

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**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**

**January 1987**

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

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Cite this pamphlet as *Recommendations Relating to Probate Law*, 19 Cal. L. Revision Comm'n Reports 1 (1988).

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STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Supervised Administration of  
Decedent's Estate

October 1986

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 Supervised Administration of Decedent's Estate*, 19 Cal. L. Revision Comm'n Reports 5 (1988).

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**CALIFORNIA LAW REVISION COMMISSION**

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October 17, 1986

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 overhauls the structure of the estate management provisions of existing law, collects them all in one part of the Probate Code, adopts a uniform set of procedures for petitions, notices, and orders, simplifies and improves the drafting, and eliminates obsolete provisions.

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

Respectfully submitted,

Arthur K. Marshall  
*Chairperson*



# RECOMMENDATION

*relating to*

## SUPERVISED ADMINISTRATION OF DECEDENT'S ESTATE

### Introduction

The proposed law overhauls the structure of the estate management provisions of existing law,<sup>1</sup> collects them all in one part of the Probate Code, adopts a uniform set of procedures for petitions, notices, and orders, and simplifies and improves the drafting.

The operative date of the proposed law is deferred for six months to July 1, 1988, to give the bench, bar, and public time to become familiar with its provisions.

### Standard of Care of Personal Representative

Under existing case law, the personal representative must use ordinary care and diligence in managing and controlling the estate.<sup>2</sup> The proposed law codifies this rule, and makes clear that what constitutes ordinary care and diligence is determined by all the circumstances of the particular estate.<sup>3</sup>

The proposed law spells out the powers and duties of the personal representative in managing the estate, and makes clear that the personal representative has a duty:

(1) To exercise a power to the extent that ordinary care and diligence requires that the power be exercised.

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1. The existing estate management provisions are found mainly in Chapters 8 (powers and duties), 13 (sales), and 14 (notes, mortgages, leases, conveyances, exchanges) of Division 3 of the Probate Code. Other estate management provisions are scattered through the Probate Code. See, e.g., Prob. Code §§ 718, 718.5, 718.6, 718.7, 920, 920.3, 920.5.

2. See, e.g., *Estate of Beach*, 15 Cal. 3d 623, 631, 542 P.2d 994, 125 Cal. Rptr. 570 (1975); *Lobro v. Watson*, 42 Cal. App. 3d 180, 189, 116 Cal. Rptr. 533 (1974). This is the same as the rule applicable to guardians and conservators of the estate. See Prob Code § 2401. The standard of care for trustees is slightly different because of the existence of a trust instrument. See Prob. Code § 16040.

3. In determining what constitutes ordinary care and diligence, a professional personal representative is held to a higher standard of care based on its presumed expertise than is a lay personal representative. *Estate of Beach*, *supra* note 2, at 635.

(2) Not to exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

### Measure of Liability for Breach of Fiduciary Duty

The proposed law provides rules for determining the personal representative's liability for breach of fiduciary duty,<sup>4</sup> drawn from the Restatement of Trusts<sup>5</sup> and from California's new trust law.<sup>6</sup> The new rules are consistent with prior case law applicable to personal representatives.<sup>7</sup>

Under the proposed law, the personal representative is chargeable with any of the following as appropriate under the circumstances:

(1) Any loss or depreciation in value of the estate resulting from the breach, with interest.

(2) Any profit made by the personal representative through the breach of duty, with interest.

(3) Any profit that would have accrued to the estate if the loss of profit is the result of the breach of duty.

The court may excuse the personal representative from liability in whole or part if the personal representative has acted reasonably and in good faith and it would be equitable to do so. If interest is awarded, the interest to be awarded is that actually received by the personal representative, or the interest that accrues at the legal rate on judgments, whichever is greater.

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4. Existing law provides a cryptic and unsatisfactory statement of the rules for the personal representative's liability. See, e.g., Prob. Code § 920.

5. See Restatement (Second) of Trusts § 205 (1957).

6. Prob. Code §§ 16440, 16441.

7. See *In re Estate of Elizalde*, 182 Cal. 427, 435, 188 P. 560 (1920) (liability for misappropriated funds plus interest, barring receipt of larger profit); *In re Estate of Piercy*, 168 Cal. 755, 757-58, 145 P. 91 (1914); *In re Estate of Hilliard*, 83 Cal. 423, 427, 23 P. 393 (1890); *In re Estate of Holbert*, 39 Cal. 597, 601 (1870) (liability for interest or profit, whichever greater); *Estate of Gerber*, 73 Cal. App. 3d 96, 114, 140 Cal. Rptr. 577 (1977) (liability for interest due to delay in payment of estate taxes); *Estate of Guiol*, 28 Cal. App. 3d 818, 105 Cal. Rptr. 35 (1972) (breach of duty by turning estate assets over to attorney and failing to protect assets); *Estate of McSweeney*, 123 Cal. App. 2d 787, 792-93, 268 P.2d 107 (1954) (liability for using estate funds for individual needs); *Estate of Pardue*, 57 Cal. App. 2d 918, 920-21, 135 P.2d 394 (1943) (liability for rental value of property). See also *In re Estate of Guglielmi*, 138 Cal. App. 80, 90, 31 P.2d 1078 (1934).

## Joint Personal Representatives

### Absence from California

Under existing law, if two or more joint personal representatives have been appointed, majority concurrence is ordinarily required for them to act.<sup>8</sup> But if one or more are absent from the state, the personal representatives remaining in California may act as though the absent or disqualified personal representatives had not been appointed.<sup>9</sup>

However, if there is only one personal representative, absence from the state does not take away the power to act.<sup>10</sup> The rule should be the same for joint personal representatives: If one is out of state, the others should consult with the absent personal representative by telephone rather than taking possibly controversial action during the absence. For this reason, the proposed law eliminates the authority for the remaining personal representatives to act as though the absent one had not been appointed. They may act, but only with majority concurrence, just as though the absent personal representative were still in California.

### Liability of One for Act or Omission of Another

Existing law provides that a personal representative is not liable for the act or negligence of a joint personal representative, except for collusion or gross negligence.<sup>11</sup> The proposed law provides a more detailed statement of liability. Under the proposed law, one personal representative is liable for breach of fiduciary duty by a joint personal representative where the former (1) participates in, approves, negligently enables, knowingly acquiesces in, or conceals the breach, (2) improperly delegates administration of the estate to the joint personal

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8. Prob. Code § 570. If two personal representatives have been appointed, the majority requirement means they both must concur to take action. *Bullis v. Security Pac. Nat'l Bank*, 21 Cal. 3d 801, 810, 582 P.2d 109, 148 Cal. Rptr. 22 (1978).

9. Prob. Code § 570.

10. See Prob. Code §§ 405.1-405.6.

11. Prob. Code § 920.

representative, or (3) knows or has information from which the personal representative reasonably should have known of the breach and fails to take reasonable steps to compel the joint personal representative to redress it.<sup>12</sup>

### Extent of Court Supervision

Although under existing law the personal representative may perform many acts without prior court approval, the extent of this authority is not entirely clear.<sup>13</sup> The proposed law makes clear that, unless court approval is specifically required by statute, the personal representative may act without court approval.<sup>14</sup>

### Order Compelling Personal Representative to Act or Not to Act

Under the proposed law as under existing law, only the personal representative may petition for instructions concerning the estate.<sup>15</sup> The proposed law supplements this provision by adding a new provision permitting any interested person to petition for an order directing the personal representative to take specified action, or to refrain from taking specified action, concerning the estate. The petitioner must show that if the petition is not granted, the estate will suffer great or irreparable injury.<sup>16</sup> The order may include appropriate terms and conditions.

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12. This provision is drawn from trust law (see Prob. Code § 16402) and is consistent with case law. See *In re Estate of Osborn*, 87 Cal. 1, 25 P. 157 (1890). The proposed law conforms the provision relating to joint guardians or conservators (Prob. Code § 2105) to the revised provision relating to joint personal representatives.

13. See *In re Estate of Fulmer*, 203 Cal. 693, 697-98, 265 P. 920 (1928); *Estate of Palm*, 68 Cal. App. 2d 204, 212, 156 P.2d 62 (1945); Davis, *Instructions*, in 1 California Decedent Estate Administration §§ 19.1, 19.4, at 750, 752 (Cal. Cont. Ed. Bar 1971).

14. This is the same as the rule applicable to guardians and conservators of the estate. See Prob. Code § 2450. The proposed law also includes a new provision, drawn from the guardianship-conservatorship law (Section 2103), relating to the effect of court authorization or approval. This provision protects the personal representative and the bond sureties from claims of estate beneficiaries and others based on an act or omission directly authorized, approved, or confirmed in a court order or judgment that has become final.

15. Prob. Code § 588.

16. The showing of great or irreparable injury required for an order is analogous to the great or irreparable injury which must be shown for injunctive relief. Cf. Code Civ. Proc. § 526(2); 6 B. Witkin, *California Procedure Provisional Remedies* § 254, at 221 (3d ed. 1985).

### Compromise of Claims and Actions

Although the existing statute appears to require court authorization before the personal representative may compromise and settle claims and actions against the estate,<sup>17</sup> the cases hold that the personal representative may make settlements without court authorization, but that in so doing the personal representative acts at his or her peril.<sup>18</sup> The proposed law makes clear that the personal representative may compromise and settle claims and actions without court approval,<sup>19</sup> except for the following matters for which prior court authorization is required:

(1) Any settlement before the time for filing creditors' claims has expired.<sup>20</sup>

(2) A settlement affecting real property.<sup>21</sup>

(3) A settlement involving the transfer or encumbrance of estate property, or creation of an unsecured liability of the estate, in excess of \$25,000.<sup>22</sup>

(4) Settlement of a claim against the personal representative.<sup>23</sup>

(5) Modification of a debt owed by the personal representative to the estate.<sup>24</sup>

(6) Settlement of a claim for wrongful death or personal injury of the decedent.<sup>25</sup>

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17. Prob. Code §§ 578, 578a, 718.5.

18. See *Estate of Lucas*, 23 Cal. 2d 454, 463-65, 144 P.2d 340 (1943); *Moulton v. Holmes*, 57 Cal. 337, 343-44, (1881); *Estate of Coffey*, 161 Cal. App. 2d 259, 264, 326 P.2d 511 (1958); *Taylor v. Sanson*, 24 Cal. App. 515, 517-18, 141 P. 1060 (1914).

19. This provision is drawn from guardianship-conservatorship law. See Prob. Code § 2500.

20. This provision continues a portion of Probate Code Section 718.5.

21. This provision is drawn from guardianship-conservatorship law. See Prob. Code § 2501.

22. This provision is drawn from guardianship-conservatorship law. See Prob. Code § 2502.

23. This provision is drawn from guardianship-conservatorship law. See Prob. Code § 2503(a).

24. This provision is drawn from guardianship-conservatorship law. See Prob. Code § 2503(b).

25. This provision continues a portion of Probate Code Section 578a.

## Action to Recover Property Transferred in Fraud of Creditors

Under existing law, a creditor of the decedent may require the personal representative to bring suit to recover property conveyed by the decedent in fraud of creditors, and the court may direct the creditor to share in the costs of suit.<sup>26</sup> The proposed law expands this authority to permit the court to require the creditor to share in the personal representative's attorney fees as well. Since suit is brought for the benefit of creditors, creditors should share in attorney fees as directed by the court.

## Summary Determination of Disputes

Under existing law, if there is a disputed claim against the estate,<sup>27</sup> the personal representative and the claimant may agree to submit the dispute to a commissioner, referee, temporary judge, or other disinterested person.<sup>28</sup> The proposed law expands this authority to apply to any dispute relating to the estate.<sup>29</sup> The proposed law also authorizes the personal representative to agree to submit a dispute relating to the estate to arbitration.<sup>30</sup> This expanded authority should help to resolve disputes expeditiously.

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26. Prob. Code §§ 579-580. There must be a deficiency of assets in the estate before this procedure may be used. Prob. Code § 579; Broll, *Property Not Subject to Probate Administration*, in 1 California Decedent Estate Administration § 4.21, at 149 (Cal. Cont. Ed. Bar 1971).

27. A claim may be submitted for summary determination if the personal representative doubts its correctness, if it has been rejected, or if it has not been acted upon and may be deemed rejected by the claimant. Prob. Code § 718.

28. Prob. Code § 718.

29. The proposed law makes a conforming revision to the Guardianship-Conservatorship Law (Prob. Code § 2405).

30. The new provision is drawn from guardianship-conservatorship law. See Prob. Code § 2406. Under the proposed law, arbitration is conducted under Code of Civil Procedure Sections 1280-1294.2. This is "conventional" or "ordinary" arbitration. See 6 B. Witkin, *California Procedure Proceedings Without Trial* § 320, at 612-13 (3d ed. 1985). In conventional or ordinary arbitration, there is no right to trial de novo, and, although the court may correct or vacate an award, the grounds for so doing are limited. See Code Civ. Proc. §§ 1285-1294.2. Conventional or ordinary arbitration differs markedly from "judicial" arbitration under the 1978 mandatory judicial arbitration statute and rules of court. See Code Civ. Proc. §§ 1141.10-1141.31; California Rules of Court 1600-1617; 6 B. Witkin, *supra*.

### **Leases of Estate Property**

Existing law permits the personal representative to lease estate property without prior court approval if the rental is not more than \$250 a month and the lease term is not longer than one year, or, regardless of the amount of rental, when the lease is from month to month.<sup>31</sup> The proposed law increases the maximum rental for leases the personal representative may make without prior court approval from \$250 a month to \$1500 a month. The \$250 limit was established in 1963,<sup>32</sup> and rental values in California have increased dramatically in the intervening decades.<sup>33</sup>

Under existing law, the court may authorize estate property to be leased for longer than 10 years if no estate beneficiary with an interest in the property objects.<sup>34</sup> The court may also authorize a lease longer than 10 years notwithstanding an objection if the lease is to produce minerals or hydrocarbons or to grow asparagus.<sup>35</sup> The proposed law does not continue the provision for a lease longer than 10 years to grow asparagus over the objection of an estate beneficiary. Asparagus is not the only agricultural product with a long growing time. There is no justification for imposing a long term lease on a beneficiary who objects for this one limited class of agricultural product.

### **Continuing Operation of Decedent's Business**

Existing law permits the court to authorize the personal representative to continue operation of the decedent's nonpartnership business.<sup>36</sup> Under case law, if the personal representative continues operation of the decedent's business without a court order, the personal representative

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31. Prob. Code § 844.

32. See 1963 Cal. Stat. ch. 51. The 1963 legislation is the only increase in the maximum rental value for leases without prior court approval since the 1931 Probate Code was enacted. From 1931 to 1963, the maximum rental value was \$100 per month.

33. The proposed law makes a conforming revision to the Guardianship-Conservatorship Law (Prob. Code § 2555) to increase the maximum rental for leases that the guardian or conservator may execute without court authorization from \$750 per month to \$1500 per month.

34. Prob. Code § 842.1.

35. Prob. Code § 842.

36. Prob. Code § 572.

is nonetheless excused from liability if he or she acted in good faith and as a cautious and prudent person would act under similar circumstances.<sup>37</sup>

The proposed law makes clear that the personal representative may operate the decedent's business for six months, with or without court authorization.<sup>38</sup> Court authorization is required to operate the business for more than six months, because the risk to the estate increases the longer the business is operated. This is consistent with the Independent Administration of Estates Act which requires advice of proposed action for operation of the business for more than six months.<sup>39</sup>

### Decedent's Partnership

Existing law permits the court to authorize the personal representative to continue as a partner in any partnership in which the decedent was a partner at death.<sup>40</sup> The proposed law makes clear that the court may authorize the personal representative to continue as a general or limited partner, but only if the decedent was a general partner. If the decedent was a limited partner, the personal representative may exercise the decedent's rights only for the purpose of settling the estate.<sup>41</sup>

Existing law provides that the personal representative may not continue as a partner in decedent's partnership if to do so would be inconsistent with the partnership agreement.<sup>42</sup> The proposed law makes clear that the surviving partners may consent to participation by the personal representative, notwithstanding the terms of the partnership agreement.

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37. *In re Estate of Maddalena*, 42 Cal. App. 2d 12, 18, 108 P.2d 17 (1940).

38. The proposed law also makes clear that court authorization is not required for the personal representative to exercise the decedent's rights as a limited partner for the purpose of settling the estate or administering the decedent's property as provided in Section 15675 of the Corporations Code.

39. Prob. Code § 591.3(b) (6).

40. Prob. Code § 572.

41. Corp. Code § 15675.

42. Prob. Code § 572.

### **Purchase of Estate Property by Personal Representative**

Under existing law, the personal representative may not purchase property of the estate, unless the right is given by will or contract.<sup>43</sup> The proposed law expands this right by permitting the personal representative to purchase estate property if written consent to the purchase is signed by all the decedent's heirs or devisees, is filed with the court, and the court approves the proposed purchase. The requirement of consent and court approval is a sufficient safeguard against the dangers of self-dealing.

### **Abandonment of Valueless Tangible Personal Property**

The proposed law makes clear that the personal representative may dispose of or abandon tangible personal property not specifically devised where the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.<sup>44</sup> The proposed law requires that the personal representative first give notice of the proposed disposition or abandonment.<sup>45</sup> The persons given notice may prevent the disposition or abandonment by objecting to the personal representative.<sup>46</sup> This will prevent disposition of apparently valueless property that has sentimental or other special value to heirs or devisees.

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43. Prob. Code § 583; Hudner, *Sales of Estate Property*, in 1 California Decedent Estate Administration § 14.8, at 507 (Cal. Cont. Ed. Bar 1971). The right must be given in the decedent's will or by a specifically enforceable contract made during the decedent's lifetime, or by an option to purchase given to the personal representative in the decedent's will. *Id.*

44. This provision is consistent with case law. See *In re Estate of Barreiro*, 125 Cal. App. 153, 178-79, 13 P.2d 1017 (1932). It is also consistent with the Independent Administration of Estates Act (Prob. Code § 591.6(d), with guardianship-conservatorship law (Prob. Code § 2465), and with the Uniform Probate Code (UPC § 3-715(6)).

45. The proposed law requires notice to devisees or heirs whose interest is affected, to persons who have requested special notice, and to the State of California if any portion of the estate is to escheat to it. Notice need not be given to a person who consents in writing to the proposed disposition or abandonment or who waives notice in writing.

46. When the personal representative receives an objection, he or she may not thereafter dispose of or abandon the property without court authorization. Also the person objecting may apply to the court for an order restraining the personal representative from disposing of or abandoning the property without prior court authorization. Notwithstanding these provisions, the personal representative may abandon or dispose of the property without court authorization if the personal representative requests the objecting person to take possession of the property at his or her expense and the objecting person fails to do so.

## Deposits in Financial Institutions

Existing law permits the personal representative to deposit estate funds in banks within this state or in insured savings and loan associations.<sup>47</sup> The proposed law expands this authority to include insured credit unions in this state.<sup>48</sup>

Existing law discharges the personal representative from further care or responsibility for funds deposited with financial institutions until the funds are withdrawn.<sup>49</sup> The proposed law eliminates this immunity, and requires the personal representative to use ordinary care and diligence in managing deposited funds.<sup>50</sup> Since the personal representative has overall management of the estate, he or she should ensure that funds on deposit are not subject to undue risk, as, for example, where it is known that the financial institution is in difficulty.

The proposed law adds a new provision to make clear that the court may order that a deposit in a financial institution may be withdrawn only upon authorization of the court.<sup>51</sup> The proposed law requires the personal representative to give a copy of the order to the financial institution when the deposit is made, and provides that the financial institution is deemed not to have notice of the order unless it has actual notice.

## Investments

Existing law permits the personal representative, without prior court authorization, to invest in mutual funds comprised of direct obligations of the United States maturing not later than one year from the date of investment, or in repurchase agreements with respect to any obligation in which the fund is authorized to invest.<sup>52</sup>

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47. Prob. Code § 585.

48. The proposed law also requires that the entire deposit be covered by the insurance and limits deposits in savings and loan associations to associations in this state. The proposed law makes conforming revisions to the Guardianship-Conservatorship Law (Prob. Code § 2453).

49. Prob. Code § 585.

50. See *supra* text accompanying notes 2-3.

51. This provision is drawn from guardianship-conservatorship law. See Prob. Code § 2456.

52. Prob. Code § 584.1.

The proposed law relaxes this requirement by permitting the mutual fund to invest in U.S. government obligations maturing not later than five years after investment or in repurchase agreements fully collateralized by United States government obligations, but tightens the requirement by requiring the fund's portfolio to be limited to such investments.<sup>53</sup> The new requirement that the repurchase agreements be fully collateralized by United States government obligations<sup>54</sup> will avoid having estate assets invested indirectly in equities (such as common stocks) that are inappropriate for estate assets.

### **Holding Security in Name of Nominee**

The proposed law makes clear that the personal representative may hold securities of the estate in street name.<sup>55</sup>

### **Exercise of Subscription Rights**

Existing law permits the personal representative to sell subscription rights for the purchase of additional securities, but is silent concerning the exercise of those rights.<sup>56</sup> The proposed law includes express authority for the personal representative to petition the court for authority to exercise subscription rights upon a showing that it is advantageous to the estate.

### **Exercise of Option Rights**

Where an asset of the estate consists of an option right which is nontransferable save only by testate or intestate succession from the decedent, existing law permits the

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53. This limitation does not preclude the fund from having a reserve of uninvested cash.

54. The Commission is informed that this is consistent with the intent of the original legislation, and that Probate Code Section 584.1 permits investment in repurchase agreements with respect to "any obligation," rather than with respect to U.S. government obligations, because of a drafting error.

55. The Commission is informed that it is existing practice for a personal representative to hold decedent's securities in street name. See also Bilson, *Transfer of Securities*, in 1 California Decedent Estate Administration § 16.29, at 634 (Cal. Cont. Ed. Bar 1971); Prob. Code § 16238 (Trust Law). See also Prob. Code § 591.6(h) (Independent Administration of Estates Act).

