

The proposed law also makes several revisions in the marital deduction gift provisions, relating to the interaction of the statute with a qualified terminable interest property (QTIP) trust election.<sup>6</sup>

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1. Prob. Code §§ 1030-1039.

2. Prob. Code § 15005 (law applicable to marital deduction gifts in trust) (1986 Cal. Stat. ch. 820, operative July 1, 1987), which restates former Prob. Code § 1138.14 without substantive change.

3. Provisions governing construction of charitable remainder unitrusts and annuity trusts are currently intermingled with marital deduction gift provisions. See Prob. Code § 1032. In addition to regrouping the charitable trust provisions, the proposed law adds comparable rules of construction for charitable lead trusts. See I.R.C. § 170(f)(2)(B).

4. The proposed legislation provides a rule of construction for formula clauses intended to eliminate the federal estate tax. The rule of construction makes clear that such a formula clause is applied to eliminate the tax or to reduce it to the maximum extent possible. This will cure the problem in application of a formula clause caused by enactment of a non-reducible estate tax. I.R.C. § 4981(d), enacted by the Tax Reform Act of 1986, § 1133.

For other changes, see the Comments to the proposed legislation, *infra*.

5. I.R.C. § 2523.

6. I.R.C. § 2056(b)(7).

(1) In the case of a pre-September 14, 1981, formula marital deduction gift, typical language would appear to require that the gift be reduced by any amount qualified by a QTIP trust election.<sup>7</sup> The proposed law remedies this by making clear that a QTIP trust election may be made without thereby reducing the amount passing under the formula marital deduction gift.

(2) The Internal Revenue Code requires that under a QTIP trust the surviving spouse must be entitled to all income from the property.<sup>8</sup> Where accrued income is unpaid at the time of death of the surviving spouse or other life beneficiary, however, existing law provides that the accrued but unpaid income presumptively becomes part of principal.<sup>9</sup> As a matter of caution, the proposed law requires that the unpaid income of a QTIP trust be distributed to the estate of the surviving spouse.<sup>10</sup>

(3) Exercise of the QTIP trust election may have the effect of increasing the estate tax burden on the spouses' estates or of shifting the burden among ultimate beneficiaries of the property. The fiduciary should be able to make the election in an appropriate case, however, free of concern about potential liability to beneficiaries who are adversely affected by the election. The proposed law adds a provision to make clear that a good faith election may be made without liability. This provision is analogous to Kansas law.<sup>11</sup>

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7. Prob. Code § 1034(c).

8. I.R.C. § 2056(b)(7)(B)(ii)(I).

9. Prob. Code §§ 1035(e) (QTIP trust excepted), 16304 (Revised Uniform Principal and Income Act).

10. It is conceivable that proposed regulations may be adopted that enable the unpaid income to pass with principal. A change in the law is recommended nonetheless, since such regulations may never become final or may be found to be inconsistent with the underlying law.

11. 79 Kan. Stat. Ann. § 1537d (1984).

# **OUTLINE OF PROPOSED LEGISLATION**

## **DIVISION 11. CONSTRUCTION OF WILLS, TRUSTS, AND OTHER INSTRUMENTS**

### **PART 1. GENERAL PROVISIONS**

#### **CHAPTER 1. SCOPE AND DEFINITIONS**

- § 21100. Definitions
- § 21101. Division applicable to wills, trusts, and other instruments

#### **CHAPTER 2. MISCELLANEOUS PROVISIONS**

- § 21120. Satisfaction of a pecuniary gift

### **PART 5. COMPLIANCE WITH INTERNAL REVENUE CODE**

#### **CHAPTER 1. GENERAL PROVISIONS**

- § 21500. "Internal Revenue Code" defined
- § 21501. Application of part
- § 21502. Application of formula clause to federal estate tax

#### **CHAPTER 2. MARITAL DEDUCTION GIFTS**

- § 21520. Definitions
- § 21521. Chapter inapplicable to estate trust
- § 21522. Marital deduction gifts
- § 21523. Maximum marital deduction for instrument dated before September 12, 1981
- § 21524. Marital deduction gift in trust
- § 21525. Survival requirement for marital deduction gift
- § 21526. QTIP election

#### **CHAPTER 3. CHARITABLE GIFTS**

- § 21540. Charitable remainder unitrusts and annuity trusts
- § 21541. Charitable lead trusts

### **CONFORMING CHANGES**

### **COMMENTS TO REPEALED SECTIONS**





# DIVISION 11. CONSTRUCTION OF WILLS, TRUSTS, AND OTHER INSTRUMENTS

## PART 1. GENERAL PROVISIONS

### CHAPTER 1. SCOPE AND DEFINITIONS

#### § 21100. 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.

**Comment.** Subdivision (a) of Section 21100 restates former Section 1030(f) without substantive change. Subdivisions (b) and (c) are new. Unless the provision or context otherwise requires, this division applies to both inter vivos and testamentary instruments. See Section 21101 (division applicable to wills, trusts, and other instruments).