56. Prob. Code § 771.5. The Commission is informed that, under existing law, if the personal representative wants to exercise subscription rights, it is brought to court on a petition for instructions under Probate Code Section 588.

personal representative, after court authorization, to exercise the option right if the exercise would add value to the estate.<sup>57</sup> The proposed law permits the exercise of any option right, whether or not it is nontransferable, after authorization by order of court upon a showing that the exercise would be to the advantage of the estate and would be in the best interest of the interested persons.

### Insuring Estate Assets or Personal Representative

Under existing law, the personal representative has implied authority to insure estate assets against damage or loss, and to insure himself or herself against liability.<sup>58</sup> The proposed law codifies this authority. Although the new provision is permissive, proper performance of the personal representative's fiduciary duties may require the personal representative to insure estate assets in appropriate circumstances.<sup>59</sup>

### Estate Sales

The proposed law reorganizes the provisions relating to estate sales,<sup>63</sup> clarifies and simplifies the drafting, and repeals special provisions for sale of mining property.<sup>64</sup>

57. Prob. Code § 584.2.

58. See 1 California Decedent Estate Administration § 9.50, at 356 (Cal. Cont. Ed. Bar 1971).

59. See *supra* text accompanying notes 2-3.

[Footnotes 60-62 not used.]

63. The existing chapter on estate sales is divided into five articles: sales in general (Prob. Code §§ 750-764), sale of personal property (*id.* §§ 770-776), sale of real property (*id.* §§ 780-794), sale of contract to purchase real property (*id.* §§ 800-802), and sale of mining property (*id.* §§ 810-814). However, because of amendments over the years, the substantive provisions are scattered through the chapter on sales, and are not necessarily in the proper article. The article on sales in general contains provisions applicable to real property sales only (*id.* § 754.6, first sentence), and others applicable to sales of personal property only (*id.* §§ 754.6, second sentence, 756.5, 760.5). The article on sale of personal property contains a provision authorizing the personal representative to purchase property to complete a short sale. *Id.* § 771.3. This provision should be located in the chapter on powers and duties of personal representatives. The article on sale of real property contains provisions applicable to sales of personal property. *Id.* § 787.

Some provisions are duplicated in nearly identical form in the article on sale of personal property and in the article on sale of real property. *Compare* Prob. Code §§ 775 and 776 with Prob. Code §§ 788 and 789. These should be consolidated in one set of provisions applicable both to real and personal property sales.

64. Prob. Code §§ 810-814. Other substantive changes to existing law are noted in text.

## Compensation of Agent or Broker

**Compensation reasonable, but not more than contract amount.** The proposed law continues the rule of existing law that brokers' commissions on a sale of estate property shall be the amount the court determines is reasonable,<sup>65</sup> but adds a provision to make clear that the amount of the commission awarded by the court may not exceed the amount provided in the contract.

**Exclusive listing period.** Under existing law, a personal representative who intends to sell estate property may, with court authorization upon a showing of necessity and advantage to the estate, give a broker an exclusive right to sell the property for a period not in excess of 90 days.<sup>66</sup> The proposed law makes clear that the personal representative may get court permission for one or more extensions of the 90-day period upon *ex parte* application. Each extension may be for a period not in excess of 90 days.

**Assured commission for exclusive listing broker.** In sales outside probate, it is not necessary for a broker with an exclusive listing to produce a buyer in order to be entitled to a commission on the sale.<sup>67</sup> In probate sales, however, some courts inquire into the services actually performed by the exclusive listing broker.<sup>68</sup>

The exclusive listing broker performs a valuable service to the estate merely by listing the property through the multiple listing service.<sup>69</sup> This assures maximum exposure of the property to the market. The Commission recommends that the exclusive listing broker be entitled to share in the commission without producing a buyer or showing that he or she has personally made an effort to sell the property.

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65. See Prob. Code §§ 760, 761.5, 785.

66. Prob. Code § 760.

67. See 1 H. Miller & M. Starr, *Current Law of California Real Estate* §§ 2.10, 2.11, at 185-87 (rev. ed. 1975).

68. See, *e.g.*, San Diego County Probate Rules § 4.79, in *California Local Probate Rules*, 7th Edition (C.E.B. 1986).

69. The court may consider whether the broker will use the multiple listing service in determining whether it is advantageous to the estate to authorize the personal representative to grant an exclusive right to sell.

**Division of commission between exclusive listing broker and broker who returns bid to court.** The existing statute provides for division of the commission when one broker produces a buyer whose bid is returned to the court for confirmation, but sale is confirmed to an overbidder who is also produced by a broker.<sup>70</sup> In 1974, the code was amended to authorize a 90-day exclusive right to sell listing in probate with approval of the court.<sup>71</sup> This creates the possibility that three brokers may be involved in the transaction: the exclusive listing broker (Broker A), the broker who produces a buyer whose bid is returned to the court for confirmation (Broker B), and the broker who produces the successful overbidder (Broker C). However, the 1974 amendments did not revise the provisions governing division of commissions to take account of the possibility that there may be three brokers involved.

The Commission recommends that when there is an exclusive listing and three brokers are involved, the broker who produces the successful overbidder (Broker C) should be entitled to one-half of the commission on the original bid and all of the commission on the difference between the original bid and the sale price confirmed to the overbidder, as under existing law.<sup>72</sup> The exclusive listing broker (Broker A) and the broker who produced the original bid (Broker B) should divide the balance of the commission as provided in any agreement between them, or, if there is no agreement, should divide it equally.

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70. See Prob. Code §§ 760, 761. The broker who produced the original buyer whose bid was returned to the court for confirmation is entitled to a half commission on the original bid, and the broker who produced the successful overbidder is entitled to the balance of the commission. *Id.* These provisions are satisfactory where only two brokers are involved.

71. 1974 Cal. Stat. ch. 1422 (amending Prob. Code § 760). The exclusive listing broker may be entitled to a commission even if he or she does not produce the buyer. See 1 H. Miller & M. Starr, *Current Law of California Real Estate* § 2.50, at 301 (rev. ed. 1975).

72. Prob. Code §§ 760, 761. Under existing law, the commission of the broker for a successful overbidder may not exceed half the difference between the original bid and the successful overbid. Prob. Code § 785. If the original bidder is produced by the broker having the contract with the personal representative, the half-the-difference limit may have the anomalous result of the estate paying a lower total commission than if there had been no overbid. The 1955 legislation containing this limit was enacted in response to *Estate of Cole*, 124 Cal. App. 2d 615, 269 P.2d 73 (1954), in which the overbidder was represented by a broker but the original bidder was not. *Review of Selected 1955 Code Legislation*, at 159 (Cal. Cont. Ed. Bar 1955). The Commission recommends that the half-the-difference limit be restricted to apply only where the broker for the successful overbidder is the only broker entitled to any commission. This will serve the purpose of the 1955 legislation to avoid having the estate receive a lower net because of the successful overbid.

## Measure of Damages on Purchaser's Default

If a purchaser of property at an estate sale defaults and the property is not resold by the personal representative, the measure of damages is the same as under general law: the amount by which the contract price exceeds the market value of the property at the time of breach (loss of bargain), plus expenses made necessary by the purchaser's breach.<sup>73</sup> However, if the property is resold by the personal representative, there is a special rule of damages: Damages are measured by the contract price minus the amount realized on resale,<sup>74</sup> plus expenses of the first sale, but only if the amount realized on resale is insufficient to cover those expenses.<sup>75</sup> This special rule restricts the recoverable expenses to the disadvantage of the estate. The proposed law therefore eliminates this special rule for recoverable expenses, and substitutes the general rule that recoverable expenses are those made necessary by the purchaser's breach, whether or not the resale price exceeds the contract price of the first sale. The proposed law also makes clear that, as under general law, damages may include consequential damages.<sup>76</sup>

## Court Relief From Directions in Will

Under existing law, if directions are given in the will as to the mode of selling or the particular property to be sold,

73. Estate of Williamson, 150 Cal. App. 2d 334, 339, 310 P.2d 77 (1957); 1 B. Witkin, Summary of California Law *Contracts* § 663, at 562 (8th ed. 1973). Under general law, expenses made necessary by the purchaser's breach include expenses of resale to the extent they exceed expenses assumed by the seller under the breached contract. Jensen v. Dalton, 9 Cal. App. 3d 654, 657, 88 Cal. Rptr. 426 (1970).

74. Prob. Code §§ 775 (personal property), 788 (real property). The reason the resale price is used to determine loss of bargain in estate sales, rather than market value at the time of breach as under general law, is so the estate will not suffer loss in a declining market: There may be no loss of bargain at the time of breach, but the eventual resale price may be much lower. Estate of Williamson, 150 Cal. App. 2d 334, 339, 310 P.2d 77 (1957). This is a sound reason to use resale price to determine loss of bargain. The proposed law therefore continues this special rule.

75. Prob. Code §§ 775 (personal property), 788 (real property).

76. Civ. Code § 3307 (real property: detriment "deemed to be the excess, if any, of the amount which would have been due to the seller under the contract over the value of the property to him or her, consequential damages according to proof, and interest"). In the case of real property, such consequential damages may include, for example, sewer assessments, utilities fees, and taxes. Jensen v. Dalton, 9 Cal. App. 3d 654, 658, 88 Cal. Rptr. 426 (1970). See generally 1 B. Witkin, Summary of California Law *Contracts* §§ 665-666, at 564-65 (8th ed. 1973).

the personal representative must comply with those directions.<sup>77</sup> The proposed law permits the court to relieve the personal representative of the duty to comply with the directions in the will. This may be desirable where conditions have changed since execution of the will.

### Posting Notice of Sale of Real Property of Small Value

If the value of real property to be sold is \$1,000 or less, existing law permits the personal representative to post notice of sale at the courthouse rather than publishing the notice.<sup>78</sup> The proposed law increases to \$5,000 the maximum value of the property for posting of the notice.<sup>79</sup>

### Contents of Notice of Sale

When real property is to be sold, existing law requires that the notice of sale describe the property with particularity.<sup>80</sup> In practice this requirement is met by describing the property either by metes and bounds or by lot and block number.<sup>81</sup> The proposed law replaces this requirement with a new requirement that the notice of sale describe the property by its street address or other common designation, if any. This is the description that will be most readily understood by potential purchasers. Only if there is no street address or other common designation is the legal description required to be given.

The proposed law also makes clear that terms and conditions of sale may be included in the notice of sale.<sup>82</sup> If terms and conditions of sale are included, bids are required to comply with them.<sup>83</sup>

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77. Prob. Code § 757.

78. Prob. Code § 780.

79. The amount was last increased to \$1,000 in 1959. The increase to \$5,000 recognizes the effect of inflation in the intervening years.

80. Prob. Code § 780.

81. See Hudner, *Sales of Estate Property*, in 1 California Decedent Estate Administration § 14.23, at 515 (Cal. Cont. Ed. Bar 1971).

82. This codifies existing practice. See Hudner, *Sales of Estate Property*, in 1 California Decedent Estate Administration § 14.22, at 514, § 14.53, at 540 (Cal. Cont. Ed. Bar 1971).

83. This is consistent with case law. See *Estate of Hunter*, 194 Cal. App. 2d 859, 865-68, 15 Cal. Rptr. 556 (1961) (real property); *In re Estate of Dargie*, 33 Cal. App. 2d 148, 155-57, 91 P.2d 126 (1939) (personal property).

## **Auction Sales**

Existing law permits real and personal property of the estate to be sold at public auction.<sup>84</sup> If real property is sold at public auction, the sale must be made between 9 a.m. and the setting of the sun on the same day.<sup>85</sup> The proposed law revises this to provide that auction sales of real property must be made between 9 a.m. and 9 p.m.

Auction sales of personal property are ordinarily made in the county where the estate proceedings are pending.<sup>86</sup> The proposed law permits the court by order to authorize an auction sale outside California or outside the United States. This may be desirable, for example, when the property to be auctioned is a rare work of art and an established market exists at some location outside California.

## **Petition for Confirmation by Purchaser**

Under existing law, when court confirmation of sale is required, a report of the sale and a petition for court confirmation must be made within 30 days after the sale.<sup>87</sup> Existing law does not specify who must file the report and petition, nor does it state the consequences of failure to file the report and petition within the 30-day period.<sup>88</sup> The proposed law provides that if the personal representative fails to file the report and petition within the 30-day period, the purchaser may do so.

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84. Prob. Code § 754; see also Prob. Code §§ 760.5, 772, 781. There is some inconsistency in existing law concerning the type of personal property that may be auctioned: Some provisions authorize auction sale of personal property without limitation as to type. See Prob. Code §§ 754, 757, 772. Other provisions appear to limit auction sales of personal property to tangible personal property. See Prob. Code § 760.5. The proposed law provides that an auctioneer may auction any property authorized under the new Auctioneer and Auction Licensing Act. Bus. & Prof. Code §§ 5700-5791.5. The Auctioneer and Auction Licensing Act authorizes a licensed auctioneer to auction goods, wares, chattels, merchandise, or other personal property, including domestic animals and farm products. Bus. & Prof. Code §§ 5701(j), 5774, 5775-5776.

85. Prob. Code § 781.

86. See Prob. Code § 772.

87. Prob. Code § 755.

88. See *Costello v. Wells Fargo Bank*, 258 Cal. App. 2d 90, 65 Cal. Rptr. 612 (1968) (no cause of action against personal representative for failing to file report and petition within 30-day period).

### **Limitation Period for Recovery of Property on Claimed Void Sale**

Existing law provides a three-year limitation period for recovery of any property sold by a personal representative on the claim that the sale is void,<sup>89</sup> except that minors or others under a legal disability to sue at the time the right of action accrued have three years from the removal of the disability.<sup>90</sup> The proposed law eliminates this special tolling period for minors and others under a legal disability to sue. This will improve the stability of the title obtained from an estate sale after the three-year limitation period has expired.

### **Repeal of Special Provisions for Sale of Mining Property**

Generally when real property of the estate is to be sold, one court proceeding is required—for court confirmation of the sale.<sup>91</sup> However, when the property is mining property, two court proceedings are required—one on the petition for a court order authorizing the sale, and another on the petition for court confirmation of sale.<sup>92</sup> This two-step procedure is cumbersome, unnecessary, and wasteful. Moreover, the special provisions for sale of mining property are rarely used.<sup>93</sup> For these reasons, the proposed law treats estate sales of mining property under the provisions for sales of real property generally. The result is that only one court hearing (on confirmation of sale) will be required.

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89. The three-year limitation period is measured from settlement of the personal representative's final account or from the date of discovery of any fraud on which the action is based, whichever is later. Prob. Code § 793.

90. Prob. Code § 793.

91. See Prob. Code §§ 755, 785-785.1.

92. Prob. Code §§ 810-811, 814.

93. Hudner, *Sales of Estate Property*, in 1 California Decedent Estate Administration § 14.71, at 554 (Cal. Cont. Ed. Bar 1971).

# OUTLINE OF PROPOSED LEGISLATION

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## **PART 5. ESTATE MANAGEMENT**

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

#### **Article 1. Duties and Liabilities of Personal Representative**

##### **§ 9600. Duty to manage estate using ordinary care and diligence**

9600. (a) The personal representative has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The personal representative:

(1) Shall exercise a power to the extent that ordinary care and diligence require that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence require that the power not be exercised.

**Comment.** Section 9600 is comparable to Section 2401 (guardianship and conservatorship) and is consistent with prior law. See, *e.g.*, *Estate of Beach*, 15 Cal. 3d 623, 631, 542 P.2d 994, 125 Cal. Rptr. 570 (1975) (executor required to exercise “that degree of prudence and diligence which a man of ordinary judgment would be expected to bestow upon his own affairs of a like nature”); *Lobro v. Watson*, 42 Cal. App. 3d 180, 189, 116 Cal. Rptr. 533 (1974) (personal representative “required to exercise the degree of care and prudence that an ordinary person would employ in handling his or her own affairs”).

In determining what constitutes ordinary care and diligence, a professional personal representative is held to a higher standard of care based on its presumed expertise than is a lay personal representative. *Estate of Beach*, 15 Cal. 3d at 635. Section 9600 applies to all powers and duties of the personal representative, whether or not prior court authorization is required. See also Section 9612 (effect of court authorization or approval).

Subdivision (b) of Section 9600 makes clear that ordinary care and diligence may require that the personal representative

exercise a power. For example, the personal representative has the duty to take all steps reasonably necessary for the protection and preservation of the estate property, and this duty requires that the personal representative obtain and maintain insurance on the estate property to the extent reasonably necessary. See Section 9656. At the same time, subdivision (b) also makes clear that the extent to which a power should be exercised is limited to what is required by the exercise of ordinary care and diligence under all the circumstances. Thus, for example, the personal representative is not authorized to obtain and maintain more insurance on the estate property than is reasonably necessary. In determining when a power must be exercised and when it may not be exercised, the personal representative has some discretion. For example, the personal representative has discretion to determine the amount of insurance, and so long as the amount of insurance is not unreasonably high or low under the circumstances, the personal representative has complied with the duty to use ordinary care and diligence.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2401

### **§ 9601. Measure of liability for breach of fiduciary duty**

9601. (a) If a personal representative breaches a fiduciary duty, the personal representative is chargeable with any of the following that is appropriate under the circumstances:

(1) Any loss or depreciation in value of the decedent's estate resulting from the breach of duty, with interest.

(2) Any profit made by the personal representative through the breach of duty, with interest.

(3) Any profit that would have accrued to the decedent's estate if the loss of profit is the result of the breach of duty.

(b) If the personal representative has acted reasonably and in good faith under the circumstances as known to the personal representative, the court, in its discretion, may excuse the personal representative in whole or in part from liability under subdivision (a) if it would be equitable to do so.

**Comment.** Section 9601 is drawn from and is consistent with Section 16440 (trustee's liability). Section 9601 is in general accord with prior law. See *In re Estate of Elizalde*, 182 Cal. 427, 435, 188 P. 560 (1920) (liability for misappropriated funds plus interest where no showing that larger profit was received); *Estate of Gerber*, 73 Cal. App. 3d 96, 113, 140 Cal. Rptr. 577 (1977) (liability for interest due to delay in payment of estate taxes); *Estate of Guiol*, 28 Cal. App. 3d 818, 105 Cal. Rptr. 35 (1972) (breach of duty for turning estate assets over to attorney and failing to protect assets); *Estate of McSweeney*, 123 Cal. App. 2d 787, 792-93, 268 P.2d 107 (1954) (liability for using estate funds for individual needs) (dictum); *Estate of Pardue*, 57 Cal. App. 2d 918, 920-21, 135 P.2d 394 (1943) (liability for rental value of property). See also Sections 9631 (liability of joint personal representative for breach of duty by another personal representative), 10380 (liability for neglect or misconduct in sale of estate property), 10381 (liquidated damages for fraudulent sale), 10382 (limitation of actions for recovery of property).

Under subdivision (a), the court has discretion to choose the measure of liability in paragraph (1), (2) or (3) that is appropriate under the circumstances. The reference to "profit made by the personal representative" in paragraph (2) of subdivision (a) refers to personal profit rather than profit to the estate.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### COMPARABLE PROVISIONS

Trustee's liability § 16440

### § 9602. Measure of liability for interest

9602. If the personal representative is liable for interest pursuant to Section 9601, the personal representative is liable for the greater of the following amounts:

- (a) The amount of interest that accrues at the legal rate on judgments.
- (b) The amount of interest actually received.

**Comment.** Section 9602 is drawn from and is consistent with Section 16441 (measure of liability for interest on breach of trust). See the Comment to Section 16441. See also Code Civ. Proc. § 685.010 (rate of interest on judgments). Section 9602 is consistent with the former case law rule that executors are liable

for interest at the legal rate. See, e.g., *In re Estate of Piercy*, 168 Cal. 755, 757-58, 145 P. 91 (1914); *In re Estate of Hilliard*, 83 Cal. 423, 427, 23 P. 393 (1890); *In re Estate of Holbert*, 39 Cal. 597, 601 (1870) (liability for interest or profit, whichever is greater); *Estate of McSweeney*, 123 Cal. App. 2d 787, 791-93, 268 P.2d 107 (1954); see also *In re Estate of Guglielmi*, 138 Cal. App. 80, 90, 31 P.2d 1078 (1934). Unlike the former case law rule, however, Section 9602 does not allow for annual compounding even where the personal representative is negligent. See also Section 9603 (other remedies not affected).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### COMPARABLE PROVISIONS

Trustee's liability § 1641

### § 9603. Other remedies not affected

9603. The provisions of Sections 9601 and 9602 for liability of a personal representative for breach of a fiduciary duty do not prevent resort to any other remedy available against the personal representative under the statutory or common law.

**Comment.** Section 9603 is drawn from and is consistent with Section 16442 (remedies against a trustee). The section makes clear that Sections 9601 and 9602 do not prevent resort to any other remedy available against the personal representative under the statutory or common law. The section merely retains remedies that existed before the enactment of Sections 9601 and 9602; it does not create any new remedies against a personal representative.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### COMPARABLE PROVISIONS

Trustee's liability § 16442

### § 9604. Enforceability of promise of personal representative personally to answer in damages or to pay debts of decedent

9604. No personal representative is chargeable upon a special promise to answer in damages for a liability of the decedent or to pay a debt of the decedent out of the

personal representative's own estate unless the agreement for that purpose, or some memorandum or note thereof, is in writing and is signed by one of the following:

(a) The personal representative.

(b) Some other person specifically authorized by the personal representative in writing to sign the agreement or the memorandum or note.

**Comment.** Section 9604 restates former Probate Code Section 737 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

## Article 2. Court Supervision

### § 9610. Extent of court supervision

9610. Unless this part specifically provides a proceeding to obtain court authorization or requires court authorization, the powers and duties set forth in this part may be exercised by the personal representative without court authorization, instruction, approval, or confirmation. Nothing in this section precludes the personal representative from seeking court authorization, instructions, approval, or confirmation.

**Comment.** Section 9610 is new and is comparable to subdivision (a) of Section 2450 (guardianship-conservatorship law). The section is consistent with prior law under which personal representatives could perform many acts without prior court approval. See *In re Estate of Fulmer*, 203 Cal. 693, 697-98, 265 P. 920 (1928); *Estate of Palm*, 68 Cal. App. 2d 204, 212, 156 P.2d 62 (1945); Davis, *Instructions*, in 1 California Decedent Estate Administration §§ 19.1, 19.4, at 750, 752 (Cal. Cont. Ed. Bar 1971).

In a case where Section 9610 authorizes the personal representative to act without court authorization and the personal representative decides to take the action without obtaining court authorization, the personal representative must use ordinary care and diligence in taking the action. See Section 9600. As to the effect of court authorization or approval, see Section 9612. As to when the personal representative is to

exercise a power and when the personal representative is not to exercise a power, see Section 9600(b).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2450(a)

### § 9611. Instructions from or confirmation by court

9611. (a) In all cases where no other procedure is provided by statute, upon petition of the personal representative, the court may authorize and instruct the personal representative, or approve and confirm the acts of the personal representative, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith. Section 9613 does not preclude a petition for instructions under this section.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Section 9611 restates former Section 588 using language drawn from Section 2403 (guardianship and conservatorship). However, unlike Section 2403, Section 9611 permits a petition for instructions only where no other procedure is provided by statute. Section 2403 is not so limited.

If some other procedure is provided by statute but the personal representative is uncertain whether the statute providing the other procedure is applicable to the particular case, the personal representative may petition in the alternative, giving notice that is sufficient to satisfy the requirements both of Section 9611 and the other possibly applicable statute.

A petition for instructions is used to obtain court authorization to incorporate the decedent's unincorporated business, there being no specific provision governing that matter. Compare Section 10512 (independent administration authority).

Section 9611 continues former Section 588 insofar as that section authorized only the personal representative to petition for instructions. In this respect, the authorization is more limited than the authorization of the guardianship and conservatorship law, which authorizes a creditor or other interested person to file a petition for instructions (Section 2403).

The words “from time to time,” which appeared in former Section 588, have been omitted as unnecessary, since there is no limit on the number of times instructions or confirmations can be requested.

Subdivision (a) makes clear that the court may not only instruct the personal representative in advance, but may also confirm actions already taken. As to the effect of court authorization or approval, see Section 9612.

Under subdivision (b), notice is given at least 15 days before the hearing pursuant to Section 1220, instead of the 10-day period under former Section 1200.5.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Interested person § 48

Personal representative § 58

Proof of giving notice § 1260

Verification required § 1284

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2403

### § 9612. Effect of court authorization or approval

9612. When a judgment or order made pursuant to this division becomes final, it releases the personal representative and the sureties from all claims of the heirs or devisees and of any persons affected thereby based upon any act or omission directly authorized, approved, or confirmed in the judgment or order. For the purposes of this section, “order” includes an order settling an account of the personal representative, whether an interim or final account.

**Comment.** Section 9612 is a new provision drawn from subdivision (a) of Section 2103 (guardianship-conservatorship law). Section 9612 generalizes provisions such as the last sentence of former Section 718.5.

Section 9612 is subject to case law exceptions relating to extrinsic fraud. See, e.g., *Bank of America v. Superior Court*, 181 Cal. App. 3d 705, 226 Cal. Rptr. 685 (1986); *Lazzarone v. Bank of America*, 181 Cal. App. 3d 581, 226 Cal. Rptr. 855 (1986); 8 B. Witkin, *California Procedure Attack on Judgment in Trial Court* §§ 204-207, at 602-07 (3d ed. 1985).

## CROSS-REFERENCES

## Definitions

Devisee § 34

Heirs § 44

Personal representative § 58

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2103

**§ 9613. Order compelling personal representative to act or not to act**

9613. (a) On petition of any interested person, and upon a showing that if the petition is not granted the estate will suffer great or irreparable injury, the court may direct the personal representative to act or not to act concerning the estate. The order may include such terms and conditions as the court determines to be appropriate under the circumstances.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Section 9613 is new and permits the court to direct the personal representative to act or not to act concerning the estate. The showing of irreparable injury under Section 9613 is analogous to the irreparable injury which must be shown for injunctive relief. *Cf.* Code Civ. Proc. § 526(2); 6 B. Witkin, California Procedure *Provisional Remedies* § 254, at 221 (3d ed. 1985).

The existence of a remedy under Section 9613 does not limit the right of a personal representative to petition for instructions. See Section 9611.

## CROSS-REFERENCES

## Definitions

Interested person § 48

Personal representative § 58

**§ 9614. Renewal, modification, and termination of orders**

9614. Upon petition of any person authorized to file an initial petition for the order sought to be renewed, modified, or terminated, the court may at any time renew, modify, or terminate an order made under this part. Notice of the hearing on the petition shall be given as provided for the initial petition.

**Comment.** Section 9614 is new. It generalizes a portion of the second sentence of former Section 584.6.

## CROSS-REFERENCES

Definitions  
Person § 56

**Article 3. Summary Determination of Disputes****§ 9620. Submission of dispute to temporary judge**

9620. If there is a dispute relating to the estate between the personal representative and a third person, the personal representative may do either of the following:

(a) Enter into an agreement in writing with the third person to refer the dispute to a temporary judge designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The temporary judge shall proceed promptly to hear and determine the matter in controversy by summary procedure, without pleadings or discovery. The decision of the designated person shall be subject to Section 632 of the Code of Civil Procedure. Judgment shall be entered on the decision and shall be as valid and effective as if rendered by a judge of the court in an action against the personal representative or the third person commenced by ordinary process.

(b) Enter into an agreement in writing with the third person that a judge, pursuant to the agreement and with the written consent of the judge, both filed with the clerk within the time specified in Section 9257 for bringing an independent suit on the matter in dispute, may hear and determine the dispute pursuant to the procedure provided in subdivision (a).

**Comment.** Section 9620 restates and generalizes paragraph (2) of former Section 718. Former Section 718 was limited to claims filed or presented, but Section 9620 applies to any dispute relating to the estate, including but not limited to one concerning a claim by or against the decedent or the estate. Paragraph (2) of former Section 718 required a written decision; this requirement is replaced by a provision that adopts the statement of decision provision of Code of Civil Procedure

Section 632. Summary proceedings under Section 9620 do not include a right to jury trial. See *Estate of Beach*, 15 Cal. 3d 623, 642, 542 P.2d 994, 125 Cal. Rptr. 570 (1975).

The reference in paragraph (2) of former Probate Code Section 718 to “a commissioner or referee who is regularly attached to the court and designated in the agreement or to a judge pro tempore designated in the agreement” is replaced by a reference to “a temporary judge designated in the agreement.” This substitution makes no substantive change in the law but makes the provision conform to the language used in Section 21 of Article 6 of the California Constitution (“On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause.”). Accordingly, under Section 9620, any member of the State Bar (including a court commissioner or referee) may be appointed as a temporary judge. See also Code Civ. Proc. § 259(5) (power of court commissioner to act as temporary judge). Section 9620 does not require that the temporary judge try the matter in a regular courtroom; the temporary judge may try the matter at his or her office or at any other place.

Section 9620 is designed to reduce the cost of administration of estates and to ease the court’s workload by encouraging disposition of disputes by summary proceedings rather than by litigation. See *Review of Selected 1968 Code Legislation*, at 226-27 (Cal. Cont. Ed. Bar 1968). Nothing in Section 9620 limits the alternative of reference and trial by a referee under Code of Civil Procedure Sections 638-645.1, and those provisions remain applicable to probate matters.

#### CROSS-REFERENCES

##### Definitions

Person § 56

Personal representative § 58

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2405

### § 9621. Submission of dispute to arbitration

9621. If there is a dispute relating to the estate between the personal representative and a third person, the personal representative may enter into an agreement in writing with the third person to submit the dispute to arbitration under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. The agreement is not effective

unless it is first approved by the court and a copy of the approved agreement is filed with the court. Notice of the hearing on the petition for approval of the agreement shall be given as provided in Section 1220 unless the court, upon a showing of good cause, orders that notice be given for a shorter period or that notice be dispensed with. The order approving the agreement may be made *ex parte*.

**Comment.** Section 9621 is a new provision. The section is drawn from Section 2406 (guardianship-conservatorship law).

Arbitration pursuant to Section 9621 is conducted under Code of Civil Procedure Sections 1280-1294.2. This is "conventional" or "ordinary" arbitration. See 6 B. Witkin, *California Procedure Proceedings Without Trial* § 320, at 612-13 (3d ed. 1985). In conventional or ordinary arbitration, there is no right to trial *de novo*, and, although the court may correct or vacate an award, the grounds for so doing are limited. See Code Civ. Proc. §§ 1285-1294.2.

There is no right to a jury trial when an arbitration award as contemplated by Section 9621 is confirmed. See Code Civ. Proc. § 1286; *Madden v. Kaiser Foundation Hospitals*, 17 Cal. 3d 699, 712-14, 552 P.2d 1178, 131 Cal. Rptr. 882 (1976).

#### CROSS-REFERENCES

##### Definitions

Person § 56

Personal representative § 58

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2406

### Article 4. Joint Personal Representatives

§ 9630. **Authority of joint personal representatives to act**  
9630. (a) Subject to subdivisions (b), (c) and (d):

(1) Where there are two personal representatives, both must concur to exercise a power.

(2) Where there are more than two personal representatives, a majority must concur to exercise a power.

(b) If one of the joint personal representatives dies or is removed or resigns, the powers and duties continue in the remaining joint personal representatives as if they were the only personal representatives until further appointment is made by the court.

(c) Where joint personal representatives have been appointed and one or more are (1) absent from the state and unable to act, or (2) otherwise unable to act, or (3) legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining joint personal representatives to act as to all matters embraced within its order.

(d) Where there are two or more personal representatives, any of them may:

(1) Oppose a petition made by one or more of the other personal representatives or by any other person.

(2) Petition the court for an order requiring the personal representatives to take a specific action for the benefit of the estate or directing the personal representatives not to take a specific action. If a procedure is provided by statute for a petition to authorize the specific action by the personal representatives, the petitioner shall file the petition under the provision relating to that procedure. Otherwise, the petitioner shall file the petition under Section 9611.

**Comment.** Section 9630 replaces former Section 570. Paragraph (1) of subdivision (a) codifies case law. See *Bullis v. Security Pac. Nat'l Bank*, 21 Cal. 3d 801, 810, 582 P.2d 109, 148 Cal. Rptr. 22 (1978). Paragraph (2) of subdivision (a) restates the second sentence of former Section 570 without substantive change.

Subdivisions (b) and (c) replace the first sentence of former Probate Code Section 570 with language drawn in part from Section 2105 (guardianship-conservatorship law). Under Section 9630, absence from the state does not suspend the power of a personal representative to act. See Sections 405.1-405.6. And, absent a court order authorizing the remaining personal representatives to act, if one of several joint personal representatives is absent from California, the same number of joint personal representatives must concur in the action as would be required if the absent personal representative were still in California.

Subdivision (d) is new. Paragraph (1) of subdivision (d) is drawn from a portion of the last sentence of Section 1000 and of the second sentence of Section 1020. Paragraph (2) of subdivision

(d) is drawn from the law in other states. See Annot., 85 A.L.R.3d 1124 (1978).

## CROSS-REFERENCES

## Definitions

Personal representative § 58

Proof of giving notice § 1260

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2105

**§ 9631. Liability of joint personal representative for breach of duty by another personal representative**

9631. (a) Except as provided in subdivision (b), where there is more than one personal representative, one personal representative is not liable for a breach of fiduciary duty committed by another of the personal representatives.

(b) Where there is more than one personal representative, one personal representative is liable for a breach of fiduciary duty committed by another of the personal representatives under any of the following circumstances:

(1) Where the personal representative participates in a breach of fiduciary duty committed by the other personal representative.

(2) Where the personal representative improperly delegates the administration of the estate to the other personal representative.

(3) Where the personal representative approves, knowingly acquiesces in, or conceals a breach of fiduciary duty committed by the other personal representative.

(4) Where the personal representative's negligence enables the other personal representative to commit a breach of fiduciary duty.

(5) Where the personal representative knows or has information from which the personal representative reasonably should have known of the breach of fiduciary duty by the other personal representative and fails to take reasonable steps to compel the other personal representative to redress the breach.

(c) The liability of a personal representative for a breach of fiduciary duty committed by another of the personal

representatives that occurred before July 1, 1988, is governed by prior law and not by this section.

**Comment.** Section 9631 replaces a provision formerly found in the last portion of the first sentence of Section 920 (personal representative not liable for act or negligence of coexecutor or coadministrator except for collusion or gross negligence). Section 9631 is drawn from the law applicable to trustees (Section 16402). Subdivision (b), which imposes liability on one personal representative for a breach of fiduciary duty by another representative under certain circumstances, is generally consistent with case law. See *In re Estate of Osborn*, 87 Cal. 1, 25 P. 157 (1890).

See also Sections 511-512 (joint personal representatives).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### COMPARABLE PROVISIONS

Trustee § 16402

## Article 5. Independent Administration

### § 9640. Independent administration authority not limited

9640. Nothing in this part limits or restricts the authority given the personal representative under Part 6 (commencing with Section 10400) (Independent Administration of Estates Act) if the personal representative has been given the authority to administer the estate under that part.

**Comment.** Section 9640 is a new provision that makes clear that this part does not limit the authority of the personal representative under the Independent Administration of Estates Act.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

**CHAPTER 2. ESTATE MANAGEMENT GENERALLY****§ 9650. Possession and management of decedent's estate**

9650. (a) Except as provided by statute and subject to subdivision (c):

(1) The personal representative has the right to, and shall take possession or control of, all the estate of the decedent to be administered in the decedent's estate and shall collect all debts due to the decedent or the estate. The personal representative is not accountable for any debts that remain uncollected without his or her fault.

(2) The personal representative is entitled to receive the rents, issues, and profits from the real and personal property in the estate until the estate is settled or delivered over by order of court to the heirs or devisees.

(b) The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his or her possession.

(c) Real property or tangible personal property may be left with or surrendered to the person presumptively entitled to it unless or until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration. The person holding the property shall surrender it to the personal representative on request by the personal representative.

**Comment.** The introductory clause of subdivision (a) of Section 9650 recognizes that the subdivision is subject to other provisions of law governing possession of the estate. See, *e.g.*, Sections 6500 (temporary possession of family dwelling and exempt property), 9780 (abandonment of tangible personal property).

The first sentence of paragraph (1) of subdivision (a) restates subdivision (a) of former Section 571 without substantive change, using language drawn in part from Section 3-709 of the Uniform Probate Code, and supersedes a portion of the first sentence of former Section 581. For a comparable provision in the guardianship-conservatorship law, see Section 2451 (collection of debts and benefits). Where necessary, the personal representative may bring an action to recover possession of estate property or to determine title thereto. See Sections 9820

(action or proceeding for benefit of estate), 9654 (action by heirs or devisees for possession or to quiet title to real property of estate). See also Section 300 (estate subject to control of superior court).

The second sentence of paragraph (1) of subdivision (a) restates a provision formerly found in the first sentence of Section 920 without substantive change.

Paragraph (2) of subdivision (a) restates the last portion of the first sentence of former Probate Code Section 581 without substantive change.

Subdivision (b) is taken from Section 3-709 of the Uniform Probate Code, and replaces the second sentence of former Section 581 which imposed on the personal representative the duty of keeping in good tenantable repair all houses, buildings, and fixtures on estate property under the control of the personal representative. Under subdivision (b), the personal representative not only has a duty to maintain estate property in a reasonably good condition but also has, for example, a duty to obtain and maintain reasonably necessary insurance on estate property. *Cf.* Section 9656 (authority to insure). See also Section 9610 (extent of court supervision).

Subdivision (c) is taken from Section 3-709 of the Uniform Probate Code, and replaces the third sentence of former Probate Code Section 581 and all of former Probate Code Section 582. Subdivision (c) is designed to avoid disruption of possession of the decedent's assets by the devisees or heirs whenever possible. But, if the personal representative decides that possession of an asset is necessary or desirable for purposes of administration, the heir or devisee must surrender the asset to the personal representative. It may be possible for the heir or devisee to question the judgment of the personal representative in a later proceeding to surcharge for breach of fiduciary duty, but this possibility should not interfere with the personal representative's administrative authority as it relates to possession of the estate. On the other hand, the personal representative may be liable for failing to take possession of estate property if the property is thereby lost to those entitled to it. *In re Estate of Boggs*, 33 Cal. App. 2d 30, 33, 90 P.2d 814 (1939). However, where the property is in the possession of the person who will ultimately receive it (as authorized under subdivision (c) of Section 9650), the personal representative is not liable to the person having the property if it is not properly cared for by that person.

Under subdivision (c), the expiration of the time to file or present claims no longer has significance in this context. Under

former Section 582, after the time to file or present claims expired, the personal representative had to deliver possession of real property to the heirs or devisees unless needed to pay debts. Under former Section 581, the personal representative could not recover property from an heir or devisee unless the personal representative could prove it was needed in estate administration. By contrast, the sole question under subdivision (c) of Section 9650 is whether, in the judgment of the personal representative, the property is “necessary for purposes of administration.”

#### CROSS-REFERENCES

##### Definitions

Devisee § 34

Heirs § 44

Personal representative § 58

Property § 62

Real property § 68

#### § 9651. Taking property in good faith

9651. (a) A personal representative who in good faith takes into his or her possession real or personal property, and reasonably believes that the property is part of the estate of the decedent, is not:

(1) Criminally liable for so doing.

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

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

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

(d) The court may award the personal representative and the personal representative’s attorney reasonable

compensation for services rendered in connection with the duties specified in this section as to property later determined not to be part of the estate of the decedent, if the court makes one of the following findings:

(1) That the services were of benefit to the estate. In such case, the compensation shall be a proper expense of administration.

(2) That the services were essential to preserve, protect, and maintain the property. In such case, the court shall award compensation as an expense deductible from the rents, issues, and profits received by the personal representative, or, if these are insufficient, as a lien against the property.

**Comment.** Section 9651 restates subdivision (c) of former Section 571 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Person § 56

Property § 62

Real property § 68

### § 9652. Duty to keep cash invested

9652. (a) Except as provided in subdivisions (b) and (c), the personal representative shall keep all cash in his or her possession invested in interest-bearing accounts or other investments authorized by law.

(b) The requirement of subdivision (a) does not apply to the amount of cash that is reasonably necessary for orderly administration of the estate.

(c) The requirement of subdivision (a) does not apply to the extent that the testator's will otherwise provides.

**Comment.** Section 9652 restates a provision formerly found in Section 920.3 without substantive change. For the provisions concerning investments authorized by law, see Sections 9700, 9730, 9731. See also Section 9705 (interest on deposits by trust company).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Will § 88

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

9653. (a) On application of a creditor of the decedent or the estate, the personal representative shall commence and prosecute an action for the recovery of real or personal property of the decedent for the benefit of creditors if the personal representative has insufficient assets to pay creditors and the decedent during lifetime did either of the following:

(1) Made a conveyance of the property, or any right or interest in the property, that is fraudulent as to creditors under the Uniform Fraudulent Transfer Act, Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code.

(2) Made a gift of the property in view of death.

(b) A creditor making application under this section shall pay such part of the costs and expenses of the suit and attorney's fees, or give an undertaking to the personal representative for that purpose, as the personal representative and the creditor agree, or, absent an agreement, as the court or a judge thereof shall order.

(c) The property recovered under this section shall (1) be sold for the payment of debts in the same manner as if the decedent had died seised or possessed of the property or (2) if the court so directs, be assigned to the creditor and credited against the debt in an amount equal to the value of the property as determined by the court. The court shall not order that the property be assigned to the creditor unless (1) the value of the property assigned is not greater than the creditor's pro rata share of the assets of the estate and (2) notice of the hearing at which the order is made has been given as provided in Section 1220 to each creditor who filed a claim in the estate proceedings and whose claim remains unpaid in whole or in part.

(d) If the property is sold, the proceeds shall be applied first to the portion of the costs and expenses of suit, including attorney's fees, that is to be borne by the estate, and then to payment of the debts of the decedent in the same manner as other property in possession of the personal representative. After all the debts of the decedent

have been paid, the remainder of the proceeds shall be paid to the person from whom the property was recovered. The property may be sold or assigned in its entirety or in such portion as necessary to pay the debts.

**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 (Civil 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); Civil 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), (c), and (d) restate former Section 580 with the following additions and changes:

(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) Authority is added in subdivision (c) for the court to order that the property recovered be assigned to the creditor, and requiring notice to other creditors in such a case.

(3) Notice under subdivision (c) 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.

(4) The provision in subdivision (d) for application of the proceeds of sale first to costs and expenses of suit borne by the estate is new. The last sentence of subdivision (d) is new.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

Real property § 68

### § 9654. Action by heirs or devisees for possession of or to quiet title to property

9654. The heirs or devisees may themselves, or jointly with the personal representative, maintain an action for possession of property or to quiet title to property against any person except the personal representative.

**Comment.** Section 9654 restates the fourth sentence of former Section 581 and broadens it to apply to personal property as well as to real property. See also Sections 9650 (right of personal representative to possession or control of estate), 9820 (authority of personal representative to maintain action for benefit of estate).

#### CROSS-REFERENCES

##### Definitions

Devisee § 34

Heirs § 44

Personal representative § 58

Real property § 68

### § 9655. Voting rights with respect to corporate shares or memberships or property

9655. With respect to a share of stock of a domestic or foreign corporation held in the estate, a membership in a nonprofit corporation held by the estate, or other property

held in the estate, a personal representative may do any one or more of the following:

(a) Vote in person, and give proxies to exercise, any voting rights with respect to the share, membership, or other property.

(b) Waive notice of a meeting or give consent to the holding of a meeting.

(c) Authorize, ratify, approve, or confirm any action which could be taken by shareholders, members, or property owners.

**Comment.** Section 9655 is drawn from Section 2458 (guardianship-conservatorship) and is consistent with former Section 589. The personal representative may act under Section 9655 without prior court authorization. See Section 9610.

Former Section 589 permitted the personal representative to authorize "by a writing" any action which could be taken by shareholders. The requirement of a writing is not continued, but this change is not significant. Whether a writing is required in such cases is governed by the Corporations Code, which generally does require a writing for ratification by shareholders or members. For example, the transactions of an improperly called or noticed meeting may be ratified only by a signed instrument. Corp. Code § 601(e). Also, a writing is required for shareholder consent to action taken without a meeting. Corp. Code § 603.