#### CROSS-REFERENCES

##### Definitions

Beneficiary § 24

Person § 56

Personal representative § 58

Property § 62

Trust § 82

Trustee § 84

Will § 88

#### § 21101. Division applicable to wills, trusts, and other instruments

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

**Comment.** Section 21101 is new. This division does not apply to an instrument if its terms expressly or by necessary implication make this division inapplicable. *Cf.* former Section 15005(b).

## CROSS-REFERENCES

## Definitions

Instrument § 21100

Trust § 82

Will § 88

**CHAPTER 2. MISCELLANEOUS PROVISIONS****§ 21120. Satisfaction of a pecuniary gift**

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.

**Comment.** Subdivision (a) of Section 21120 restates former Section 1033(a) without substantive change. Subdivision (b) restates former Section 1030(a) without substantive change.

## CROSS-REFERENCES

## Definitions

Fiduciary § 21100

Instrument § 21100

Property § 62

## PART 5. COMPLIANCE WITH INTERNAL REVENUE CODE

### CHAPTER 1. GENERAL PROVISIONS

#### § 21500. “Internal Revenue Code” defined

21500. As used in this part, “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended from time to time. A reference to a provision of the Internal Revenue Code includes any subsequent provision of law enacted in its place.

**Comment.** Section 21500 restates former Section 1030(g) without substantive change. See also Section 7 (amendments and additions).

#### § 21501. Application of part

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

(b) By an appropriate statement made in an instrument, the transferor may incorporate by reference any or all of the provisions of this part. The effect of incorporating a provision of this part in an instrument is to make the incorporated provision a part of the instrument as though the language of the incorporated provision were set forth verbatim in the instrument. Unless an instrument incorporating a provision of this part provides otherwise, the instrument automatically incorporates the provision’s amendments.

**Comment.** Section 21501 restates former Section 1031 without substantive change. This part applies to trusts as well as wills. Section 21101 (division applicable to wills, trusts, and other instruments). *Cf.* former Section 15005 (law applicable to marital deduction gifts in trust).

#### CROSS-REFERENCES

##### Definitions

Instrument § 21100

Transferor § 21100

### § 21502. Application of formula clause to federal estate tax

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.

**Comment.** Section 21502 establishes rules of construction that would apply formula clauses to the maximum extent possible, consistent with their intent. One effect of these rules is that a formula clause applies to the tax imposed by Chapter 11 (commencing with Section 2001) of Subtitle B of the Internal Revenue Code and not to the tax imposed by Section 4981 (d) of the Internal Revenue Code, which the formula clause cannot affect.

#### CROSS-REFERENCES

Definitions

Instrument § 21100

## CHAPTER 2. MARITAL DEDUCTION GIFTS

### § 21520. Definitions

21520. As used in this chapter:

(a) “Marital deduction” means the federal estate tax deduction allowed for transfers under Section 2056 of the Internal Revenue Code or the federal gift tax deduction allowed for transfers under Section 2523 of the Internal Revenue Code.

(b) “Marital deduction gift” means a transfer of property that is intended to qualify for the marital deduction.

**Comment.** Section 21520 restates subdivisions (b) and (d) of former Section 1030, and expands them to apply to the gift tax as well as the estate tax. Whether an instrument contains a marital deduction gift depends upon the intention of the transferor at the time the instrument is executed.

## CROSS-REFERENCES

## Definitions

Internal Revenue Code § 21500

Property § 62

**§ 21521. Chapter inapplicable to estate trust**

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

**Comment.** Section 21521 restates the fourth sentence of former Section 1032(a) without substantive change.

## CROSS-REFERENCES

## Definitions

Marital deduction § 21520

Trust § 82

**§ 21522. Marital deduction gifts**

21522. If an instrument contains a marital deduction gift:

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

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

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

**Comment.** Subdivisions (a) and (b) of Section 21522 restate the first three sentences of subdivision (a) of former Section 1032 without substantive change. See Sections 21500 (“Internal Revenue Code” defined) and 21520 (“marital deduction gift” defined). Subdivision (c) restates former Section 1033(b) without substantive change.

## CROSS-REFERENCES

## Definitions

Fiduciary § 21100

Instrument § 21100

Marital deduction § 21520

Marital deduction gift § 21520

Property § 62

**§ 21523. Maximum marital deduction for instrument dated before September 12, 1981**

21523. (a) The Economic Recovery Act of 1981 was enacted August 13, 1981. This section applies to an instrument executed before September 12, 1981 (before 30 days after enactment of the Economic Recovery Tax Act of 1981).