The word "meeting" in subdivision (b) includes a meeting of shareholders, members, or property owners, but is not so limited.

Subdivision (c) permits authorization of action taken at a defectively noticed meeting by approval of the minutes of the meeting if such approval satisfies the requirements of the Corporations Code or other applicable law.

See also Corp. Code §§ 702(a) (personal representative may vote share), 705(a) (person entitled to vote shares may give proxy).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

#### COMPARABLE PROVISIONS

Trusts § 16234

**§ 9656. Insuring estate property; insuring personal representative against liability**

9656. The personal representative may insure the property of the estate against damage or loss and may insure himself or herself against liability to third persons.

**Comment.** Section 9656 is new and is drawn from subdivision (i) of former Section 591.6. Section 9656 continues a power implied under former law. See 1 California Decedent Estate Administration § 9.50, at 356 (Cal. Cont. Ed. Bar 1971). The personal representative may act under Section 9656 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). For example, if the estate includes real property, the personal representative ordinarily will have the responsibility to maintain a reasonable amount of insurance on improvements on property and may insure himself or herself against personal liability arising out of the duty to maintain the property. Where the personal representative properly exercises the power under this section, the cost of insurance for estate property or to protect the personal representative against liability is a proper expense of estate administration.

CROSS-REFERENCES

Definitions

Personal representative § 58

COMPARABLE PROVISIONS

Guardianship-conservatorship § 2460

Trusts § 16240

**§ 9657. Profit or loss to the estate**

9657. The personal representative shall not make profit by the increase, nor suffer loss by the decrease or destruction without his or her fault, of any part of the estate.

**Comment.** Section 9657 restates the former second sentence of Section 920 without substantive change. See also Section 10005 (property sold for more or less than appraisalment).

CROSS-REFERENCES

Definitions

Personal representative § 58

### CHAPTER 3. DEPOSIT OF MONEY AND PERSONAL PROPERTY WITH FINANCIAL INSTITUTIONS

#### § 9700. Deposit in insured account

9700. The personal representative may deposit money belonging to the estate in an insured account in a financial institution in this state. Unless otherwise provided by court order, the money may be withdrawn without order of the court.

**Comment.** Subdivision (a) of Section 9700 provides authority for the deposit or investment of estate money without court authorization. See Section 9610 (prior court authorization not required). If the deposit is withdrawable only upon court order, provisions for reducing the amount of the bond are found in Section 541.1 and Financial Code Section 1586. See also Section 9703 (deposits withdrawable only upon court order).

Section 9700 replaces former Section 585. Section 9700 expands the deposits and investments permitted under former Section 585 to include investments in insured credit unions. This makes the coverage of Section 9700 consistent with the coverage under Section 2453 (guardianship-conservatorship law).

The references in former Section 585 to statutory provisions that provide for the deposit or investment of money pursuant to a court order have been omitted as unnecessary. For provisions relating to deposits pursuant to court order, see Financial Code § 764 (deposit with bank or trust company) and Probate Code § 541.1 (exclusion of deposited property in computing amount of bond). See also Prob. Code § 9703 (accounts and deposits withdrawable only upon court order) and Financial Code §§ 6850-6852 (account of fiduciary under savings association law).

The provision of former Section 585 discharging the personal representative from responsibility for deposited money until withdrawn is not continued. The extent of the personal representative's responsibility for deposited funds is determined under Section 9600 (duty to use ordinary care and diligence). This is consistent with Section 2453 (guardianship-conservatorship law). See also the Comment to Section 2453.

#### CROSS-REFERENCES

##### Definitions

Insured account in a financial institution § 46

Personal representative § 58

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2453  
Trusts § 16225

**§ 9701. Deposit of personal property with trust company**

9701. The personal representative may deposit personal property of the estate with a trust company for safekeeping. Unless otherwise provided by court order, the personal property may be withdrawn without order of the court.

**Comment.** The first sentence of Section 9701 provides authority for the deposit without court authorization of personal property of the estate with a trust company (defined in Section 83). See Section 9610 (prior court authorization not required). For other provisions relating to property deposited with a trust company under court order, see Prob. Code §§ 541.1, 9703; Fin. Code § 1586.

Section 9701 replaces former Section 586 which permitted personal assets to be deposited with a trust company, and the bond of the personal representative reduced, “as provided by Division 1 of the Financial Code.” The omission in Section 9701 of the quoted language does not change the law: If personal property is deposited with a trust company and the deposit is withdrawable only upon court order, provisions for reducing the amount of the bond are found in Section 541.1 and Financial Code Section 1586. See also Section 9703 (deposits withdrawable only upon court order).

## CROSS-REFERENCES

## Definitions

Personal representative § 58  
Property § 62  
Trust company § 83

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2454

**§ 9702. Deposit of securities in securities depository**

9702. (a) A trust company serving as personal representative may deposit securities that constitute all or part of the estate in a securities depository as provided in Section 775 of the Financial Code.

(b) If securities have been deposited with a trust company by a personal representative pursuant to Section 9701, the trust company may deposit the securities in a

securities depository as provided in Section 775 of the Financial Code.

(c) The securities depository may hold securities deposited with it in the manner authorized by Section 775 of the Financial Code.

**Comment.** Subdivisions (a) and (c) of Section 9702 restate former Section 590 without substantive change. The personal representative may deposit securities under subdivision (a) without prior court authorization. See Section 9610. Subdivision (b) restates former Section 586.1 without substantive change. See also Section 83 (defining “trust company”).

#### CROSS-REFERENCES

Definitions

Security § 70

Trust company § 83

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2455

### § 9703. Accounts and deposits withdrawable only upon court order

9703. (a) Upon application of the personal representative, the court may, with or without notice, order that money or other personal property be deposited pursuant to Section 9700 or 9701 and be subject to withdrawal only upon authorization of the court.

(b) The personal representative shall deliver a copy of the court order to the financial institution or trust company at the time the deposit is made.

(c) No financial institution or trust company accepting a deposit pursuant to Section 9700 or 9701 shall be on notice of the existence of an order that the money or other property is subject to withdrawal only upon authorization of the court unless it has actual notice of the order.

**Comment.** Section 9703 is a new provision based on authority implied under Section 541.1 and former Sections 585 and 586, except that Section 9703 includes investments in shares of insured credit unions which were not included under Section 541.1 and former Section 585. Section 9703 is comparable to a provision of the guardianship and conservatorship law (Section 2456). If the deposit is withdrawable only upon court order, provisions for reducing the amount of the bond are found in Probate Code Section 541.1 and Financial Code Section 1586.

Only the personal representative may make an application under Section 9703. An interested person (such as an heir, devisee, or creditor) may neither make the application under Section 9703 nor petition for instructions under Section 9611.

#### CROSS-REFERENCES

##### Definitions

Financial institution § 40

Personal representative § 58

Property § 62

Trust company § 83

Effect of court authorization or approval § 9612

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2456

### § 9704. Direct distribution by depository

9704. When a decree is rendered distributing money or personal property deposited pursuant to this chapter, the financial institution, trust company, or securities depository may deliver the property directly to the distributees and shall file receipts therefor with the clerk.

**Comment.** Section 9704 continues former Section 586.5 and expands it to apply to all types of financial institutions where money or property may be deposited pursuant to this chapter. Former Section 586.5 applied only to a bank or trust company.

#### CROSS-REFERENCES

##### Definitions

Financial institution § 40

Property § 62

Securities depository, Fin. Code § 30004

Trust company § 83

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

9705. Where a trust company is a personal representative and in the exercise of reasonable judgment deposits money of the estate in an account in any department of the corporation or association of which it is a part, it is chargeable with interest thereon at the rate of interest prevailing among banks of the locality on such deposits.

**Comment.** 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).

#### CROSS-REFERENCES

##### Definitions

Account § 21

Personal representative § 58

Trust company § 83

## CHAPTER 4. INVESTMENTS AND PURCHASE OF PROPERTY

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

9730. Pending settlement of the estate, the personal representative may invest money of the estate in possession of the personal representative in any one or more of the following:

(a) Direct obligations of the United States maturing not later than one year from the date of making the investment.

(b) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 *et seq.*) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to

United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.

(c) Units of a common trust fund described in Section 1564 of the Financial Code. The common trust fund shall have as its objective investment primarily in short term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.

**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 a portion of former Section 584.1 without substantive change. 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.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### COMPARABLE PROVISIONS

Guardianship-conservatorship §§ 2574, 2575

Trusts § 16224

### § 9731. Investment in federal or state securities with court authorization

9731. (a) Pending settlement of the estate, upon a showing that it is to the advantage of the estate, the court may order that money of the estate in possession of the personal representative be invested in securities of the United States or of this state.

(b) To obtain an order pursuant to this section, the personal representative or any interested person shall file

a petition stating the types of securities that are proposed to be purchased and the advantage to the estate of the purchase.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Section 9731 restates a portion of former Section 584 without substantive change except that (1) the order may be obtained only pending the settlement of the estate whereas former Section 584 permitted the order also to be obtained at the time of settlement of the estate, (2) the portion of subdivision (b) stating the contents of the petition is new, and (3) notice under subdivision (c) 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 language of former Section 584 that permitted the order to be obtained at the time of settlement of the estate is omitted from Section 9731. The omitted language appeared to be included in former Section 584 only to apply to the other provision of former Section 584 which permitted the purchase of an annuity expressly granted to a legatee by the decedent's will. The omitted language is continued in Section 9733 which continues the substance of the portion of former Section 584 that permitted the purchase of an annuity.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Interested person § 48

Personal representative § 58

Security § 70

Proof of giving notice § 1260

Verification required § 1284

#### COMPARABLE PROVISIONS

Guardianship-conservatorship law, see §§ 2573-2574

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

9732. (a) The court may order that money of the estate in possession of the personal representative be invested in any manner provided by the will if all of the following conditions are satisfied:

(1) The time for filing claims has expired.

(2) All uncontested claims have been paid or are sufficiently secured by mortgage or otherwise, or there is sufficient cash in the estate aside from the money to be

invested to pay all uncontested claims, or the court is otherwise satisfied that all uncontested claims will be paid.

(3) The estate is not in a condition to be finally closed and distributed.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition showing the general condition of the estate and the types of investments that are proposed to be made.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220. In addition, the petitioner shall cause notice of the hearing and a copy of the petition to be mailed to all known devisees of property which is proposed to be invested. Where the property proposed to be invested is devised to a trust or trustee, notice of the hearing and a copy of the petition shall be mailed to (1) the trustee or, if the trustee has not yet been appointed, to the person nominated as trustee, and (2) all persons in being who may participate in the corpus or income of the trust. Mailing pursuant to this subdivision shall be to the person's last known address as provided in Section 1220.

(d) If no objection has been filed by an interested person, the court may make an order authorizing or directing the personal representative to invest such portion of the money of the estate as the court deems advisable in the types of investments proposed in the petition and authorized by the will. If there is no objection by an interested person and no substantial reason why some or all of the investment powers given by the will should not be exercised, the court shall make the order. The order may be for a limited period or until the administration of the estate is completed.

**Comment.** Section 9732 replaces former Probate Code Sections 584.5 and 584.6.

Subdivision (a) of Section 9732 restates the first sentence of former Probate Code 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 Probate Code 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) 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 provision in the third sentence of former Section 584.5 requiring 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 sentence and a portion of the second sentence 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).

## CROSS-REFERENCES

Clerk to set matter for hearing § 1285

## Definitions

Devisee § 34

Interested person § 48

Personal representative § 58

Property § 62

Trustee § 84

Will § 88

Proof of giving notice § 1260

Renewal, modification, or termination of order § 9614

Verification required § 1284

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

9733. (a) Pending settlement of the estate or at the time of settlement of the estate, on petition of the personal representative or any interested person, the court may, upon good cause shown, order that the personal representative purchase any of the following from an insurer admitted to do business in this state:

(1) An annuity granted by the will to a devisee named in the will.

(2) An annuity to provide for the payment of an amount granted by the will to a devisee named in the will.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Section 9733 supersedes a portion of former Section 584. Paragraph (2) of subdivision (a) is a new provision that makes clear that an annuity may be purchased to provide for the payment of an amount granted by the will to a devisee named in the will. 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.

## CROSS-REFERENCES

Clerk to set matter for hearing § 1285

## Definitions

Devisee § 34

Interested person § 48

Personal representative § 58

Will § 88

Proof of giving notice § 1260

Verification required § 1284

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2459(b) (2)

**§ 9734. Exercise of option right**

9734. (a) If an asset of the estate consists of an option right, the personal representative may exercise the option after authorization by order of court upon a showing that the exercise would be to the advantage of the estate and would be in the best interest of the interested persons. The personal representative may use any funds or property in the estate to acquire the property covered by the option.

(b) A petition under this section may be filed by the personal representative or any interested person.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Section 9734 restates former Section 584.2 without the limitation of former Section 584.2 that the option right be one that “is nontransferable save only by testate or intestate succession from the decedent.” In addition, under subdivision (c), 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 provision of the last sentence of former Section 584.2 giving the court authority to shorten the time of notice or to dispense with notice is omitted as unnecessary because the court is given this authority by general provisions. See Sections 1203 (shortening period of notice), 1220(f) (dispensing with notice).

The requirement of former Section 584.2 that the exercise of the option right would “add value to the estate” is omitted as unnecessary, this requirement being included in the requirement of Section 9734 that exercise of the option right be “to the advantage of the estate” and “in the best interest of the interested persons.”

The personal representative is required to exercise the power granted by this section (by filing a petition with the court) 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).

Under subdivision (b), a petition may be filed by the personal representative “or any interested person.” Under former Section 584.2, it was unclear whether an interested person was authorized to file a petition.

The provision of former Section 584.2 that the petition shall be filed with the clerk is omitted as unnecessary. The provision of

former Section 584.2 that the clerk shall set the petition for hearing by the court is continued in Section 1285. See also Section 10202 (sale of subscription rights).

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Interested person § 48

Personal representative § 58

Property § 62

Proof of giving notice § 1260

Verification required § 1284

**§ 9735. Purchase of securities or commodities sold short**

**9735.** (a) After authorization by order of court, the personal representative may purchase securities or commodities required to perform an incomplete contract of sale where the decedent died having sold but not delivered securities or commodities not owned by the decedent. The court's order shall fix the terms and conditions of purchase.

(b) A petition under this section may be filed by the personal representative or by any party to the contract. Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) No notice of hearing need be given when the maximum purchase price is fixed or when the securities or commodities are to be purchased on an established stock, bond, or commodity exchange.

**Comment.** Section 9735 restates former Section 771.3 without substantive change, except that, 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.

The provision of the third sentence of former Section 771.3 giving the court authority to shorten the time of notice or to dispense with notice is omitted as unnecessary because the court is given this authority by general provisions. See Sections 1203 (shortening period of notice), 1220(f) (dispensing with notice).

The personal representative is required to exercise the power granted by this section (by filing a petition with the court) 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). Only the personal representative or a party to the contract may petition under Section 9735.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Personal representative § 58

Security § 70

Proof of giving notice § 1260

Verification required § 1284

### § 9736. Holding securities in name of nominee or in other form

9736. The personal representative may hold a security in the name of a nominee or in any other form without disclosure of the estate so that title to the security may pass by delivery.

**Comment.** Section 9736 is new and is drawn from Section 16238 (trust law). See also Corp. Code § 702(a) (personal representative may vote shares without transfer into personal representative's name); Fin. Code § 1563 (trust company may register securities in name of nominee).

#### CROSS-REFERENCES

Definitions

Personal representative § 58

Security § 70

### § 9737. Exercise of subscription rights

9737. (a) If an estate by reason of owning securities also owns or receives subscription rights for the purchase of additional securities, the personal representative may exercise the subscription rights after authorization by order of court upon a showing that it is to the advantage of the estate.

(b) To obtain an order pursuant to this section, the personal representative or any interested person shall file a petition stating the nature of the subscription rights and the advantage to the estate of exercising them.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Section 9737 is new. See also Sections 9734 (exercise of option right), 10202 (sale of subscription rights).

## CROSS-REFERENCES

## Definitions

Interested person § 48

Personal representative § 58

Security § 70

## **CHAPTER 5. OPERATION OF DECEDENT'S BUSINESS**

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

9760. (a) As used in this section, "decedent's business" means an unincorporated business or venture in which the decedent was engaged or which was wholly or partly owned by the decedent at the time of the decedent's death, but does not include a business operated by a partnership in which the decedent was a partner.

(b) If it is to the advantage of the estate and in the best interest of the interested persons, the personal representative, with or without court authorization, may continue the operation of the decedent's business; but the personal representative may not continue the operation of the decedent's business for a period of more than six months from the date of appointment of the personal representative unless a court order has been obtained under this section authorizing the personal representative to continue the operation of the business.

(c) The personal representative or any interested person may file a petition requesting an order (1) authorizing the personal representative to continue the operation of the decedent's business or (2) directing the personal representative to discontinue the operation of the decedent's business. The petition shall show the advantage to the estate and the benefit to the interested persons of the order requested. Notice of the hearing on the petition shall be given as provided in Section 1220.

(d) If a petition is filed under this section, the court may make an order that either:

(1) Authorizes the personal representative to continue the operation of the decedent's business to such an extent and subject to such restrictions as the court determines to be for the advantage of the estate and in best interests of the interested persons.

(2) Directs the personal representative to discontinue the operation of the decedent's business within the time specified in, and in accordance with the provisions of, the order.

**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 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 of appointment of the personal representative. The section requires court authorization to continue operation of the decedent's nonpartnership business for a period of more than six months from the date of the appointment of the personal representative. 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. 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.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Interested person § 48

Personal representative § 58

Proof of giving notice § 1260

Renewal, modification, or termination of order § 9614

Verification required § 1284

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

9761. If a partnership existed between the decedent and another person at the time of the decedent's death, on application of the personal representative, the court may order the surviving partner to render an account pursuant to Section 15043, 15510, or 15634 of the Corporations Code. An order under this section may be enforced by the court's power to punish for contempt.

**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 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.

#### CROSS-REFERENCES

Decedent’s limited partnership § 9763

Definitions

Personal representative § 58

### **§ 9762. Personal representative continuing as partner in decedent’s general partnership**

9762. (a) After authorization by order of court upon a showing that it would be to the advantage of the estate and in the best interest of the interested persons, the personal representative may continue as a general or a limited partner in any partnership in which the decedent was a general partner at the time of death. In its order, the court may specify any terms and conditions of the personal representative’s participation as a partner that the court determines are to the advantage of the estate and in the best interest of the interested persons, but any terms and conditions that are inconsistent with the terms of any written partnership agreement are subject to the written consent of all of the surviving partners.

(b) If there is a written partnership agreement permitting the decedent’s personal representative to participate as a partner, the personal representative has all the rights, powers, duties, and obligations provided in the written partnership agreement, except as otherwise ordered by the court pursuant to subdivision (a).

(c) If there is not a written partnership agreement, the personal representative has the rights, powers, duties, and obligations that the court specifies in its order pursuant to subdivision (a).

(d) To obtain an order pursuant to this section, the personal representative or any interested person shall file a petition showing that the order requested would be to the advantage of the estate and in the best interest of the interested persons. Notice of the hearing on the petition shall be given as provided in Section 1220. In addition, unless the court otherwise orders, the petitioner, not less than 15 days before the hearing, shall cause notice of hearing and a copy of the petition to be mailed to each of the surviving general partners at his or her last known address.

**Comment.** Section 9762 restates a portion of the first sentence and all of the second sentence of former Section 572 without substantive change except as indicated below.

The section is limited to a partnership in which the decedent was a general partner at the time of the decedent's death. Insofar as former Section 572 may have applied to a partnership in which the decedent was a limited partner, the section is superseded by Section 9763. See the Comment to that section.

The authority of the surviving partners to consent to participation by the personal representative notwithstanding the terms of the partnership agreement, which is provided in the second sentence of subdivision (a), is new. Former law did not appear to allow the personal representative to continue participation in the partnership where to do so would be inconsistent with the terms of the partnership agreement. See former Section 572; *but cf.* Corp. Code § 15023 (continuation of terminated partnership).

The requirement in subdivision (d) that notice of the hearing on the petition be given as provided in Section 1220 and by mail to each of the surviving partners replaces 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.

The personal representative is required to exercise the power granted by this section (by filing a petition with the court) 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).

Nothing in Section 9762 authorizes the personal representative to perform acts as a partner for which a professional license is required, or authorizes otherwise prohibited fee-sharing by a licensed professional with unlicensed persons. See, e.g., Rules of Professional Conduct of the State Bar of California, Rule 3-102 (payment of fees to deceased lawyer's estate or other specified person). Section 9762 is subject to regulatory provisions governing use of a license after death of a licensee. See, e.g., Bus. & Prof. Code § 7076 (temporary continuance of licensed contractor's business by family member of deceased licensee).

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Decedent's limited partnership § 9763

Definitions

Interested person § 48

Personal representative § 58

Proof of giving notice § 1260

Verification required § 1284

### § 9763. Exercise of decedent's partnership rights by personal representative

9763. (a) If the decedent was a general partner, the personal representative may commence and maintain any action against the surviving partner that the decedent could have commenced and maintained.

(b) The personal representative may exercise the decedent's rights as a limited partner as provided in Section 15675 of the Corporations Code.

**Comment.** Subdivision (a) of Section 9763 restates the last part of the last sentence of subdivision (b) of former Section 571 without substantive change.

Subdivision (b) replaces the provisions of former Section 572 that may have required court approval for the personal representative to exercise the decedent's rights as a limited partner. Under Section 15675 of the Corporations Code, court

approval is not required, but the personal representative may exercise the decedent's rights only for the purpose of settling the estate.

## CROSS-REFERENCES

## Definitions

Personal representative § 58

## CHAPTER 6. ABANDONMENT OF TANGIBLE PERSONAL PROPERTY

### § 9780. Abandonment of tangible personal property

9780. Unless the property is specifically devised, subject to the requirements of this chapter, the personal representative may dispose of or abandon tangible personal property where the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.

**Comment.** This chapter (commencing with Section 9780) is new. The chapter applies only to tangible personal property. As to intangible personal property, Section 9820 gives the personal representative the power to commence and maintain actions and proceedings for the benefit of the estate. Under Section 9820, the personal representative may decline to commence an action to collect intangible personal property in a case where the cost of collection is likely to exceed the amount likely to be collected. See Section 9600(b).

The personal representative is required to exercise the power granted by this chapter 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).

Section 9780 is consistent with case law. See *In re Estate of Barreiro*, 125 Cal. App. 153, 178-79, 13 P.2d 1017 (1932). The section also is consistent with guardianship-conservatorship law (Section 2465) and with the Uniform Probate Code (UPC § 3-715(6)).

## CROSS-REFERENCES

## Definitions

Devise § 32

Personal representative § 58

Property § 62

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2465

Trusts § 16227

**§ 9781. Court authorization or approval not required unless will otherwise provides**

9781. Unless otherwise provided in the will, subject to the requirements of this chapter, the personal representative may exercise the power provided in Section 9780 without court authorization or approval.

**Comment.** See the Comment to Section 9780.

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

**§ 9782. Notice of proposed disposition or abandonment**

9782. (a) Except as provided in Section 9785, before disposing of or abandoning property under Section 9780, the personal representative shall give notice of the proposed disposition or abandonment as provided in subdivision (c) to all of the following:

(1) Each known devisee whose interest in the estate is affected by the proposed action.

(2) If the estate is an intestate estate, each known heir of the decedent whose interest in the estate is affected by the proposed action.

(3) Each person who has filed a request for special notice pursuant to Section 1250.

(4) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the proposed action.

(b) The notice of the proposed disposition or abandonment shall describe the property to be disposed of or abandoned, indicate the manner in which the property is to be disposed of or abandoned, and specify the date on or after which the property will be disposed of or abandoned.

(c) The notice shall be delivered personally to each person required to be given notice or shall be sent by mail to the person at the person's last known address. If the notice is delivered personally, it shall be delivered to the person not less than five days before the date specified in the notice as the date on or after which the property will be disposed of or abandoned. If the notice is sent by mail,

it shall be deposited in the mail not less than 10 days before the date specified in the notice as the date on or after which the property will be disposed of or abandoned. .

**Comment.** See the Comment to Section 9780. As to giving notice to known heirs and known devisees, see Section 1206.

CROSS-REFERENCES

Consent § 9785  
 Definitions  
   Devise § 32  
   Heirs § 44  
   Personal representative § 58  
   Property § 62  
 Manner of mailing § 1215  
 Notice to known heirs and devisees § 1206  
 Waiver of notice § 9785  
 When mailing complete § 1215

**§ 9783. Objection to proposed disposition or abandonment**

9783. A person described in Section 9782 may deliver or mail a written objection to the disposition or abandonment to the personal representative on or before the date specified in the notice as the date on or after which the property will be disposed of or abandoned. Subject to Section 9788, after receipt of the written objection, the personal representative shall not dispose of or abandon the property without authorization by order of the court obtained under Section 9611.

**Comment.** See the Comment to Section 9780.

CROSS-REFERENCES

Definitions  
   Person § 56  
   Personal representative § 58  
   Property § 62  
 Effect of failure to object § 9787  
 Effect of objection § 9787  
 Restraining order § 9784

**§ 9784. Restraining order**

9784. (a) A person described in Section 9782 who objects to the disposition or abandonment of property by the personal representative under Section 9780 may apply to the court having jurisdiction over the proceeding for an order restraining the personal representative from

disposing of or abandoning the property without prior court authorization.

(b) The court shall grant the requested order without requiring notice to the personal representative and without cause being shown for the order if the court is satisfied that the estate will not suffer any loss or unreasonable expense if the order is granted. As a condition of granting the order, the court may require the person applying for the order (1) to pay the costs of storing and protecting the property or (2) to provide security by bond or cash deposit that the costs will be paid.

(c) The personal representative is deemed to have notice of the restraining order if it is served upon the personal representative in the same manner as is provided for in Section 415.10 or 415.30 of the Code of Civil Procedure, or in the manner authorized by the court, before the date specified in the notice as the date on or after which the property will be disposed of or abandoned.

**Comment.** See the Comment to Section 9780.

#### CROSS-REFERENCES

##### Definitions

Person § 56

Personal representative § 58

Property § 62

Effect of restraining order § 9787

#### § 9785. Notice not required where consent or waiver

9785. Notice of the proposed disposition or abandonment need not be given to any of the following:

(a) Any person who consents in writing to the proposed disposition or abandonment.

(b) Any person who, in writing, waives the right to notice of the proposed disposition or abandonment.

**Comment.** See the Comment to Section 9780.

#### CROSS-REFERENCES !°

##### Definitions

Person § 56

#### § 9786. Notice of hearing of petition for court authorization

9786. A person who objects to the disposition or abandonment as provided in Section 9783, or who serves a

restraining order issued under Section 9784 in the manner provided in that section, shall be given notice of any court hearing on a petition for court authorization of the disposition or abandonment of the property.

**Comment.** See the Comment to Section 9780.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

**§ 9787. Waiver of right to court review**

9787. (a) Except as provided in subdivision (b), a person described in Section 9782 who receives notice of the proposed disposition or abandonment as provided in Section 9782, waives the right to have the court later review the disposition or abandonment of the property unless the person does one of the following:

(1) Delivers or mails a written objection as provided in Section 9783.

(2) Serves a restraining order obtained under Section 9784 before whichever of the following is the later time:

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

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

(b) Subject to Section 9785, the court may review the disposition or abandonment of the property upon the motion of a person described in subdivision (a) of Section 9782 who establishes that he or she did not actually receive notice of the proposed disposition or abandonment before the time to object expired.

**Comment.** See the Comment to Section 9780.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

**§ 9788. Tender of possession of property to person objecting**

9788. (a) Notwithstanding Sections 9783 and 9784, the personal representative may abandon or dispose of the

property without court authorization if the person who made the objection or obtained the restraining order fails to take possession of the property at his or her expense within 10 days after the personal representative requests that the person do so.

(b) A person who takes possession of estate property pursuant to this section is liable for the safekeeping of the property until a court order is made relieving the person of this obligation.

**Comment.** See the Comment to Section 9780.

#### CROSS-REFERENCES

##### Definitions

Person § 56

Personal representative § 58

Property § 62

## CHAPTER 7. BORROWING, REFINANCING, AND ENCUMBERING PROPERTY

### § 9800. Borrowing money, refinancing, and encumbering property

9800. (a) Subject to subdivision (c), after authorization by order of court obtained under this chapter upon a showing that it would be to the advantage of the estate, the personal representative may borrow money on a note, either unsecured or to be secured by a security interest or other lien on the personal property of the estate, or any part thereof, or to be secured by a mortgage or deed of trust on the real property of the estate, or any part thereof, and may give a security interest or other lien on the personal property of the estate, or any part thereof, or a mortgage or deed of trust on the real property of the estate, or any part thereof, in order to do any one or more of the following:

(1) Pay the debts of the decedent or the estate, devise made in the will of the decedent, and expenses and charges of administration.

(2) Pay, reduce, extend, or renew a security interest or lien or mortgage or deed of trust already existing on property of the estate.

(3) Improve, use, operate, or preserve property in the estate.

(b) The personal representative shall apply the money to the purpose specified in the order.

(c) Where the surviving spouse has elected to have his or her share of the community real property administered in the decedent's estate, the personal representative is authorized to borrow money to be secured by a mortgage or deed of trust on the real property of the estate, or any part thereof, only with the written consent of the surviving spouse.

**Comment.** Subdivision (a) of Section 9800 restates a portion of the first sentence, and all of the third sentence, of former Section 830 without substantive change. Clarifying language is added to paragraph (1) of subdivision (a) to make clear that debts of the estate are included. As used in paragraph (1) of subdivision (a), "debts" includes taxes owed by the decedent or the estate. Paragraph (3) of subdivision (a) is new. For a comparable provision, see Section 2552 (guardianship and conservatorship).

Subdivision (b) is drawn from the second sentence of subdivision (a) of Section 2551 (guardianship and conservatorship).

Subdivision (c) is a new provision that makes clear that the personal representative may not borrow money to be secured by real property of the estate where the surviving spouse has elected to have his or her share of the community real property administered in the estate unless the written consent of the surviving spouse is obtained.

The personal representative is required to exercise the power granted by this section (by filing a petition with the court) 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).

"Security interest" is substituted in Section 9800 for "chattel mortgage" and "pledge" which appeared in former Probate Code Section 830. Under the California Commercial Code, the security interest replaces the chattel mortgage and pledge. See Uniform Law Commissioners' Comment to Uniform Commercial Code Section 9-101.

The word "note" has been substituted in Section 9800 in place of the phrase "note or notes" used in former Section 830. This is

not a substantive change. See Section 10 (singular number includes the plural).

#### CROSS-REFERENCES

##### Definitions

Devise § 32

Personal representative § 58

Property § 62

Real property § 68

### § 9801. Acting jointly with other owners of interests in estate property

9801. If property of the estate consists of an undivided interest in real or personal property, or any other interest therein less than the entire ownership, upon a showing that it would be to the advantage of the estate to borrow money to improve, use, operate, or preserve the property jointly with the owners of the other interests therein, or to pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on all of the property, the personal representative, after authorization by order of the court obtained under this chapter, may join with the owners of the other interests in borrowing money and the execution of a joint and several note and such security interest, lien, mortgage, or deed of trust as may be required to secure the payment of the note. The note may be for such sum as is required for the purpose.

**Comment.** Section 9801 continues the second sentence of former Section 830 without substantive change. Section 9801 is comparable to subdivision (b) of Section 2552 (guardianship-conservatorship law). The word “note” has been substituted in Section 9801 for the phrase “note or notes” used in former Section 830 and the word “owners” has been substituted in Section 9801 for the phrase “owner or owners” used in former Section 830. These are not substantive changes. See Section 10 (singular number includes the plural, and the plural, the singular).

The personal representative is required to exercise the power granted by this section (by filing a petition with the court) 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).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Real property § 68

**§ 9802. Petition**

9802. (a) The personal representative or any interested person may file a petition for an order pursuant to this chapter.

(b) The petition shall state the purpose for which the order is sought and the necessity for or the advantage to accrue from the order. If applicable, the petition shall also show the amount of money proposed to be borrowed, the rate of interest to be paid, the length of time the note is to run, and a general description of the property proposed to be mortgaged or subjected to the deed of trust, security interest, or other lien.

**Comment.** Section 9802 restates the first sentence of former Section 831 without substantive change.

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Interested person § 48

Personal representative § 58

Verification required § 1284

**§ 9803. Notice of hearing**

9803. Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Section 9803 restates the last portion of the second sentence of former Section 831 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.

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Proof of giving notice § 1260

**§ 9804. Hearing; order**

9804. (a) Subject to subdivision (c), if the court is satisfied that it will be to the advantage of the estate, the court shall make an order that authorizes or requires that the personal representative do any one or more of the following:

(1) Borrow money and execute a note.

(2) Execute a mortgage or deed of trust or give other security by security interest or other lien.

(3) Pay, reduce, extend, or renew a security interest or lien or mortgage or deed of trust already existing upon property of the estate.

(b) The court in its order may do any one or more of the following:

(1) Order that a lesser amount than that specified in the petition be borrowed.

(2) Prescribe the maximum rate of interest and the period of the loan.

(3) Require that the interest and the whole or any part of the principal be paid from time to time out of the whole estate or any part thereof.

(4) Require that the personal property used as security, or any buildings on real property to be mortgaged or subjected to the deed of trust, be insured for the further security of the lender and that the premiums be paid out of the estate.

(5) Specify the purpose for which the money to be borrowed is to be applied.

(6) Specify the terms and conditions of any extension or renewal agreement.

(7) Prescribe such other terms and conditions concerning the transaction as the court determines to be to the advantage of the estate.

(c) Where the surviving spouse has elected to have his or her share of the community real property administered in the decedent's estate, an order authorizing or requiring the personal representative to borrow money to be secured by a mortgage or deed of trust upon the real property of the estate, or any part thereof, may be made only if the written consent of the surviving spouse has been filed with the court.

**Comment.** Section 9804 restates the last portion of the first sentence of former Section 830 and the first and second sentences of former Section 832 without substantive change. The provision of former Section 832 that the court may direct in what coin or currency the loan shall be paid has been omitted as obsolete. This omission is consistent with the 1982 amendment to Section 667 of the Code of Civil Procedure. Paragraphs (5) and (6) of subdivision (b) are new and state matters that were implied under former Section 830. Paragraph (7) of subdivision (b) is new and makes clear that the court has flexibility to fashion an appropriate order. Subdivision (c) is new and is consistent with subdivision (c) of Section 9800. As to the recording of the order, see Section 1292.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

Real property § 68

#### § 9805. Execution of instrument; liability of personal representative

9805. (a) The personal representative shall execute and deliver the mortgage or deed of trust, or execute and deliver the instrument creating the security interest, setting forth therein that it is made by authority of the order, giving the date of the order.

(b) The note and the mortgage or deed of trust or other instrument creating the security interest, if any, shall be signed by the personal representative and shall be acknowledged by the personal representative if the instrument creates a lien on real property. The personal representative is not personally liable on the note or the mortgage or deed of trust or other instrument by reason of so signing.

**Comment.** Section 9805 restates former Section 833 without substantive change, except that Section 9805 applies to an instrument creating a security interest in personal property as well as to a mortgage or deed of trust on real property. Former Section 833 did not refer to an instrument creating a security interest in personal property.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Effect of court authorization or approval § 9612

**§ 9806. Effectiveness of encumbrance**

9806. (a) Every mortgage, deed of trust, or security interest made pursuant to a court order obtained under this chapter is effectual to mortgage, or to subject to the deed of trust or security interest, both of the following:

(1) All right, title, and interest which the decedent had in the property described therein at the time of the decedent's death.

(2) Any right, title, or interest in the property acquired by the estate of the decedent, by operation of law or otherwise, since the time of the decedent's death.

(b) Jurisdiction of the court to administer the estate of the decedent shall be effectual to vest the court with jurisdiction to make the order for the note and for the security interest, lien, mortgage, or deed of trust. This jurisdiction shall conclusively inure to the benefit of the owner of the security interest or lien, mortgagee named in the mortgage, or the trustee and beneficiary named in the deed of trust, and their heirs and assigns.

(c) No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the note, security interest, lien, mortgage, or deed of trust given pursuant to an order under this chapter. Subject to Section 9807, the owner of the security interest or lien, the mortgagee named in the mortgage, or the trustee and beneficiary named in the deed of trust, and their heirs and assigns, have and possess the same rights and remedies on the note and the security interest or lien or mortgage or deed of trust as if it had been made by the decedent prior to his or her death.

**Comment.** Section 9806 restates without substantive change the first and second sentences and the first portion of the third sentence of former Section 834. The words "or prior thereto" which appeared in the first sentence of former Section 834 have been omitted. Those words should have been deleted from Section 834 in 1931 when former Code of Civil Procedure Section 1578 (which applied not only to decedents' estates but also to estates of guardians of minors and incompetent persons) was repealed and Section 834 (which applied only to decedents'

estates) was enacted. See Cal. Stat. 1931 ch. 281, §§ 834, 1533, 1538.

## CROSS-REFERENCES

Definitions  
 Heirs § 44  
 Property § 62

**§ 9807. Deficiency in case of foreclosure or sale under security interest or deed of trust**

9807. (a) Except as provided in subdivision (b), no judgment or claim for any deficiency shall be had or allowed against the personal representative or the estate if (1) there is a foreclosure or sale under a security interest, lien, mortgage, or deed of trust and (2) the proceeds of sale of the encumbered property are insufficient to pay the note, the security interest, lien, mortgage, or deed of trust, and the costs or expenses of sale.

(b) If the note, security interest, mortgage, or deed of trust was given to pay, reduce, extend, or renew a lien, mortgage, security interest, or deed of trust existing on property of the estate at the time of death of the decedent and the indebtedness secured thereby was an allowed and approved claim against the estate, the part of the indebtedness remaining unsatisfied shall be classed and paid with other allowed claims against the estate.

**Comment.** Section 9807 restates the last portion of the third sentence of former Section 834 without substantive change.

## CROSS-REFERENCES

Definitions  
 Personal representative § 58  
 Property § 62

**CHAPTER 8. ACTIONS AND PROCEEDINGS BY OR AGAINST PERSONAL REPRESENTATIVE**

**§ 9820. Authority to sue and defend**

9820. The personal representative may:

(a) Commence and maintain actions and proceedings for the benefit of the estate.

(b) Defend actions and proceedings against the decedent, the personal representative, or the estate.

**Comment.** Section 9820 is new and is consistent with prior law. See 7 B. Witkin, *Summary of California Law Wills and Probate* § 337, at 5813 (8th ed. 1974); former Sections 573-577. Section 9820 is drawn from Section 2462 (guardianship-conservatorship law). The authority in subdivision (b) for defense of actions and proceedings against the personal representative refers to actions and proceedings against the personal representative in his or her representative capacity, not those against him or her individually.

The personal representative may act under Section 9820 without prior court authorization. See Section 9610; *Halleck v. Mixer*, 16 Cal. 574, 580 (1860). The personal representative must exercise ordinary care and diligence in determining whether to exercise a power granted by Section 9820 and in exercising the power. See Section 9600. The personal representative may seek instructions from the court if in doubt as to the appropriate action to take. See Section 9611. As to the effect of court authorization or approval, see Section 9612.

Section 9820 gives authority to the personal representative to defend actions and proceedings, but procedural requirements are governed by the Code of Civil Procedure. If the defendant in a pending action dies and the cause of action survives or continues, the court in which the civil action is pending may, on motion, allow the action to be continued against the personal representative. Code Civ. Proc. § 385(a).

The personal representative and third party may agree to use a summary procedure for determination of a dispute. See Sections 9620 (submission to temporary judge) and 9621 (submission to arbitration).

See also Sections 612 (action for double damages), 9650 (possession and management of decedent's estate), 9653 (duty to recover property transferred in fraud of creditors), 9654 (action by heirs or devisees for possession of or to quiet title to real property), 9763 (action against decedent's surviving partner), 9780 (abandonment of tangible personal property where cost of collection would exceed its value), 9823 (partition action); Code Civ. Proc. §§ 376 (action against personal representative of person causing injury to minor child), 377 (wrongful death action against personal representative of person causing death), 385 (continuation of action against deceased defendant without appointment of personal representative).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2462

Trusts § 16249

**§ 9821. Effect of death on causes of action**

9821. (a) Except as provided in this section, no cause of action is lost by reason of the death of any person but may be maintained by or against the person's personal representative.

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

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

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

(e) Nothing in this section shall be construed as making assignable things in action which are of such a nature as not to have been assignable prior to September 15, 1961.

**Comment.** Section 9821 restates former Section 573 without substantive change. See also Section 9654 (action by heirs or devisees for possession or to quiet title to real property); Code Civ. Proc. §§ 353 (limitation on action by or against personal representative or estate), 355 (limitation on action by personal representative after reversal of judgment), 376 (action against personal representative of person causing injury to minor child), 377 (wrongful death action against personal representative of person causing death), 385 (continuation of action against

deceased defendant without appointment of personal representative).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

### § 9822. Action on bond of former personal representative

9822. The personal representative may bring an action on the bond of any former personal representative of the same estate, for the use and benefit of all interested persons.

**Comment.** Section 9822 restates former Section 576 without substantive change. The former reference to the personal representative acting “as such” has been omitted as unnecessary. The personal representative may act under this section without prior court authorization. See Section 9610.

The authority given by Section 9822 is not exclusive: Liability on the bond of a former personal representative may be enforced on motion as well as by an action. See Code Civ. Proc. §§ 995.020, 996.440(a); Estate of Johnson, 162 Cal. App. 3d 917, 919, 208 Cal. Rptr. 821 (1984) (liability on bond determined on settlement of account).

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.

#### CROSS-REFERENCES

##### Definitions

Interested person § 48

Personal representative § 58

### § 9823. Partition actions

9823. (a) If the decedent leaves an undivided interest in any property, an action for partition of the property may be brought against the personal representative.

(b) The personal representative may bring an action against the other cotenants for partition of any property in which the decedent left an undivided interest.

**Comment.** Section 9823 continues former Section 575 without substantive change. Section 9823 is a specific example of the general authority given the personal representative by Section 9820. The personal representative may act under this

section 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.

When a partition action is brought against the personal representative, the rules of venue for partition actions generally apply. See Code Civ. Proc. § 872.110.

Under subdivision (b), court authorization is not required for the personal representative to commence a partition action. See Section 9610. This continues prior law. See Review of Selected 1969 Code Legislation 187 (Cal. Cont. Ed. Bar 1969).

The personal representative and third party may agree to use a summary procedure for determination of a dispute. See Sections 9620 (submission to temporary judge) and 9621 (submission to arbitration).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

## CHAPTER 9. COMPROMISE OF CLAIMS AND ACTIONS; EXTENSION, RENEWAL, OR MODIFICATION OF OBLIGATIONS

### § 9830. Authority to compromise claims and actions and to extend, renew, or modify obligations

9830. (a) Unless this chapter or some other applicable statute requires court authorization or approval, if it is to the advantage of the estate, the personal representative may do any of the following without court authorization, instruction, approval, or confirmation:

(1) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate, including the giving of a covenant not to sue.

(2) Extend, renew, or in any manner modify the terms of an obligation owing to or in favor of the decedent or the estate.

(3) Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

(b) Nothing in this section precludes the personal representative from seeking court authorization pursuant to the provisions of this chapter.

(c) Upon petition of an interested person or upon the court's own motion, the court may limit the authority of the personal representative under subdivision (a). Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Section 9830 is drawn from Section 2500 (guardianship-conservatorship law). It replaces the first, second, and third sentences of former Section 578 and the first sentence of former Section 718.5.