(b) If an instrument described in subdivision (a) indicates the transferor's intention to make a gift that will provide the maximum allowable marital deduction, the instrument passes to the recipient an amount equal to the maximum amount of the marital deduction that would have been allowed as of the date of the gift under federal law as it existed before enactment of the Economic Recovery Tax Act of 1981, with adjustments for the following, if applicable:

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

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

**Comment.** Section 21523 restates former Sections 1030(c) and 1034(a) and (c) with the addition in subdivision (b) of a provision to make it possible to make a "QTIP" trust election in a pre-September 13, 1981, instrument under Internal Revenue Code Section 2056(b) (7) without thereby reducing the formula marital deduction gift on a dollar-for-dollar basis. Subdivision (b) of former Section 1034 is omitted in conformity with the change in the generation-skipping transfer tax made by the Tax Reform Act of 1986, Pub. L. No. 99-514.

CROSS-REFERENCES

Definitions

Instrument § 21100

Internal Revenue Code § 21500

Marital deduction § 21520

Property § 62

Transferor § 21100

**§ 21524. Marital deduction gift in trust**

21524. If a marital deduction gift is made in trust, in addition to the other provisions of this chapter, each of the following provisions also applies to the marital deduction trust:

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

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

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

(d) Notwithstanding subdivision (d) of Section 16304, in the case of qualified terminable interest property under Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code, on termination of the interest of the transferor's spouse in the trust all of the remaining accrued or undistributed income shall pass to the estate of the transferor's spouse, unless the instrument provides a different disposition that qualifies for the marital deduction.

**Comment.** Section 21524 restates former Section 1035, combining the concepts of former subdivisions (b) and (c) and revising subdivision (d) to provide for qualification of a QTIP trust that is silent about the payment of income between the last distribution date of the trust and the date of the spouse's death and, beyond that, to provide for qualification of a QTIP trust that mandates payment of income to the remaindermen. It should be noted that the limitations provided in this section do not apply to an "estate trust." See Section 21521 (chapter inapplicable to estate trust).

## CROSS-REFERENCES

## Definitions

- Beneficiary § 24
- Fiduciary § 21100
- Instrument § 21100
- Internal Revenue Code § 21500
- Marital deduction gift § 21520
- Property § 62
- Transferor § 21100
- Trust § 82
- Trustee § 84

**§ 21525. Survival requirement for marital deduction gift**

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.

**Comment.** Subdivision (a) of Section 21525 restates former Probate Code Section 1036 without substantive change. Subdivision (b) is new. See I.R.C. § 2056(b)(3); 26 C.F.R. § 20.2056(b)-3.

## CROSS-REFERENCES

## Definitions

- Instrument § 21100
- Marital deduction gift § 21520
- Transferor § 21100

**§ 21526. QTIP election**

21526. A fiduciary is not liable for a good faith decision to make any election, or not to make any election, referred to in Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code.

**Comment.** Section 21526 supersedes the fifth sentence of former Section 1032(a). It is analogous to Section 1537d of 79 Kansas Statutes Annotated (1984). It provides protection for a partial, as well as a full, election.



## CROSS-REFERENCES

## Definitions

Fiduciary § 21100

Internal Revenue Code § 21500

**CHAPTER 3. CHARITABLE GIFTS****§ 21540. Charitable remainder unitrusts and annuity trusts**

21540. If an instrument indicates the transferor's intention to comply with the Internal Revenue Code requirements for a charitable remainder unitrust or a charitable remainder annuity trust as each is defined in Section 664 of the Internal Revenue Code, the provisions of the instrument, including any power, duty, or discretionary authority given to a fiduciary, shall be construed to comply with the charitable deduction provisions of Section 2055 or Section 2522 of the Internal Revenue Code and the charitable remainder trust provisions of Section 664 of the Internal Revenue Code in order to conform to that intent. In no event shall the fiduciary take an action or have a power that impairs the charitable deduction. The provisions of the instrument may be augmented in any manner consistent with Section 2055(e) or Section 2522(c) of the Internal Revenue Code on a petition provided for in Section 17200.

**Comment.** Section 21540 restates subdivision (b) of former Probate Code Section 1032 and applies it to living as well as testamentary trusts. Whether an instrument contains a gift under this section depends upon the intention of the transferor at the time the instrument is executed.

## CROSS-REFERENCES

## Definitions

Fiduciary § 21100

Instrument § 21100

Internal Revenue Code § 21500

Transferor § 21100

**§ 21541. Charitable lead trusts**

21541. If an instrument indicates the transferor's intention to comply with the requirements for a charitable lead trust as described in Section 170(f) (2) (B) and Section

2055(e)(2) or Section 2522(c)(2) of the Internal Revenue Code, the provisions of the instrument, including any power, duty, or discretionary authority given to a fiduciary, shall be construed to comply with the provisions of that section in order to conform to that intent. In no event shall the fiduciary take any action or have any power that impairs the charitable deduction. The provisions of the instrument may be augmented in any manner consistent with that intent upon a petition provided for Section 17200.