The provisions of former Sections 578 and 718.5 authorized the personal representative to do the acts described in subdivision (a) "with the approval of the court." Under Section 9830, unless otherwise provided by statute, the personal representative may, but is not required to, obtain court authorization. By permitting but not requiring prior court authorization, Section 9830 continues prior law. See *Moulton v. Holmes*, 57 Cal. 337, 343-44 (1881); *Estate of Coffey*, 161 Cal. App. 2d 259, 264, 326 P.2d 511 (1958); *Taylor v. Sanson*, 24 Cal. App. 515, 517-18, 141 P. 1060 (1914). See also *Estate of Lucas*, 23 Cal. 2d 454, 463-65, 144 P.2d 340 (1943). If the compromise, modification, or release affects title to real property, court authorization is required. Section 9832.

Section 9830 requires that the action taken be to the advantage of the estate. In addition, the personal representative must exercise ordinary care and diligence in determining whether to exercise a power granted by Section 9830 and in exercising the power. See Section 9600. The personal representative may seek prior authorization from the court under Sections 9836-9837 if in doubt as to the appropriate action to take. As to the effect of court authorization, see Section 9612. For other provisions that may apply to a compromise or settlement, see, e.g., Lab. Code § 5001 (compromise of worker's compensation claim).

This chapter limits the authority the personal representative had under prior law to compromise claims and actions without court approval. Although there is no general requirement under this chapter that authorization of the court be obtained, certain matters (specified in Sections 9831-9835) do require authorization by the court. This new scheme is drawn from the

guardianship-conservatorship law. See Sections 2500-2507. In addition, under subdivision (c) of Section 9830, the court may limit the authority of the personal representative under this section. For example, the court may require prior court authorization for any compromise or settlement of a particular matter or of a particular kind of matter. Or the court may order that no compromise or settlement be made unless it has first been authorized by the court. Under subdivision (c), a creditor or other interested person may request that the court make an order that, for example, limits the authority of the personal representative to take action under this section without prior authorization by order of the court.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285  
 Definitions  
   Interested person § 48  
   Personal representative § 58  
 Effect of court authorization or approval § 9612  
 Proof of giving notice § 1260  
 Verification required § 1284

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2500

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

9831. Unless the time for filing creditor's claims has expired, authorization by order of court is required 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.

**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. The section 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).

#### CROSS-REFERENCES

Definitions  
   Personal representative § 58

**§ 9832. Matters relating to real property**

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

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

(b) If it is to the advantage of the estate, the personal representative without prior court authorization may extend, renew, or modify a lease of real property having an unexpired term of one year or less where, under the lease as extended, renewed, or modified (1) the rental does not exceed one thousand five hundred dollars (\$1,500) a month and the term does not exceed one year or (2) regardless of the amount of the rental, the lease is from month to month.

**Comment.** Section 9832 is new and is drawn in part from Section 2501 (guardianship-conservatorship law).

Except as provided in subdivision (b), a transaction described in Section 9832 requires authorization by order of court obtained under Sections 9836-9837. Subdivision (b), which provides an exception to the requirement of court authorization, is consistent with Section 9941 (leases permitted without court authorization).

In determining whether to extend, renew, or modify a lease under subdivision (b) without prior court authorization, and in extending, renewing, or modifying the lease under that subdivision, the personal representative is required to exercise ordinary care and diligence. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612.

**CROSS-REFERENCES****Definitions**

Personal representative § 58

Real property § 68

Effect of court authorization or approval § 9612

**COMPARABLE PROVISIONS**

Guardianship-conservatorship § 2501

**§ 9833. Compromise in excess of specified amount**

9833. Authorization by order of court is required for a compromise or settlement of a matter when the transaction

requires the transfer or encumbrance of property of the estate, or the creation of an unsecured liability of the estate, or both, in an amount or value in excess of twenty-five thousand dollars (\$25,000).

**Comment.** Section 9833 is new and is the same in substance as Section 2502 (guardianship-conservatorship law). Section 9833 requires authorization by order of court obtained under Sections 9836-9837 where the amount to be paid or charged against the estate exceeds \$25,000. Section 9833 does not apply to a claim by the estate.

Although Section 9833 does not require court authorization for a compromise or settlement where the amount to be paid or charged against the estate is not more than \$25,000, another provision may require court authorization in the particular case (as, for example, under Section 9832—matter affecting real property).

#### CROSS-REFERENCES

Definitions

Property § 62

Effect of court authorization or approval § 9612

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2502

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

9834. Authorization by order of court is required for any of the following:

(a) A compromise or settlement of a claim by the estate against the personal representative, whether or not the claim arises out of the administration of the estate.

(b) An extension, renewal, or modification of the terms of a debt or similar obligation of the personal representative owing to, or in favor of, the estate.

**Comment.** Section 9834 is new and is the same in substance as Section 2503 (guardianship-conservatorship law). 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.

#### CROSS-REFERENCES

Definitions

Personal representative § 58

Effect of court authorization or approval § 9612

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2503

**§ 9835. Wrongful death and personal injury claims**

9835. Authorization by order of court is required for the compromise or settlement of a claim or right of action given to the personal representative by any law for the wrongful death or injury of the decedent, including any action brought by the personal representative in attempting enforcement of the claim or right of action. Authorization to compromise or settle the claim or right of action includes authorization to give a covenant not to sue.

**Comment.** Section 9835 continues the substance of the first paragraph of former Section 578a. Section 9835 requires authorization by order of court obtained under Sections 9836-9837 for a compromise or settlement described in the section. For provisions giving the personal representative a right of action for wrongful death of the decedent, see Code Civ. Proc. § 377 (wrongful death of adult or certain minors), Labor Code § 2803 (wrongful death of employee).

## CROSS-REFERENCES

Action by personal representative

Wrongful death of adult or certain minors Code Civ. Proc. § 377

Wrongful death of employee Labor Code § 2803

Definitions

Personal representative § 58

Continuance of action after death Code Civ. Proc. § 385

Death of party before expiration of time limited for commencement of action Code Civ. Proc. § 353

Effect of court authorization or approval § 9612

Limitation of action for wrongful death Code Civ. Proc. § 340

Survival of actions § 9821

**§ 9836. Court having authority to give authorization**

9836. The court authorization required by this chapter shall be obtained from the court in which the estate is being administered.

**Comment.** Section 9836 is new. Section 9836 applies whether or not the claim or matter is the subject of a pending action or proceeding.

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2505

**§ 9837. Petition for court authorization; notice**

9837. (a) A petition for an order authorizing a compromise, settlement, extension, renewal, or modification under this chapter may be filed by any of the following:

(1) The personal representative.

(2) Any interested person who has obtained the written approval of the personal representative to file the petition.

(b) The petition shall show the terms of the compromise, settlement, extension, renewal, or modification and its advantage to the heirs or devisees and the estate.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Section 9837 restates the fourth and fifth sentences of former Section 578, the third and fourth sentences of former Section 578a, and the second and third sentences of former Section 718.5, with the following changes:

(1) The authority for the filing of a petition by an interested person with the written approval of the personal representative is new. In some cases, the personal representative may desire to have an outside party bear the legal expense of obtaining the court approval, or the estate beneficiaries may be interested in seeking court approval of a modification.

(2) Under subdivision (c), 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.

**CROSS-REFERENCES**

Clerk to set matter for hearing § 1285

Definitions

Personal representative § 58

Effect of court authorization or approval § 9612

Proof of giving notice § 1260

Verification required § 1284

**COMPARABLE PROVISIONS**

Guardianship-conservatorship § 2506

**§ 9838. Transfer of property to effectuate court approved compromise or settlement**

9838. (a) If an order made under Section 9837 authorizes a compromise or settlement that requires the transfer of real property of the estate, the personal representative shall execute a conveyance of the real property to the person entitled thereto under the

compromise or settlement. The conveyance shall refer to the order authorizing the compromise or settlement and directing that the conveyance be executed. A certified copy of the order shall be recorded in the office of the recorder of the county in which the real property or any portion thereof lies.

(b) A conveyance made in compliance with the court order authorizing the compromise or settlement and directing the conveyance to be executed vests in the person to whom the property is transferred both of the following:

(1) All the right, title, and interest which the decedent had in the property at the time of the decedent's death.

(2) Any other or additional right, title, or interest in the property acquired by the estate of the decedent, by operation of law or otherwise, prior to the transfer.

**Comment.** Section 9838 restates the fourth sentence of former Section 718.5 without substantive change. See also Section 9612 (effect of court authorization or approval).

#### CROSS-REFERENCES

##### Definitions

Person § 56

Personal representative § 58

Real property § 68

### § 9839. Claim paid for less than full amount

9839. If the personal representative pays a claim for less than its full amount, the personal representative's accounts may be credited only for the amount actually paid.

**Comment.** Section 9839 restates the second half of the first paragraph of former Section 583 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

## CHAPTER 10. ACCEPTANCE OF DEED IN LIEU OF FORECLOSURE OR TRUSTEE'S SALE; GRANT OF PARTIAL SATISFACTION OR PARTIAL RECONVEYANCE

### § 9850. Acceptance of deed in lieu of foreclosure or trustee's sale

9850. (a) If it is to the advantage of the estate to accept a deed to property which is subject to a mortgage or deed

of trust in lieu of foreclosure of the mortgage or sale under the deed of trust, the personal representative may, after authorization by order of the court, and upon such terms and conditions as may be imposed by the court, accept a deed conveying the property to the heirs or devisees of the decedent, subject to administration.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition showing the advantage to the estate of accepting the deed. Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) The court shall make an order under this section only if the advantage to the estate of accepting the deed is shown by clear and convincing evidence.

**Comment.** Section 9850 restates the substance of former Section 718.6, except that (1) the showing of advantage to the estate must be by clear and convincing evidence, and (2) notice under subdivision (b) 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.

Among the factors to be taken into consideration by the court in determining whether it is to the advantage of the estate to take a deed in lieu of foreclosure are (1) whether there will be subordinate liens that will continue on the property if the deed is taken that would be eliminated if the mortgage is foreclosed or the property is sold under the deed of trust and (2) whether there is a right to a deficiency judgment that would continue if the mortgage were foreclosed and the property were to fail to yield enough to pay the amount of the encumbrance. These factors would not necessarily preclude the granting of the order (as where the subordinate lien that would continue is for only a small amount or where the deficiency judgment would be uncollectible).

The personal representative is required to exercise the power granted by this section (by filing a petition with the court) to the extent that ordinary care and diligence require that the power be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612.

## CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Devisee § 34

Heirs § 44

Interested person § 48

Personal representative § 58

Property § 62

Proof of giving notice § 1260

Verification required § 1284

**§ 9851. Grant of partial satisfaction or partial reconveyance**

9851. (a) Except as provided in subdivision (c), if it is to the advantage of the estate for the personal representative to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a trust deed held by the estate, the personal representative may, after authorization by order of the court and upon such terms and conditions as may be imposed by the court, give the partial satisfaction or cause the partial reconveyance to be executed by the trustee.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition showing the advantage to the estate of giving the partial satisfaction or causing the partial reconveyance. Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) No authorization by the court is necessary for the personal representative to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a trust deed held by the estate if the partial satisfaction or partial reconveyance is executed pursuant to the terms of the mortgage or trust deed held by the estate.

**Comment.** Section 9851 restates former Section 718.7 without substantive change, except that, 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.

The personal representative is required to exercise the power granted by subdivision (a) (by filing a petition with the court) to the extent that ordinary care and diligence require that the

power be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612.

## CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Interested person § 48

Personal representative § 58

Proof of giving notice § 1260

Verification required § 1284

## CHAPTER 11. CONVEYANCE OR TRANSFER OF PROPERTY CLAIMED TO BELONG TO DECEDENT OR OTHER PERSON

### § 9860. Petition for order

9860. (a) The personal representative or any interested person may file a petition requesting that the court make an order under this chapter in any of the following cases:

(1) Where the decedent while living is bound by a contract in writing to convey real property or to transfer personal property and dies before making the conveyance or transfer and the decedent, if living, could have been compelled to make the conveyance or transfer.

(2) Where the decedent while living binds himself or herself or his or her personal representative by a contract in writing to convey real property or to transfer personal property upon or after his or her death and the contract is one which can be specifically enforced.

(3) Where the decedent died in possession of, or holding title to, real or personal property, and the property or some interest therein is claimed to belong to another.

(4) Where the decedent died having a claim to real or personal property, title to or possession of which is held by another.

(b) The petition shall set forth the facts upon which the claim is based.

**Comment.** The introductory clause of subdivision (a) of Section 9860 restates a portion of the first sentence of former Section 851 and a portion of the first sentence of former Section 851.5 without substantive change, except that under the former provisions only the personal representative and a claimant had the right to file a petition. Paragraphs (1) and (2) of subdivision (a) restate a portion of former Probate Code Section 850 without

substantive change. Paragraphs (3) and (4) of subdivision (a) restate a portion of the first sentence of former Probate Code Section 851.5 without substantive change. Paragraph (4) is broad enough to permit the court to adjudicate claims under Sections 612-613, and therefore overrules *Laing v. Superior Court*, 88 Cal. App. 2d 641, 199 P.2d 373 (1948).

Subdivision (b) restates a portion of the first sentence of former Section 851 and a portion of the first sentence of former Section 851.5 without substantive change.

The personal representative is required to exercise the power granted by this section (by filing a petition with the court) to the extent that ordinary care and diligence require that the power be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612. The personal representative and third party may agree to use a summary procedure for determination of a dispute. See Sections 9620 (submission to temporary judge) and 9621 (submission to arbitration).

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Interested person § 48

Personal representative § 58

Property § 62

Real property § 68

Verification required § 1284

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2520

### § 9861. Notice of hearing

9861. (a) At least 30 days prior to the day of the hearing, the petitioner shall cause notice of the hearing and a copy of the petition to be served in the same manner as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure on all of the following persons:

- (1) The personal representative.
- (2) Any person claiming an interest in, or having title to or possession of, the property.

(b) Except for those persons given notice pursuant to subdivision (a), notice of the hearing on the petition, together with a copy of the petition, also shall be given as provided in Section 1220 to all of the following:

(1) Each known devisee whose interest in the estate is affected by the proposed purchase.

(2) If the estate is an intestate estate, each known heir of the decedent whose interest in the estate is affected by the proposed purchase.

(3) Each person who has filed a request for special notice pursuant to Section 1250.

**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). As to giving notice to known heirs and known devisees, see Section 1206.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Devisee § 34

Heirs § 44

Person § 56

Personal representative § 58

Property § 62

Notice to known heirs and devisees § 1206

Proof of giving notice § 1260

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2521

### § 9862. Continuance for preparation for hearing

9862. Any interested person may request time for filing a response to the petition, for discovery proceedings, or for other preparation for the hearing, and the court shall grant a continuance for a reasonable time for any of these purposes.

**Comment.** Section 9862 continues the fifth sentence of former Section 851.5 without change.

## CROSS-REFERENCES

## Definitions

Interested person § 48

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2522

**§ 9863. Filing of notice of lis pendens**

9863. If the matter concerns real property, notice of the pendency of the proceeding may be filed pursuant to Section 409 of the Code of Civil Procedure.

**Comment.** Section 9863 continues the sixth sentence of former Section 851.5 with the addition of the introductory clause.

## CROSS-REFERENCES

## Definitions

Real property § 68

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2523

**§ 9864. Denial of petition if objection based on venue**

9864. Any person having or claiming title to or an interest in the property which is the subject of the petition may, at or prior to the hearing, object to the hearing of the petition if the petition is filed in a court which is not the proper court under any other provision of law for the trial of a civil action seeking the same relief and, if the objection is established, the court shall not grant the petition.

**Comment.** Section 9864 continues the seventh sentence of former Section 851.5 without substantive change.

## CROSS-REFERENCES

## Definitions

Person § 56

Property § 62

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2524

**§ 9865. Abatement of petition if civil action pending**

9865. (a) Except as provided in subdivision (b), if a civil action is pending with respect to the subject matter of a petition filed pursuant to this chapter and jurisdiction has been obtained in the court where the civil action is pending prior to the filing of the petition, upon request of any party

to the civil action, the court shall abate the petition until the conclusion of the civil action.

(b) The court need not abate the petition if the court determines that the civil action was filed for the purpose of delay.

**Comment.** Subdivision (a) of Section 9865 restates the last sentence of former Section 851.5 with the addition of the language “upon request of any party to the civil action.” Subdivision (b) codifies the rule of *Richer v. Superior Court*, 63 Cal. App. 3d 748, 755-57, 134 Cal. Rptr. 52 (1976).

COMPARABLE PROVISIONS

Guardianship-conservatorship § 2525

**§ 9866. Denial of petition if matter should be determined by civil action**

9866. The court shall not grant a petition under this chapter if the court determines that the matter should be determined by a civil action.

**Comment.** Section 9866 restates a portion of the first sentence of former Section 852 without substantive change.

COMPARABLE PROVISIONS

Guardianship-conservatorship § 2526

**§ 9867. Order**

9867. Except as provided in Sections 9864, 9865, and 9866, if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the personal representative, or the other person having title to or possession of the property, to execute a conveyance or transfer to the person entitled thereto or granting other appropriate relief.

**Comment.** Section 9867 restates portions of former Section 850 and of the first sentence of former Section 852 without substantive change. Under Section 9867, the court orders the property to be transferred to “the person entitled thereto,” which may include the decedent’s estate in an appropriate case.

**§ 9868. Effect of order; execution and effect of conveyance or transfer**

9868. (a) The order is prima facie evidence of the correctness of the proceedings and of the authority of the

personal representative or other person to make the conveyance or transfer.

(b) After entry of an order that the personal representative or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

(c) The personal representative or other person ordered to execute a conveyance or transfer under Section 9867 shall execute the conveyance or transfer according to the terms of the order.

(d) The conveyance or transfer of the personal representative passes title to the property as fully as if the decedent had executed it while living.

**Comment.** Section 9868 restates former Section 853 without substantive change. The phrase of former Section 853 “and the court may enforce its execution by process” has been omitted as unnecessary. See Code Civ. Proc. § 717.010.

#### CROSS-REFERENCES

##### Definitions

Person § 56

Personal representative § 58

Property § 62

Effect of court authorization or approval § 9612

#### COMPARABLE PROVISIONS

Guardianship-conservatorship law § 2528

## **CHAPTER 12. PURCHASE OF ESTATE PROPERTY BY PERSONAL REPRESENTATIVE OR PERSONAL REPRESENTATIVE'S ATTORNEY**

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

9880. Except as provided in this chapter, neither the personal representative nor the personal representative's attorney may purchase any property of the estate, or any claim against the estate, directly or indirectly, nor be interested in any such purchase.

**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.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

**§ 9881. Purchase with consent of all heirs or devisees**

9881. Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative's attorney to purchase property of the estate if all of the following requirements are satisfied:

(a) Written consent to the purchase is signed by (1) all known devisees of the property which is proposed to be sold if the decedent died testate or (2) if the estate is an intestate estate, each known heir of the decedent whose interest in the estate is affected by the proposed purchase.

(b) The written consents are filed with the court.

(c) The purchase is shown to be to the advantage of the estate.

**Comment.** Section 9881 is new. As to who are known heirs or devisees, see Section 1206.

CROSS-REFERENCES

Definitions

Devisee § 34

Heirs § 44

Personal representative § 58

Property § 62

Will § 88

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

9882. Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative to purchase property of the estate if the will of the decedent authorizes the personal representative to purchase the property.

**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.

## CROSS-REFERENCES

## Definitions

Personal representative § 58

Property § 62

Will § 88

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

9883. (a) The personal representative may file a petition requesting that the court make an order under Section 9881 or 9882. The petition shall set forth the facts upon which the request for the order is based.

(b) If court confirmation of the sale is required, the court may make its order under Section 9881 or 9882 at the time of the confirmation.

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

(1) Each known devisee whose interest in the estate is affected by the proposed purchase.

(2) If the estate is an intestate estate, each known heir of the decedent whose interest in the estate is affected by the proposed purchase.

(3) Each person who has filed a request for special notice pursuant to Section 1250.

(d) If the court is satisfied that the purchase should be authorized, the court shall make an order authorizing the purchase upon the terms and conditions specified in the order, and the personal representative may execute a conveyance or transfer according to the terms of the order. Unless otherwise provided in the will or in the consents referred to in Section 9881 or in the order of the court, the sale of the property shall be made in the same manner as other estate property of the same nature.

**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.

Subdivision (c) supersedes the portion of the last sentence of former Section 583 relating to notice. As to giving notice to known heirs and known devisees, see Section 1206.

The first sentence of subdivision (d) 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 (d) 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.

#### CROSS-REFERENCES

Clerk to set petition for hearing § 1285  
 Definitions  
   Devisee § 34  
   Heirs § 44  
   Person § 56  
   Personal representative § 58  
   Property § 62  
   Will § 88  
 Effect of court authorization § 9612  
 Notice to known heirs and devisees § 1206  
 Petition to be verified § 1284  
 Proof of giving of notice § 1260

### **§ 9884. Purchase pursuant to contract of decedent to sell**

**9884.** This chapter does not prohibit the purchase of property of the estate by the personal representative or the personal representative's attorney pursuant to a contract in writing made during the lifetime of the decedent if the contract is one that can be specifically enforced and the requirements of Chapter 11 (commencing with Section 9860) are satisfied.

**Comment.** Section 9884 restates a portion of the third paragraph of former Section 583 without substantive change. An order authorizing the personal representative to purchase property pursuant to a contract of the decedent to sell the property is obtained under Chapter 11 (commencing with Section 9860), not under this chapter. See also Section 9860(a)(1), (2). Language is included in Section 9884 to recognize the expansion of Sections 9880 and 9881 to cover purchases by the personal representative's attorney.

#### CROSS-REFERENCES

Definitions  
   Personal representative § 58  
   Property § 62

**§ 9885. Option to purchase given in will**

9885. This chapter does not prevent the exercise by the personal representative or the personal representative's attorney of an option to purchase property of the estate given in the will of the decedent if the requirements of Chapter 17 (commencing with Section 9980) are satisfied.

**Comment.** Section 9885 restates the second paragraph of former Section 583 without substantive change. An order authorizing the personal representative to exercise an option to purchase property of the estate is obtained under Chapter 17 (commencing with Section 9980), not under this chapter. Under Section 9981, the decedent's will must have been admitted to probate. Language is included in Section 9885 to recognize the expansion of Sections 9880 and 9881 to cover purchases by the personal representative's attorney.