**Comment.** Section 21541 is new; it extends the general approach of Section 21540 (charitable remainder unitrusts and annuity trusts) to include charitable lead trusts.

#### CROSS-REFERENCES

##### Definitions

Fiduciary § 21100

Instrument § 21100

Internal Revenue Code § 21500

Transferor § 21100

## CONFORMING CHANGES

### **Probate Code § 15005 (repealed). Law applicable to marital deduction gifts in trust**

SEC. \_\_\_\_\_. Section 15005 of the Probate Code is repealed.

~~15005. (a) Except as provided in subdivision (b), Article 3 (commencing with Section 1030) of Chapter 16 of Division 3 applies to gifts, whether outright or in trust, made in a trust.~~

~~(b) This section does not apply to any trust if its terms expressly or by necessary implication make this section inapplicable to it.~~

~~(c) For purposes of this section, references in Article 3 (commencing with Section 1030) of Chapter 16 of Division 3 to a "testator" refer to the settlor and references to a "will" refer to a trust.~~

Comment. Section 15005 is omitted because it is no longer necessary. See Section 21101 (division applicable to wills, trusts, and other instruments).

### **Probate Code § 16304 (amended). When right to income arises; apportionment of income**

SEC. \_\_\_\_\_. Section 16304 of the Probate Code is amended to read:

16304. (a) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an item of property becomes subject to the trust. In the case of an item of property becoming subject to a trust by reason of a person's death, it becomes subject to the trust as of the date of the death of the person even though there is an intervening period of administration of the person's estate.

(b) Upon property becoming subject to a trust by reason of a person's death:

(1) Receipts due but not paid at the date of death of the person are principal.

(2) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the person shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal and the balance is income.

(c) In all other cases, any receipt from income-producing property is income even though the receipt was earned or accrued in whole or in part before the date when the property became subject to the trust.

(d) If an income beneficiary's right to income ceases by death or in any other manner, all payments actually paid to the income beneficiary or in the hands of the trustee for payment to the income beneficiary before such termination belong to the income beneficiary or to his or her personal representative. All income actually received by the trustee after such termination shall be paid to the person next entitled to income by the terms of the trust. This subdivision *is subject to subdivision (d) of Section 21524 and does not apply to income received by a trustee under subdivision (b) of Section 16305.*

(e) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

**Comment.** Subdivision (d) of Section 16304 is amended to recognize a QTIP election under Section 21524(d).

## COMMENTS TO REPEALED SECTIONS

### **Probate Code § 1030 (repealed)**

**Comment.** Subdivision (a) of former Section 1030 is restated in Section 21120(b) (satisfaction of a pecuniary gift) without substantive change. Subdivisions (b) and (d) are restated in Section 21520 (definitions) and expanded to apply to the gift tax as well as the estate tax. Subdivision (c) is restated by general language in Section 21523 (maximum marital deduction for instrument dated September 12, 1981, or earlier). Subdivision (e) is restated in Section 88 (“will” defined) without substantive change. Subdivision (f) is restated in Sections 21100 (definitions) and 10 (singular and plural) without substantive change. Subdivision (g) is restated in Section 21500 (“Internal Revenue Code” defined) without substantive change. Subdivision (h) is superseded by general language in the provisions to which it related.

### **Probate Code § 1031 (repealed)**

**Comment.** Former Section 1031 is restated in Section 21501 (application of part) without substantive change.

### **Probate Code § 1032 (repealed)**

**Comment.** The first three sentences of subdivision (a) of former Section 1032 are restated in Section 21522(a)-(b) (marital deduction gifts) without substantive change. The fourth sentence is restated in Section 21521 (chapter inapplicable to estate trust) without substantive change. The fifth sentence is superseded by Section 21526 (QTIP election).

Subdivision (b) is restated in Section 21540 (charitable remainder unitrusts and annuity trusts), which applies it to inter vivos as well as testamentary gifts.

### **Probate Code § 1033 (repealed)**

**Comment.** Subdivision (a) of former Section 1033 is restated in Section 21120(a) (satisfaction of a pecuniary gift) without substantive change. Subdivision (b) is restated in Section 21522(c) (marital deduction gifts) without substantive change.

**Probate Code § 1034 (repealed)**

**Comment.** Subdivisions (a) and (c) of former Section 1034 are restated in Section 21523 (maximum marital deduction for instrument dated September 12, 1981, or earlier), with the addition of a provision to make it possible to make a “QTIP” trust election in a pre-September 13, 1981, instrument under Internal Revenue Code Section 2056(b) (7) without thereby reducing the formula marital deduction bequest on a dollar-for-dollar basis. Subdivision (b) is omitted in conformity with the change in the generation-skipping transfer tax made by the Tax Reform Act of 1986, Pub. L. No. 99-514.

**Probate Code § 1035 (repealed)**

**Comment.** Former Section 1035 is restated in Section 21524 (marital deduction gift in trust), with provision for qualification of a QTIP trust that is silent about the payment of income between the last distribution date of the trust and the date of the spouse’s death and, beyond that, with provision for qualification of a QTIP trust that mandates payment of income to the remaindermen.

**Probate Code § 1036 (repealed)**

**Comment.** Former Section 1036 is restated in Section 21524 (survival requirement for marital deduction gift) without substantive change.

**Probate Code § 1037 (repealed)**

**Comment.** Former Section 1037 is not continued. It was a transitional provision that is no longer necessary.

**Probate Code § 1038 (repealed)**

**Comment.** Former Section 1038 is not continued. It duplicated Section 11 (severability clause).

**Probate Code § 1039 (repealed)**

**Comment.** Former Section 1039 is not continued. The provision did not serve a useful purpose.

APPENDIX 6

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION

*relating to*

Administration of Estates of Missing Persons

April 1987

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

#### NOTE

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

Cite this recommendation as *Recommendation Relating to Administration of Estates of Missing Persons*, 19 Cal. L. Revision Comm'n Reports 637 (1988).



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**CALIFORNIA LAW REVISION COMMISSION**

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FORREST A. PLANT

VAUGHN R. WALKER

April 10, 1987

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

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The ultimate goal is to submit a new Probate Code to the Legislature. The new code will replace the existing Probate Code.

Pending preparation of the entire new code, however, some revisions will be proposed in the existing Probate Code. This recommendation sets forth the Commission's proposed revisions relating to administration of estates of missing persons (Probate Code Sections 1350-1359).

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

Respectfully submitted,

Arthur K. Marshall  
*Chairperson*



# RECOMMENDATION

*relating to*

## ADMINISTRATION OF ESTATES OF MISSING PERSONS

Existing law provides that a person who has been missing for five years is presumed dead,<sup>1</sup> and provides a procedure for administration of the missing person's estate.<sup>2</sup> The proposed law continues this procedure with the changes noted below.

The proposed law eliminates the one-year delay of distribution of an estate applicable under existing law<sup>3</sup> and relies on the general provisions governing distribution of decedents' estates. This change is made in the interest of uniformity. In view of the length of time that must pass before the missing person's property can be distributed, the additional delay provided by existing law is not a necessary protection. In addition, a missing person who reappears may recover his or her property or its value from distributees to the extent it would be equitable at any time until five years after the distribution.

Existing law permits the spouse, a member of the missing person's family, an interested person, or a friend of the missing person to petition for administration.<sup>4</sup> The proposed law permits any person who may be appointed as a personal representative to petition for administration of

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1. Prob. Code § 1351.

2. Prob. Code §§ 1350-1359. These sections were enacted on recommendation of the Law Revision Commission. See *Recommendation Relating to Missing Persons*, 16 Cal. L. Revision Comm'n Reports 105 (1982).

3. Prob. Code § 1352.

4. Prob. Code § 1354.

the missing person's estate, except for a person who would qualify for appointment as a personal representative only as a "person legally competent."<sup>5</sup>

Existing law delays the hearing on the petition for administration of a missing person's estate for three months and requires publication of notice of the hearing 90 days beforehand.<sup>6</sup> These delays are not continued in the proposed law. Hearing dates and notices are governed by general provisions, subject to the court's authority to order a further search for the missing person.

Under existing law, the petitioner is liable for the cost of a search for the missing person where there is no administration; the estate is liable if there is administration.<sup>7</sup> The proposed law makes the estate presumptively liable, but permits the court in its discretion to order the petitioner to pay the costs of a search if there is no administration. This rule recognizes that the person whose status as a missing person has necessitated the search should be liable for the cost of the search in the normal case.

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5. See Prob. Code §§ 400-410 (appointment of executor or administrator with the will annexed), 422 (persons entitled to letters of administration). Under this scheme, the following persons could petition for administration of a missing person's estate: a person named as executor in the will, a surviving spouse, children, grandchildren, parents, brothers and sisters, next of kin entitled to share in the estate, relatives of predeceased spouse entitled to succeed to an interest in the estate, a conservator or guardian of the estate, public administrator, and creditors. Regardless of who petitions for administration of the missing person's estate, the order of priority for appointment as personal representative is unaffected.