## CROSS-REFERENCES

## Definitions

Personal representative § 58

Property § 62

Will § 88

### **CHAPTER 13. DEDICATION OR CONVEYANCE TO GOVERNMENTAL ENTITY OR OF EASEMENT OR ACCESS RIGHT**

**§ 9900. Dedication or conveyance of real property or easement with or without consideration**

9900. If it is to the advantage of the estate and in the best interest of the interested persons, the personal representative, after authorization by order of the court made pursuant to this chapter and upon such terms and conditions as the court may prescribe, may do any of the following either with or without consideration:

(a) Dedicate or convey real property of the estate for any purpose to any of the following:

(1) This state or any public entity in this state.

(2) The United States or any agency or instrumentality of the United States.

(b) Dedicate or convey an easement over real property of the estate to any person for any purpose.

(c) Convey, release, or relinquish to this state or any public entity in this state any access rights to any street, highway, or freeway from any real property of the estate.

(d) Consent as a lienholder to a dedication, conveyance, release, or relinquishment under subdivision (a), (b), or (c) by the owner of property subject to the lien.

**Comment.** Section 9900 restates a portion of former Section 587 with the following changes:

(1) Language is added to recognize that the court may prescribe terms and conditions in its order.

(2) Subdivision (d), a new provision drawn from Section 2556 (guardianship and conservatorship), is added.

(3) In the introductory clause, the language “advantage of the estate and in the best interest of the interested persons” is substituted for the former language “advantage, benefit, and best interest of the estate, and those interested therein.” This change is nonsubstantive.

The authority in subdivision (a) for the dedication or conveyance of real property of the estate includes the entire interest or any lesser interest in the property.

The personal representative is required to exercise the power granted by this section (by filing a petition with the court) to the extent that ordinary care and diligence require that the power be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612.

#### CROSS-REFERENCES

##### Definitions

Interested person § 48

Person § 56

Personal representative § 58

Real property § 68

Effect of court authorization § 9612

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2556

### § 9901. Petition; notice of hearing

9901. (a) The personal representative or any interested person may file a petition for an order pursuant to this chapter.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Section 9901 restates a portion of former Section 587 without substantive change, except that, 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.

## CROSS-REFERENCES

Clerk to set matter for hearing § 1285  
 Definitions  
   Interested person § 48  
   Personal representative § 58  
 Petition must be verified § 1284  
 Proof of giving notice § 1260

**CHAPTER 14. EXCHANGE OF PROPERTY****§ 9920. Court authorization for exchange**

9920. If it is to the advantage of the estate to exchange property of the estate for other property, the personal representative may, after authorization by order of court obtained under this chapter and upon such terms and conditions as may be imposed by the court, exchange the property for the other property. The terms and conditions prescribed by the court may include the payment or receipt of part cash by the personal representative.

**Comment.** Section 9920 restates a portion of the first sentence of former Section 860 without substantive change. The language “advantage of the estate” is substituted for the former language “advantage or best interests of the estate.” This change is nonsubstantive.

The personal representative is required to exercise the power granted by this section (by filing a petition with the court) to the extent that ordinary care and diligence require that the power be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612.

## CROSS-REFERENCES

Effect of court authorization § 9612  
 Definitions  
   Personal representative § 58  
   Property § 62

## COMPARABLE PROVISIONS

Guardianship-conservatorship § 2557

**§ 9921. Petition**

9921. To obtain an order under this chapter, the personal representative or any interested person shall file a petition containing all of the following:

- (a) A description of the property.
- (b) The terms and conditions of the proposed exchange.

(c) A showing of the advantage to the estate to accrue from the exchange.

**Comment.** Section 9921 restates a portion of the first sentence of former Section 860 without substantive change. The requirement that the petition contain a description of the property and the terms and conditions of the proposed exchange is new. The phrase “advantage of the estate” is substituted for the former phrase “advantage or best interests of the estate.” This change is nonsubstantive.

#### CROSS-REFERENCES

##### Definitions

Interested person § 48

Personal representative § 58

Verification required § 1284

### § 9922. Notice of hearing

9922. (a) Except as provided in subdivision (b), notice of the hearing on the petition shall be given as provided in Section 1220.

(b) If the petition is for authorization to exchange securities as defined in Section 10200 for different securities, the court, upon a showing of good cause, may order that the notice be given for a shorter period or that the notice be dispensed with. The order provided by this subdivision may be made *ex parte*.

**Comment.** Section 9922 restates the second and third sentences of former Section 860 without substantive change, except that, 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. The last sentence of subdivision (b) is new.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Proof of giving notice § 1260

Securities, sale or surrender for redemption or conversion § 10200

### § 9923. Error does not invalidate proceedings

9923. No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the exchange made pursuant to an order made under this chapter.

**Comment.** Section 9923 is new, and is comparable to Sections 9948(d) (leases), 9966 (option to purchase real property), 10264 (sale of personal property), 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).

## CHAPTER 15. LEASES

### § 9940. Lease; lease term

9940. For the purpose of this chapter:

(a) "Lease" includes, without limitation, a lease that includes an option to purchase real property of the estate.

(b) If a lease gives the lessee the right to extend the term of the lease, the length of the term shall be considered as though the right to extend had been exercised.

**Comment.** Subdivision (a) of Section 9940 restates the first portion of former Section 845 without substantive change. Subdivision (b) of Section 9940 is new and is consistent with Section 10203 (sale of leasehold interest).

#### CROSS-REFERENCES

##### Definitions

Real property § 68

### § 9941. Leases permitted without court authorization

9941. If it is to the advantage of the estate, the personal representative may lease, as lessor, real property of the estate without authorization of the court in either of the following cases:

(a) Where the rental does not exceed one thousand five hundred dollars (\$1500) a month and the term does not exceed one year.

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

**Comment.** Section 9941 supersedes former Section 844. The personal representative may act under Section 9941 without prior court authorization, but the personal representative must exercise ordinary care and diligence in determining whether or not to lease the real property and in the leasing of the property. See Section 9600. The personal representative may seek approval from the court under Sections 9943-9947 if in doubt as to the appropriate action to take. As to the effect of court authorization, see Section 9612.

Subdivision (a) of Section 9941 increases the maximum rental under former Section 844 from \$250 a month to \$1,500 a month. Court supervision for leases for less than \$1,500 a month adds little protection to the estate, since overbids on these leases are rare and the one-year maximum limit on the lease term assures that the lease will terminate before or soon after distribution of the average estate. See Review of 1963 Code Legislation, 38 St. B.J. 601, 777 (1963). If the lease gives the lessee an option to extend the lease beyond a one-year term, court approval of the lease is required. See Section 9940(b).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Real property § 68

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2555

### § 9942. Court authorization for lease

9942. (a) The personal representative may lease, as lessor, real property of the estate after authorization by order of court obtained under this chapter upon a showing that the proposed lease is to the advantage of the estate.

(b) If the proposed lease includes an option to purchase real property of the estate, a petition for an order authorizing the lease shall be filed under this chapter but the applicable provisions for court approval both in this chapter and in Chapter 16 (commencing with Section 9960) apply to the execution of the lease.

**Comment.** Subdivision (a) of Section 9942 restates former Section 840 without substantive change. Subdivision (b) of Section 9942 restates former Section 845 without substantive change.

The personal representative is required to exercise the power granted by this section (by filing a petition with the court) to the

extent that ordinary care and diligence require that the power be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Real property- § 68

### § 9943. Petition for order

9943. (a) To obtain an order under this chapter, the personal representative or any interested person shall file a petition containing all of the following:

(1) A general description of the real property proposed to be leased.

(2) The term, rental, and general conditions of the proposed lease.

(3) A showing of the advantage to the estate to accrue from giving the lease.

(b) If the lease is proposed to be for a term longer than 10 years, the petition shall also state facts showing the need for the longer lease and its advantage to the estate and its benefit to the interested persons.

**Comment.** Subdivision (a) of Section 9943 restates the first sentence of former Section 841 without substantive change. Subdivision (b) restates a portion of the first sentence of former Section 842.1 without substantive change.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

##### Definitions

Interested person § 48

Personal representative § 58

Real property § 68

Terms and conditions of lease §§ 9946, 9947

Verification required § 1284

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2553(b)

### § 9944. Notice of hearing

9944. (a) Notice of the hearing on the petition shall be given as provided in Section 1220 and posted as provided in Section 1230.

(b) Notice of the hearing on the petition also shall be given as provided in Section 10300, but this notice is not

required if the will authorizes or directs the personal representative to lease or sell property.

(c) If the lease is proposed to be for a term longer than 10 years, the petitioner shall also mail notice of the hearing at least 15 days before the hearing to the persons named as devisees under the decedent's will or, in an intestacy proceeding, to the persons named as heirs whose names and addresses appear in the estate proceeding.

**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.

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. 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.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Devisee § 34

Heirs § 44

Property § 62

Will § 88

Proof of giving notice § 1260

### § 9945. Hearing and order

9945. (a) At the hearing, the court shall entertain and consider any other offer made in good faith at the hearing to lease the same property on more favorable terms.

(b) If the court is satisfied that it will be to the advantage of the estate, and, if the lease is for more than 10 years, that it is to the benefit of interested persons, the court shall make an order authorizing the personal representative to

make the lease to the person on the terms and conditions stated in the order. The court shall not make an order authorizing the personal representative to make the lease to any person other than the lessee named in the petition unless the offer made at the hearing is acceptable to the personal representative.

**Comment.** Section 9945 restates the first sentence of former Section 842, and a portion of the first sentence of former Section 842.1, without substantive change.

#### CROSS-REFERENCES

##### Definitions

Interested person § 48

Person § 56

Personal representative § 58

Property § 62

Effect of court authorization or approval § 9612

Terms and conditions of lease §§ 9946, 9947

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2553

### § 9946. Terms and conditions of leases

9946. (a) Subject to Section 9947, an order authorizing the execution of a lease shall set forth the minimum rental or royalty or both and the period of the lease.

(b) The order may authorize other terms and conditions of the lease, including, with respect to a lease for the purpose of exploration for or production or removal of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy, any of the following:

(1) A provision for the payment of rental and royalty to a depository.

(2) A provision for the appointment of a common agent to represent the interests of all the lessors.

(3) A provision for the payment of a compensatory royalty in lieu of rental and in lieu of drilling and producing operations on the land covered by the lease.

(4) A provision empowering the lessee to enter into any agreement authorized by Section 3301 of the Public Resources Code with respect to the land covered by the lease.

(5) A provision for a community oil lease or a pooling or unitization by the lessee.

(c) If the lease covers additional property owned by other persons or an undivided or other interest of the decedent less than the entire ownership in the property, the order may authorize the lease to provide for division of rental and royalty in the proportion that the land or interest of each owner bears to the total area of the land or total interests covered by the lease.

**Comment.** Section 9946 restates a portion of the second and all of the third and fourth sentences of former Section 842 without substantive change. The references in subdivision (b) to geothermal energy and to a community oil lease are new. As to the maximum term of the lease, see Section 9947.

#### CROSS-REFERENCES

Definitions

Person § 56

Property § 62

Maximum term of lease § 9947

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2554

### § 9947. Maximum term of lease

9947. (a) Except as provided in this section, the period of the lease shall be for such time as the court may authorize.

(b) Except as provided in subdivision (c), the court shall not authorize a lease for longer than 10 years if any heir or devisee who has an interest in the property to be leased objects at the hearing.

(c) If the lease is for the purpose of exploration for or production or removal of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy, the court may authorize that the lease be for a fixed period and any of the following:

(1) So long thereafter as minerals, oil, gas, or other hydrocarbon substances or geothermal energy are produced in paying quantities from the property leased or mining or drilling operations are conducted thereon.

(2) If the lease provides for the payment of a compensatory royalty, so long thereafter as such compensatory royalty is paid.

(3) If the land covered by the lease is included in an agreement authorized by Section 3301 of the Public

Resources Code, so long thereafter as oil, gas, or other hydrocarbon substances are produced in paying quantities from any of the lands included in any such agreement or drilling operations are conducted thereon.

**Comment.** Subdivisions (a) and (b) of Section 9947 continue without substantive change the portion of the second sentence of former Section 842 that concerned the period of the lease, and the third sentence of former Section 842.1.

Subdivision (c) continues the fifth sentence of former Section 842 without substantive change. The reference to geothermal energy is new.

#### CROSS-REFERENCES

##### Definitions

Devisee § 34

Heirs § 44

Property § 62

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2554

### § 9948. Effectiveness of lease

9948. (a) The personal representative shall execute, acknowledge, and deliver the lease as directed, setting forth therein that it is made by authority of the order, giving the date of the order.

(b) A lease made pursuant to an order obtained under this chapter is effectual to demise and let the premises described in the order at the rent, for the term, and upon the conditions prescribed in the order.

(c) Jurisdiction of the court to administer the estate of the decedent shall be effectual to vest the court with jurisdiction to make the order for the lease. This jurisdiction shall conclusively inure to the benefit of the lessee and the lessee's heirs and assigns.

(d) No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the lease made pursuant to an order made under this chapter.

**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), 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.

#### CROSS-REFERENCES

Definitions

Heirs § 44

Personal representative § 58

#### COMPARABLE PROVISIONS

Guardianship-conservatorship § 2553(d)

## CHAPTER 16. GRANTING OPTION TO PURCHASE REAL PROPERTY

### § 9960. Authority to grant option

9960. After authorization by order of court obtained under this chapter, the personal representative may grant an option to purchase real property of the estate for a period within or beyond the period of administration.

**Comment.** Section 9960 restates the first sentence of former Section 584.3 without substantive change. A certified copy of the order shall be recorded. Section 1292.

The personal representative is required to exercise the power granted by this section (by filing a petition with the court) to the extent that ordinary care and diligence require that the power be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Real property § 68

Effect of court authorization or approval § 9612

Option to purchase given in will § 9980

Verification required § 1284

### § 9961. Petition

9961. To obtain an order under this chapter, the personal representative shall file a petition containing all of the following:

- (a) A description of the real property.
- (b) The terms and conditions of the proposed option.
- (c) A showing of the advantage to the estate to accrue from the granting of the option.

**Comment.** Section 9961 restates subdivision (a) of former Section 584.3 without substantive change. Only the personal representative may file a petition under this section. An interested person may neither petition under this section nor petition for instructions under Section 9611.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

##### Definitions

Personal representative § 58

Real property § 68

Verification required § 1284

### § 9962. Minimum purchase price

9962. The purchase price of the real property subject to the option shall be at least 90 percent of the appraised value of the real property. The appraisal shall be one made by a probate referee within one year prior to the hearing of the petition.

**Comment.** Section 9962 restates subdivision (b) of former Section 584.3 without substantive change except that a requirement that the appraisal be made within one year prior to the hearing of the petition has been substituted for the former requirement that the appraisal be made within 90 days prior to

the filing of the petition. This substitution makes Section 9962 consistent with the requirement of Section 10309(a)(1) (minimum price for private sale of real property).

The requirement of Section 9962 that the purchase price be at least 90 percent of appraised value is consistent with the general provision prescribing the minimum price for private sales of real property. See Section 10309.

#### CROSS-REFERENCES

##### Definitions

Real property § 68

### § 9963. Notice of hearing

9963. (a) Notice of the hearing on the petition shall be given as provided in Section 1220 and posted as provided in Section 1230.

(b) The personal representative shall also cause notice of the hearing to be mailed to all known heirs and devisees of the decedent as provided in Section 1220.

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

(1) Under subdivision (a), notice by mail (Section 1220) is required in addition to notice by posting (Section 1230).

(2) Under subdivision (b), 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. For the meaning of “known” heirs and devisees, see Section 1206.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

##### Definitions

Devisee § 34

Heirs § 44

Personal representative § 58

Proof of giving notice § 1260

### § 9964. Order

9964. (a) The court shall make an order authorizing the personal representative to grant the option upon the terms and conditions stated in the order if the court is satisfied as to all of the following:

(1) Good reason exists to grant the option and granting the option will be to the advantage of the estate.

(2) It does not appear that a higher offer with respect to the purchase price of the real property subject to the option

may be obtained. An offer is a higher offer with respect to purchase price only if the offer satisfies the requirements of Section 10311 governing increased bids in real property sales.

(3) It does not appear that a better offer with respect to the terms of the option may be obtained. An offer is a better offer with respect to the terms of the option only if the offer is materially more advantageous to the estate.

(b) A higher offer made either for cash or on credit, whether on the same or different credit terms, or a better offer, shall be considered only if the personal representative informs the court in person or by counsel, before the court makes its order authorizing the granting of the option, that the offer is acceptable.

**Comment.** Section 9964 restates the second, third, and fourth sentences of subdivision (d) of former Section 584.3 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Real property § 68

Effect of court authorization or approval § 9612

Recording certified copy of order § 1292

### § 9965. Expiration of record of recorded option

9965. An option granted pursuant to an order made under this chapter, whether within or beyond the administration of the estate, is subject to Chapter 4 (commencing with Section 884.010) of Title 5 of Part 2 of Division 2 of the Civil Code.

**Comment.** Section 9965 restates the second sentence of subdivision (e) of former Section 584.3 without substantive change. If an option granted pursuant to this chapter is recorded, the option expires of record unless a notice of exercise or an extension of the option is recorded within six months after the option expires according to its terms or, if the option has no expiration date, within six months after the option is recorded. Civ. Code § 884.010.

### § 9966. Error does not invalidate proceedings

9966. No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate

the proceedings or the granting of an option pursuant to an order made under this chapter.

**Comment.** Section 9966 is new, and is comparable to Sections 9923 (exchanges), 9948(d) (leases), 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).

## CHAPTER 17. OPTION TO PURCHASE GIVEN IN WILL

### § 9980. Option to purchase given in will

9980. (a) When an option to purchase real or personal property is given in a will, the person given the option has the right to exercise the option at any time within the time limits provided by the will. For the purposes of this section, if a time limitation in the will is measured from the death of the testator, that time shall be extended by the period between the testator's death and the issuance of letters testamentary or of administration with the will annexed or by six months, whichever is the shorter period.

(b) If the will does not provide a time limit for exercise of the option, the time limit is one year from the death of the decedent.

(c) Subject to subdivision (b), if the option given in the will is exercisable under the terms of the will after the time that the estate would otherwise be closed, the property subject to the option shall be distributed subject to the option.

**Comment.** Subdivision (a) of Section 9980 continues subdivision (a) of former Section 854 (as amended by Chapter 783 of the Statutes of 1986) without substantive change. Subdivision (b) of Section 9980 continues subdivision (d) of

former Section 854 without change. Subdivision (c) of Section 9980 continues subdivision (c) of former Section 854 without substantive change.

#### CROSS-REFERENCES

##### Definitions

- Person § 56
- Personal representative § 58
- Property § 62
- Real property § 68
- Will § 88

### § 9981. Order; petition; notice

9981. (a) When an option to purchase real or personal property is given in a will admitted to probate, the court may make an order under this chapter directing the personal representative to transfer or convey the property to the person given the option upon compliance with the terms and conditions stated in the will.

(b) To obtain an order under this chapter, the personal representative or the person given the option to purchase the property shall file a petition not later than 30 days after the option is exercised.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Subdivision (a) of Section 9981 continues a portion of the first sentence of subdivision (b) of former Section 854 (as amended by Chapter 783 of the Statutes of 1986) without substantive change. Subdivision (b) of Section 9981 supersedes the portion of the first sentence of subdivision (b) of former Section 854 that required the petition to be filed within any time limits provided by 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.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

##### Definitions

- Person § 56
- Personal representative § 58
- Property § 62
- Will § 88

Effect of court authorization or approval § 9612

Verification required § 1284

**§ 9982. Protection of rights of creditors**

9982. The court shall not make an order under this chapter unless one of the following requirements is satisfied:

(a) The court determines that the rights of creditors will not be impaired by the making of the order.

(b) The court requires a bond in an amount and with such surety as the court shall direct or approve.

**Comment.** Section 9982 restates the fourth sentence of subdivision (b) of former Section 854 (as amended by Chapter 783 of the Statutes of 1986) without substantive change.

**§ 9983. Error does not invalidate proceedings**

9983. No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the transfer or conveyance made pursuant to an order made under this chapter.

**Comment.** Section 9983 is new, and is comparable to Sections 9923 (exchanges), 9948(d) (leases), 9966 (option to purchase real property), 10264 (sale of personal property), and 10316 (sale of real property). Section 9983 assumes that the court has proper jurisdiction. If the court lacks jurisdiction, Section 9983 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 9983 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).

**CHAPTER 18. SALES****Article 1. General Provisions****§ 10000. When estate property may be sold**

10000. Subject to the limitations, conditions, and requirements of this chapter, the personal representative may sell real or personal property of the estate in any of the following cases:

(a) Where the sale is necessary to pay debts, devise, family allowance, expenses of administration, or taxes.

(b) Where the sale is to the advantage of the estate and in the best interest of the interested persons.

(c) Where the property is directed by the will to be sold.

(d) Where authority is given in the will to sell the property.

**Comment.** Subdivisions (a) and (b) of Section 10000 restate a portion of the second sentence of former Section 754 without substantive change.

The reference to “taxes” has been added to subdivision (a) of Section 10000, consistent with the likely construction of former Section 754. See Hudner, *Sales of Estate Property*, in 1 California Decedent Estate Administration § 14.3, at 504 (Cal. Cont. Ed. Bar 1971).

The phrase “to the advantage of the estate and in the best interest of the interested persons” has been substituted in subdivision (b) of Section 10000 for the phrase “for the advantage, benefit, and best interests of the estate and those interested therein” which was used in former Section 754. This substitution makes no substantive change in the provision.

Subdivisions (c) and (d) restate portions of the first sentence of former Section 757 without substantive change.

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.