6. See Prob. Code § 1355.

7. Prob. Code § 1356(c).

# **OUTLINE OF PROPOSED LEGISLATION**

## **PART 12. ADMINISTRATION OF ESTATES OF MISSING PERSONS PRESUMED DEAD**

- § 12400. "Missing person" defined
- § 12401. Presumption of death for purposes of administration
- § 12402. Manner of administration of missing person's estate
- § 12403. Jurisdiction of court
- § 12404. Petition for administration
- § 12405. Notice of hearing
- § 12406. Determination whether person is person presumed to be dead; search for missing person
- § 12407. Appointment of personal representative and determination of date of disappearance
- § 12408. Recovery of property by missing person upon reappearance
- § 12409. Application of part



## **PART 12. ADMINISTRATION OF ESTATES OF MISSING PERSONS PRESUMED DEAD**

### **§ 12400. “Missing person” defined**

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.

**Comment.** Section 12400 restates former Section 1350 without substantive change.

### **§ 12401. Presumption of death for purposes of administration**

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.

**Comment.** Section 12401 restates former Section 1351 without substantive change. The language of the standard as stated in this section has been revised for consistency with Section 12404. Section 12401 is the same in substance as Uniform Probate Code Section 1-107(3) (1977). See also Evid. Code §§ 667 (general presumption of death), 1282 (finding of presumed death by federal employee).

### **§ 12402. Manner of administration of missing person’s estate**

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.

**Comment.** Section 12402 restates former Section 1352 without substantive change, except that the former provision delaying distribution of property until one year after appointment and qualification of the personal representative is

not continued. The time limitations on preliminary and final distribution apply to distribution under this part. The former reference to distribution of the estate is omitted; administration of the estate includes distribution. See also Section 12408 (recovery of property by missing person upon reappearance).

CROSS-REFERENCES

Definitions

Missing person § 124(a)

**§ 12403. Jurisdiction of court**

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.

**Comment.** Section 12403 restates former Section 1353 without substantive change.

CROSS-REFERENCES

Definitions

Missing person § 12400

Real property § 68

**§ 12404. Petition for administration**

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.

**Comment.** Section 12404 restates former 1354(a)-(c) without substantive change, except as noted below.

The reference to probate of the will in former Section 1354(a) is eliminated as surplus.

The list of persons who may petition under former Section 1354(b) has been revised to incorporate the list of persons who may be appointed as personal representative. See Sections 400-410 (appointment of executor or administrator with the will annexed), 422 (persons entitled to letters of administration). This revision makes clear that a petition may be filed by persons such as the public administrator or a creditor. See Section 422(a)(10) (public administrator) and (a)(11) (creditors). However, as subdivision (b) makes clear, a person who qualifies for appointment as a personal representative only as a "person legally competent" under Section 422(a)(12) may not petition under this section; only persons who fall into some other category may petition. Subdivision (b) does not affect the order of priority of appointment of an administrator; this is controlled by provisions governing administration generally.

The requirement that the petitioner give the last known address of the missing person in subdivision (c)(1) is new. Subdivision (c)(2) is revised for consistency with subdivision (c)(3). Subdivision (c)(3) is revised to eliminate the need to identify the persons who are most likely to know the whereabouts of the missing person. The reference to seeing the missing person is new, but makes no substantive change. Pursuant to subdivision (c) and Section 12402, the general requirements for a petition for administration of the estate apply to proceedings under this part.

#### CROSS-REFERENCES

##### Definitions

Missing person § 12400

Verification required § 1284

**§ 12405. Notice of hearing**

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.

**Comment.** Section 12405 replaces former Section 1355. Section 12405 no longer delays the hearing for three months nor requires publication 90 days before the hearing.

## CROSS-REFERENCES

Certified mail equivalent of registered mail § 5

Clerk to set matter for hearing § 1285

Definition

Missing person § 12400

**§ 12406. Determination whether person is person presumed to be dead; search for missing person**

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 seen or 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.

**Comment.** Subdivisions (a) and (b) of Section 12406 restate former Section 1356 (a) and (b) without substantive change. The word “reasonably” which preceded “diligent search” under former Section 1356(b) has been omitted, but this is not a substantive change. The court has the authority to order a search that is appropriate under the circumstances of the case. The reference in subdivision (b) (1) to newspapers is new; this is not a substantive change.

Subdivision (c) replaces former Section 1356(c) which required that costs be paid by the petitioner, if there was no administration, or by the estate, if there was administration. The new rule makes the estate presumptively liable for costs, but gives the court discretion to order the petitioner to pay costs if there is no administration.

#### CROSS-REFERENCES

##### Definition

Missing person § 12400

### § 12407. Appointment of personal representative and determination of date of disappearance

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.

**Comment.** Section 12407 restates former 1357 without substantive change. See also Sections 12401 (death presumed at

end of five-year period unless sufficient evidence of earlier death), 12402 (manner of administration and distribution).

## CROSS-REFERENCES

## Definitions

Missing person § 12400

Personal representative § 58

**§ 12408. Recovery of property by missing person upon reappearance**

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.

**Comment.** Section 12408 restates former 1358 without substantive change, except that the five-year period for recovery of property under subdivision (a)(2) runs from the date of

distribution rather than the date the petition was filed. In addition, the term “beneficiaries” is substituted for “heirs and devisees” in subdivision (c). This is a nonsubstantive change.

Subdivisions (a) and (b) are drawn from the last paragraph of Section 3-412 of the Uniform Probate Code (1977), which was revised to add a provision barring an action under paragraph (a) (2) five years after distribution under Section 12404. This additional provision continues the general effect of the parts of former Sections 287-292 (the statute in effect before former Sections 1350-1359) that gave a distribution conclusive effect after the missing person had been missing 10 years. Subdivision (b) has been reworded for clarity.

Subdivision (c) is consistent with Section 1021 (effect of an order for final distribution in probate proceedings generally). Subdivision (c) permits a distributee to convey good title to property of the missing person before the time an action by the missing person against the distributee would be barred under subdivision (a) (2). This is because subdivision (c) provides a rule that the order for final distribution, when it becomes final, is conclusive as to the rights of the missing person. The exception to this rule in subdivision (a) (2) is limited to property in the hands of the distributee or its proceeds in the hands of the distributee; subdivision (a) (2) does not permit an action against the person to whom the property has been transferred by the distributee. Where a distributee has encumbered property of the missing person, the lender likewise would be protected under subdivision (c); but, if the action of the missing person is not barred under subdivision (a) (2), the reappearing missing person might recover from the distributee the property, subject to the encumbrance.

Subdivision (d) restates former Section 1358(d) without substantive change. Subdivision (d) is revised to make clear that the restrictions on the time of filing a petition under Section 1080 do not apply under this part.

#### CROSS-REFERENCES

##### Definitions

Beneficiary § 24

Missing person § 12400

Personal representative § 58

Property § 62

**§ 12409. Application of part**

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.

**Comment.** Subdivision (a) of Section 12409 restates former Section 1359 without substantive change, but also makes clear that this part applies to petitions filed pursuant to former Sections 1350-1359.

Subdivision (b) has the same effect as subdivision (b) of former Section 1359.

The reference to December 31, 1983, continues the operative date provision applicable to former Sections 1350-1359 because this part restates the substance of the former provisions and makes no substantive change that would require a separate operative date.

## CROSS-REFERENCES

Definition

Missing person § 12400

## COMMENTS TO REPEALED SECTIONS

### CHAPTER 24. ADMINISTRATION OF MISSING PERSONS PRESUMED DEAD

#### **Probate Code § 1350 (repealed). “Missing person” defined**

**Comment.** Former Section 1350 is restated in Section 12400 (“missing person” defined) without substantive change.

#### **Probate Code § 1351 (repealed). Presumption of death for purposes of administration**

**Comment.** Former Section 1351 is restated in Section 12401 (presumption of death for purposes of administration) without substantive change.

#### **Probate Code § 1352 (repealed). Manner of administration and distribution**

**Comment.** Former Section 1352 is restated without substantive change in Section 12402 (manner of administration and distribution of missing person’s estate), except that the one-year delay of distribution is not continued. Under Section 12402, the general limitations on distribution of estates apply. The reference to distribution of the estate is also omitted; distribution is included in the process of administration under Section 12402.

#### **Probate Code § 1353 (repealed). Jurisdiction of court**

**Comment.** Former Section 1353 is restated in Section 12403 (jurisdiction of court) without substantive change.

#### **Probate Code § 1354 (repealed). Petition for administration or probate**

**Comment.** Subdivisions (a)-(c) of former Section 1354 are restated in Section 12404 (petition for administration) without substantive change, except as noted in the Comment to Section 12404. Subdivision (d) is restated and generalized in Section 1284 (verification required).

**Probate Code § 1355 (repealed). Time for hearing; notice of hearing**

**Comment.** Former Section 1355 is replaced by Section 12405 (notice of hearing). Section 12405 no longer delays the hearing for three months nor requires publication 90 days before hearing. See the Comment to Section 12405.

**Probate Code § 1356 (repealed). Determination whether person is person presumed to be dead; search for missing person**

**Comment.** Subdivisions (a) and (b) of former Section 1356 are restated in Section 12406(a) and (b) (determination whether person is person presumed to be dead and search for missing person) without substantive change. Subdivision (c) is replaced by Section 12406(c).

**Probate Code § 1357 (repealed). Appointment of executor or administrator and determination of date of disappearance**

**Comment.** Former Section 1357 is restated in Section 12407 (appointment of personal representative and determination of date of disappearance) without substantive change.

**Probate Code § 1358 (repealed). Recovery of property by missing person upon reappearance**

**Comment.** Former Section 1358 is restated in Section 12408 (recovery of property by missing person upon reappearance) without substantive change, except that the five-year period runs from the time of distribution rather than the time of the petition and the term “beneficiaries” is substituted for “heirs and devisees.”

**Probate Code § 1359 (repealed). Application of chapter**

**Comment.** Former Section 1359 is restated in Section 12409 (application of part) without substantive change.



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- Tentative Recommendation Proposing the Enforcement of Judgments Law

**VOLUME 16 (1982)**

- Annual Report (December 1981) includes the following recommendation:  
 Federal Military and Other Federal Pensions as Community Property
- Annual Report (December 1982) includes the following recommendations:  
 Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage  
 Creditors' Remedies: Amount Secured by Attachment; Execution of Writs by Registered Process Servers; Technical Amendments  
 Dismissal for Lack of Prosecution  
 Conforming Changes to the Bond and Undertaking Law  
 Notice of Rejection of Late Claim Against Public Entity
- Recommendation Relating to:  
 Holographic and Nuncupative Wills  
 Marketable Title of Real Property  
 Statutory Bonds and Undertakings  
 Attachment  
 Probate Law and Procedure: Missing Persons; Nonprobate Transfers; Emancipated Minors; Notice in Limited Conservatorship Proceedings; Disclaimer of Testamentary and Other Interests
- 1982 Creditors' Remedies Legislation [out of print]  
 Tentative Recommendation Relating to Wills and Intestate Succession

**VOLUME 17 (1984)**

- Annual Report (December 1983) includes the following recommendations:  
 Effect of Death of Support Obligor  
 Dismissal for Lack of Prosecution  
 Severance of Joint Tenancy  
 Effect of Quiet Title and Partition Judgments  
 Dormant Mineral Rights  
 Creditors' Remedies: Levy on Joint Deposit Accounts; Issuance of Earnings Withholding Orders by Registered Process Servers; Protection of Declared Homestead After Owner's Death; Jurisdiction of Condominium Assessment Lien Enforcement; Technical Amendments  
 Rights Among Cotenants in Possession and Out of Possession of Real Property
- Recommendation Relating to:  
 Liability of Marital Property for Debts  
 Durable Power of Attorney for Health Care Decisions  
 Statutory Forms For Durable Powers of Attorney  
 Family Law: Marital Property Presumptions and Transmutations; Disposition of Community Property; Reimbursement of Educational Expenses; Special Appearance in Family Law Proceedings; Liability of Stepparent for Child Support; Awarding Temporary Use of Family Home  
 Probate Law: Independent Administration of Decedent's Estates; Distribution of Estates Without Administration; Execution of Witnessed Wills; Simultaneous Deaths; Notice of Will; Garnishment of Amounts Payable to Trust Beneficiary; Bonds for Personal Representatives; Revision of Wills and Intestate Succession Law; Recording Affidavit of Death  
 Statutes of Limitation for Felonies  
 Uniform Transfers to Minors Act

**VOLUME 18 (1986)**

- Annual Report (March 1985) includes the following recommendations:  
 Provision for Support if Support Obligor Dies  
 Transfer Without Probate of Certain Property Registered by the State  
 Dividing Jointly Owned Property Upon Marriage Dissolution
- Annual Report (December 1985) includes the following recommendations:  
 Protection of Mediation Communications  
 Recording Severance of Joint Tenancy  
 Abandoned Easements  
 Distribution Under a Will or Trust  
 Effect of Adoption or Out of Wedlock Birth on Rights at Death  
 Durable Powers of Attorney  
 Litigation Expenses in Family Law Proceedings  
 Civil Code Sections 4800.1 and 4800.2
- Annual Report (December 1986) includes the following recommendations:  
 Notice in Guardianship and Conservatorship Proceedings  
 Preliminary Provisions and Definitions of the Probate Code  
 Technical Revisions in the Trust Law
- Recommendation Proposing the Trust Law
- Recommendations Relating to Probate Law: Disposition of Estates Without Administration; Small Estate Set-Aside; Proration of Estate Taxes
- Selected 1986 Trust and Probate Legislation With Official Comments [out of print]

**VOLUME 19 (1988)**

[Volume expected to be available in September 1989]

- Recommendations Relating to Probate Law: Supervised Administration of Decedent's Estate; Independent Administration of Estates Act; Creditor Claims Against Decedent's Estate; Notice in Probate Proceedings
- Annual Report (December 1987) includes the following recommendations:  
 Marital Deduction Gifts  
 Estates of Missing Persons

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