#### CROSS-REFERENCES

Court order requiring sale § 10001

Damages for neglect or misconduct in sale § 10380

Definitions

Devise § 32

Interested person § 48

Personal representative § 58

Property § 62

Real property § 68

Will § 88

Limitation of actions for recovery of property § 10382

Liquidated damages for fraudulent sale of real property § 10381

### § 10001. Court order requiring sale of property

10001. (a) If the personal representative neglects or refuses to sell the property, any interested person may petition the court for an order requiring the personal

representative to sell real or personal property of the estate in any of the following cases:

(1) Where the sale is necessary to pay debts, devise, family allowance, expenses of administration, or taxes.

(2) Where the sale is to the advantage of the estate and in the best interest of the interested persons.

(3) Where the property is directed by the will to be sold.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) Notice of the hearing on the petition also shall be given to the personal representative by citation served at least five days before the hearing.

**Comment.** Section 10001 restates former Section 758 without substantive change, except for the addition of subdivision (b) which is new.

The reference to “taxes” has been added to subdivision (a) (1), consistent with the addition of “taxes” to subdivision (a) of Section 10000. See the Comment to that section.

The phrase “to the advantage of the estate and in the best interest of the interested persons” has been substituted in subdivision (a) (2) of Section 10001 for the phrase “for the advantage, benefit and best interests of the estate and those interested therein” which was used in former Probate Code Section 758. This substitution makes no substantive change and makes subdivision (a) (2) of Section 10001 consistent with subdivision (b) of Section 10000.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Compliance with directions in will § 10002

Definitions

Devise § 32

Interested person § 48

Personal representative § 58

Property § 62

Real property § 68

Will § 88

Effect of court authorization or approval § 9612

Proof of giving notice § 1260

Verification required § 1284

### § 10002. Directions in will as to mode of selling or property to be sold

10002. (a) Subject to subdivision (b), if directions are given in the will as to the mode of selling or the particular property to be sold, the personal representative shall comply with those directions.

(b) If the court determines that it would be to the advantage of the estate and in the best interest of the interested persons, the court may make an order relieving the personal representative of the duty to comply with the directions in the will. The order shall specify the mode and the terms and conditions of selling or the particular property to be sold, or both. The personal representative or any interested person may file a petition for an order under this subdivision. Notice of the hearing on the petition shall be given as provided in Section 1220.

**Comment.** Subdivision (a) of Section 10002 continues the last sentence of former Section 757 without substantive change.

Subdivision (b) is new. This subdivision permits the court to dispense in whole or in part with the directions given in the will where good cause is shown why the personal representative should not be required to comply with the directions. The court may make an order under subdivision (b), for example, where the property directed to be sold to pay the decedent's debts has greatly increased in value since the will was executed and there is sufficient cash in the estate to pay the debts and paying the debts with the cash would not adversely affect any of the interested persons. Or the court may determine that the mode of selling directed in the will is not appropriate under the circumstances existing at the time the property is to be sold.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Interested person § 48

Personal representative § 58

Property § 62

Will § 88

Effect of court authorization or approval § 9612

Proof of giving notice § 1260

Verification required § 1284

### § 10003. Discretion of personal representative as to property to be sold and mode of selling

10003. Subject to Chapter 13 (commencing with Section 750) of Division 3 and to Sections 10001 and 10002, if estate property is required or permitted to be sold, the personal representative may:

(a) Use discretion as to which property to sell first.

(b) Sell the entire interest of the estate in the property or any lesser interest therein.

(c) Sell the property either at public auction or private sale.

**Comment.** Subdivision (a) of Section 10003 restates the first sentence and a portion of the second sentence of former Section 754 without substantive change except that the former provision provided that there shall be no priority between personal and real property in selling property "to pay debts, legacies, family allowance or expenses." Under subdivision (a) of Section 10003 there is no priority between personal and real property in selling property, whatever the reason that causes the property to be sold. For the rules of abatement, see Sections 750-753.

Subdivision (b) restates the third sentence of former Section 754 without substantive change.

Subdivision (c) restates a portion of the second sentence of former Section 754 and a portion of the first sentence of former Section 757 without substantive change.

#### CROSS-REFERENCES

Compliance with directions in will § 10002

Definitions

Personal representative § 58

Property § 62

Real property § 68

Sale of assets of estate as unit § 10004

#### § 10004. Sale of assets, whether real or personal, as a unit

10004. (a) When the personal representative determines in his or her discretion that, by use or relationship, any assets of the estate, whether real or personal, constitute a unit for purposes of sale, the personal representative may cause the property to be appraised as a unit.

(b) Whether or not the property is appraised as a unit, the personal representative may sell all the assets described in subdivision (a) as a unit and under one bid if the court finds the sale of the assets as a unit to be to the advantage of the estate.

(c) No private sale of the assets as a unit may be made for less than 90 percent of the sum of the appraised values of the personal property and the sum of the appraised values of the real property, appraised separately, or for less than 90 percent of the appraised value if appraised as a unit.

(d) If the assets to be sold as a unit include any real property, the sale shall be made in the manner provided for the sale of real property, and the bid and sale are subject to

the limitations and restrictions established for the sale of real property. If the assets to be sold as a unit are entirely personal property, the property shall be sold in the manner provided for the sale of personal property.

**Comment.** Section 10004 restates former Section 754.5 without substantive change. The personal representative is required to exercise the power granted by this section (by filing a petition with the court) to the extent that ordinary care and diligence require that the power be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

Real property § 68

#### § 10005. Sale for more or less than appraisalment

10005. (a) If any property of the estate is sold for more than the appraisalment, the personal representative shall account for the proceeds of sale, including the excess over the appraisalment.

(b) If any property of the estate is sold for less than the appraisalment and the sale has been made in accordance with law, the personal representative is not responsible for the loss.

**Comment.** Section 10005 restates a provision formerly found in the last sentence of Section 920 without substantive change. The language in subdivision (a) requiring the personal representative to account for the “proceeds of sale” is new, but is consistent with case law. See *In re Estate of Radovich*, 74 Cal. 536, 538-40, 16 P. 321 (1888).

The language in subdivision (b) that the personal representative is not responsible for a loss where a sale is made “in accordance with law” replaces the former reference to a sale which is “justly” made. The new language is consistent with case law. See *In re Estate of Guglielmi*, 138 Cal. App. 80, 86-88, 31 P.2d 1078 (1934).

See also Sections 920 (duty to account), 9657 (personal representative shall not profit from increase, nor suffer loss from decrease or destruction without fault).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

## **Article 2. Contract With Agent, Broker, or Auctioneer**

### **§ 10150. Contract with agent or broker**

**10150.** (a) The personal representative may enter into a written contract with either or both of the following:

(1) A licensed real estate broker to secure a purchaser for any real property of the estate. The broker may associate other licensed real estate brokers for this purpose, including use of a multiple listing service as defined in Section 1087 of the Civil Code.

(2) One or more agents or brokers to secure a purchaser for any personal property of the estate. If the particular property to be sold or the particular manner of sale requires that the agent or broker be licensed, the contract may be made only with an agent or broker that is so licensed.

(b) The contract may provide for payment of a commission out of the proceeds of sale, but the contract is binding and valid as against the estate only for such amount as the court allows pursuant to Article 3 (commencing with Section 10160). No liability of any kind is incurred by the estate under the contract or a sale unless the sale is confirmed by the court, except for the obligations of the estate to the purchaser of personal property as to which title passes pursuant to Section 10259 without court confirmation or approval. The personal representative is not personally liable on the contract by reason of execution of the contract.

(c) The contract may grant an exclusive right to sell property for a period not in excess of 90 days if, prior to execution of the contract granting an exclusive right to sell, the personal representative obtains permission of the court to enter into the contract upon a showing of necessity and advantage to the estate. The court may grant the permission when the personal representative is appointed or at any subsequent time upon ex parte application. The personal representative may execute one or more extensions of the contract granting an exclusive right to sell property, each extension being for a period not to exceed 90 days, if for each extension the personal representative obtains permission of the court upon ex parte application to extend the contract upon a showing of necessity and advantage to the estate of the extension.

**Comment.** Subdivision (a) of Section 10150 continues a portion of the first sentence of former Section 760 except that:

(1) The former reference to a “bona fide agent or broker” is not continued. Instead, a reference to a “licensed real estate broker” is made in paragraph (1) of subdivision (a) and the second sentence of paragraph (2) of subdivision (a) has been added. For various licensing provisions, see Bus. & Prof. Code §§ 5731 (auctioneer), 10000-10581 (real estate brokers); Fin. Code § 22200 (personal property brokers); Health & Safety Code §§ 18006, 18045 (sale of mobilehomes and manufactured housing).

(2) The former reference to a “multiple group of agents or brokers” is replaced by the second sentence of paragraph (1) of subdivision (a).

The first sentence of subdivision (b) continues the last portion of the first sentence and the fourth sentence of former Section 760 without substantive change. The second sentence of subdivision (b) continues the last portion of the last sentence of former Section 760 with the addition of the phrase “except for the obligations of the estate to the purchaser of personal property as to which title passes pursuant to Section 10259 without court confirmation or approval.” This additional phrase is clarifying and is drawn from former Section 760.5, continued as Section 10151. See also Section 10160 (no liability unless actual sale made, confirmed, and consummated). The third sentence of subdivision (b) restates the first portion of the last sentence of former Section 760 without substantive change.

The first two sentences of subdivision (c) continue the third sentence of former Section 760 without substantive change. The third sentence of subdivision (c) is new and makes clear that the exclusive right to sell contract may be extended for any number of additional periods (each period not to exceed 90 days) if the personal representative obtains permission of the court for each extension.

#### CROSS-REFERENCES

Contract with auctioneer § 10151

Definitions

Personal representative § 58

Property § 62

Real property § 68

### § 10151. Contract with auctioneer

10151. (a) The personal representative may enter into a written contract with any of the following:

(1) Where the public auction sale will be held in this state, an auctioneer who holds a valid license under Chapter 3.7 (commencing with Section 5700) of Division 3 of the Business and Professions Code to conduct a public auction sale and to secure purchasers by that method for any personal property of the estate to the extent authorized under Chapter 3.7 (commencing with Section 5700) of Division 3 of the Business and Professions Code.

(2) Where the public auction sale will be held outside this state pursuant to an order made under Section 10254, an auctioneer who is legally permitted in the jurisdiction where the sale will be held to conduct a public auction sale and to secure purchasers by that method for the personal property authorized to be sold by public auction sale in that jurisdiction under the court order.

(b) The contract shall be one that is legally enforceable under the law of the jurisdiction where made.

(c) The contract may provide for payment to the auctioneer of a fee or commission out of the proceeds of sale and for reimbursement of expenses, but the contract is binding and valid as against the estate only for such amounts as the court allows pursuant to Section 10167. No liability of any kind is incurred by the estate under the contract or a sale unless the sale is approved by the court, except for the obligations of the estate to the purchaser of personal property as to which title passes pursuant to Section 10259 without court confirmation or approval. The personal representative is not personally liable on the contract by reason of execution of the contract.

(d) The contract may provide that personal property of two or more estates being administered by the same personal representative may be sold at the same public auction sale. Items of personal property may be sold separately or in a lot with other items from the same estate. A sale pursuant to the contract shall be with reserve. The auctioneer shall comply with the instructions of the personal representative with respect to withdrawal of items, risk of loss, place of delivery, warranties, and other matters.

**Comment.** Subdivision (a) of Section 10151 restates the first sentence of former Section 760.5 with the following changes:

(1) The reference in former Section 760.5 to a “bona fide” auctioneer “authorized to act as such in the locality” is replaced by the reference to an auctioneer licensed under the Auctioneer and Auction Licensing Act (Bus. & Prof. Code §§ 5700-5791.5). Where the sale is to be made in another jurisdiction, Section 10151 refers to a person permitted to sell the property by public auction sale in that jurisdiction.

(2) The provision of former Section 760.5 authorizing auction sale of “tangible” personal property is revised to authorize auction sale of all personal property an auctioneer may auction under the Auctioneer and Auction Licensing Act (see, *e.g.*, Bus. & Prof. Code §§ 5701(j), 5774, 5775-5776).

Subdivision (b) is new.

Subdivisions (c) and (d) restate the remainder of former Section 760.5 without substantive change.

See also Sections 10254 (sales at public auction), 10259 (unless court subsequently approves the sale, personal representative responsible for the value of property title to which passes without court confirmation or approval).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58  
Sales at public auction § 10254

### **Article 3. Compensation of Agent, Broker, or Auctioneer**

#### **§ 10160. Limitation on liability of estate**

10160. The estate is not liable to an agent, broker, or auctioneer under a contract for the sale of property or for any fee, commission, or other compensation or expenses in connection with a sale of property unless the following requirements are satisfied:

- (a) An actual sale is made.
- (b) If court confirmation or approval is required, the sale is confirmed or approved by the court as required.
- (c) The sale is consummated.

**Comment.** Section 10160 restates the last portion of the last sentence of former Section 760 and a portion of the third sentence of former Section 760.5 with the addition of subdivision (c) which makes clear that the sale must be consummated before the estate is liable to the agent, broker, or auctioneer. In the case of real property, the requirement that an actual sale be made and be consummated requires that the estate receive the purchase

price and that a deed be given to the purchaser and a mortgage or deed of trust be taken for payments due in the future. See Estate of Rule, 25 Cal. 2d 1, 16, 152 P.2d 1003 (1944); Wilson v. Fleming, 106 Cal. App. 542, 549, 289 P. 658 (1930). As to when court confirmation or approval is not required, see Section 10259 (personal property).

#### CROSS-REFERENCES

Contract with agent or broker § 10150

Contract with auctioneer § 10151

Definitions

Property § 62

### § 10161. Compensation and fees to be in reasonable amount determined by court

10161. (a) Subject to the provisions of this article, whether or not the agent or broker has a contract with the personal representative, the fee, commission, or other compensation of an agent or broker in connection with a sale of property shall be the amount the court, in its discretion, determines to be a reasonable compensation for the services of the agent or broker to the estate.

(b) Unless the agent or broker holds a contract granting an exclusive right to sell the property, an agent or broker is not entitled to any fee, commission, or other compensation for services to the estate in connection with a sale except in the following cases:

(1) Where the agent or broker produces the original bid which is returned to the court for confirmation.

(2) Where the property is sold on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser procured by the agent or broker.

(c) If the agent or broker has a contract with the personal representative, the amount of the compensation of the agent or broker in connection with the sale of property shall not exceed the amount provided for in the contract.

**Comment.** Subdivision (a) of Section 10161 restates a portion of the fourth sentence of former Section 760 (contract binding “for an amount to be allowed by the court”), a portion of former Section 761.5 (overbidder’s agent entitled to “reasonable compensation” fixed by the court), and a portion of the second and third sentences of former Section 785 (overbidder’s agent entitled to “reasonable compensation” fixed by the court), without substantive change. Subdivision (a) uses language

drawn primarily from the last portion of former Section 761.5. As was the case under former law, a local court rule may, for example, fix reasonable compensation as a commission of six percent of the original bid or sales price (whichever is appropriate under the provisions of this article), and the court may determine what constitutes reasonable compensation by applying the court rule.

Subdivision (b) is a new provision that makes clear that an agent or broker holding a nonexclusive contract is not entitled to compensation unless the agent or broker produces the original bid returned to the court for confirmation or procures the overbidder to whom the sale is confirmed at the confirmation hearing. For example, the agent or broker holding a nonexclusive contract is not entitled to compensation in the following cases:

(1) Where the bid returned to the court for confirmation was submitted by a bidder not represented by an agent or broker and the sale is confirmed to that bidder.

(2) Where the bid returned to the court for confirmation was submitted by a bidder represented by another agent or broker and the sale is confirmed to that bidder.

(3) Where the bid returned to the court for confirmation was submitted by a bidder not represented by the agent or broker who holds the nonexclusive contract and the court at the confirmation hearing confirms the sale of the property to an overbidder not procured by the agent or broker holding the nonexclusive contract.

Subdivision (c) is a new provision that makes clear that the amount of the compensation of the agent or broker may not exceed the amount provided for in the contract. For example, if the contract provides for a five percent commission and the applicable court rule would allow a six percent commission, the commission awarded by the court may not exceed the five percent rate provided for in the contract. See also Section 10166 (invalidity of provision in bid that certain amount of bid be paid to agent or broker).

Where an agent or broker holding a nonexclusive contract either produces the original bid returned to the court for confirmation or procures the successful overbidder, the compensation to which the agent or broker is entitled is the amount determined by the court to be a reasonable compensation for the services of the agent or broker to the estate (Section 10161) and is subject to the provisions of this article.

The compensation to an agent or broker may be for the sale of real or personal property. See Section 10150. For a limitation

on the amount of compensation that may be allowed to the agent or broker who produces the successful overbidder, see Section 10162. See also Section 10166 (invalidity of provision in bid that certain amount of bid be paid to agent or broker).

The court has considerable flexibility in determining the compensation of the agent or broker or the agents or brokers in connection with a sale of property. Subject to the provisions of this article, compensation may be fixed, for example, as a percentage of the amount of the bid returned to the court for confirmation (see Sections 10164 and 10165) or as a percentage of the amount for which the sale is confirmed (see Section 10165). The court may use one percentage (e.g., six percent) for improved property and another (e.g., ten percent) for unimproved property. Or the court may use a schedule with the percentage decreasing as the value of the property increases (e.g., six percent for the first \$100,000; five percent for amounts in excess of \$100,000). The percentage or percentages or other method of computing the compensation may be prescribed by court rule, but the court rule must not conflict with the provisions of this article. Nothing in this article precludes the court from fixing the compensation using a different method than a percentage of the amount bid or the amount for which the sale is confirmed. The personal representative and the agent or broker may provide in their contract for the amount or manner of computing the compensation for the sale and, although the court may fix the compensation at less than the amount provided for in the contract, the compensation allowed by the court in such a case may not exceed the contract amount. See Section 10161(c). See also Sections 10261(d) and 10313(b) (court to fix compensation of agents or brokers).

The following examples illustrate the effect of Sections 10161-10166. In these examples, Broker A refers to the broker holding the contract with the personal representative. Broker B refers to the broker whose bid is returned to the court for confirmation. Broker C refers to a broker who does not have a contract with the personal representative and who procures a successful overbidder (this broker is referred to as Broker C whether or not there is a Broker A or a Broker B in the transaction).

*Example 1. Broker with contract produces original bid; no overbid.* The personal representative enters into a written contract (either exclusive or nonexclusive) with Broker A for the sale of real property of the estate. The contract provides for a commission to Broker A of six percent of the sale price. Broker A finds a purchaser whose bid is

confirmed by the court. The court is not bound by the six percent commission provided in the contract, but may fix a commission in such amount as the court determines is reasonable compensation for the services of Broker A to the estate, but not an amount in excess of the amount provided in the contract. See Section 10161.

A court rule may, for example, establish what constitutes reasonable compensation and fix the compensation at six percent of the sales price in this situation (or at a higher or lower percentage), and the court may determine what constitutes reasonable compensation by applying the court rule. If the court rule provides for a commission at six percent of the sales price in this situation but the contract provides for a commission at five percent of the sales price, the court may not award a commission in excess of the five percent provided for in the contract.

*Example 2. Broker with contract produces original bid; successful overbidder not represented by broker.* The personal representative enters into a written contract (either exclusive or nonexclusive) with Broker A for the sale of real property of the estate. The contract provides for a commission to Broker A of six percent of the sale price. Broker A finds a purchaser whose bid is returned to the court for confirmation. At the confirmation hearing, the highest bid is made by another bidder who is not represented by a broker. The court confirms the sale to the overbidder. The commission payable to Broker A is such amount as the court determines is reasonable. See Section 10161; see also the discussion in Example 1. The commission is allowed on the amount of the original bid. See Section 10164(b). For example, where the commission is fixed by the court in a percentage amount, the percentage is applied to the amount of the original bid, not the amount of the successful overbid.

*Example 3. Exclusive listing contract; original bid produced by cooperating broker; successful overbid by purchaser not represented by broker.* The personal representative enters into a written exclusive listing contract with Broker A. (An exclusive listing contract must be authorized by a court order. See Section 10150(c) (personal representative must obtain permission of court to enter into an exclusive listing contract; showing of necessity and advantage to estate required; duration of contract limited).) The original bid returned to court for confirmation is procured not by Broker A, but rather by

Broker B, a cooperating broker. At the confirmation hearing, the highest bid is made by another bidder who is not represented by a broker. The court confirms the sale to the overbidder. The commission is determined as in Example 2 (reasonable commission on amount of original bid), and is divided between Broker A and Broker B as provided in any agreement between them, or, if there is no agreement, is divided equally. See Section 10164(c). For example, if the original bid returned to the court by Broker B is \$100,000 and the sale is confirmed to the successful overbidder at \$150,000, and the court determines that a reasonable commission is six percent of the original bid returned to court for confirmation (six percent of \$100,000, or \$6,000), the \$6,000 is divided between Broker A and Broker B as provided in their agreement or, absent an agreement, Broker A receives \$3,000 and Broker B receives \$3,000.

*Example 4. Original bidder not represented by broker; successful overbidder represented by broker.* The personal representative has not entered into an exclusive sales contract with an agent or broker. The original bid is made by a purchaser who is not represented by a broker. The successful overbidder is procured by Broker C. The reasonable commission allowed by the court is paid entirely to Broker C. See Section 10163. Subject to Section 10162, the commission is allowed on the full amount for which the sale is confirmed. See Section 10163(b). For example, where the commission is fixed by the court in a percentage amount, the percentage is applied to the full amount for which the sale is confirmed. See *id.* The commission of Broker C is subject to the limitation that it may not exceed one-half of the difference between the amount bid in the original return and the amount of the successful bid. See Section 10162.

*Example 5. Broker holding contract produces original bidder; successful overbidder represented by another broker.* The personal representative enters into a written nonexclusive contract with Broker A for the sale of real property of the estate. The contract provides for a commission to Broker A of six percent of the sale price. Broker A finds a purchaser whose bid is returned to the court for confirmation. At the confirmation hearing, the highest bid is made by another bidder who is also represented by a broker (Broker C) who does not hold a contract with the personal representative. The court confirms the sale to the overbidder. Under Section 10165, where a broker returns a bid for confirmation and another broker brings in a

successful overbid, the commission is divided as follows: One-half of the commission on the original bid to the original broker (Broker A); the remaining one-half of the commission on the original bid plus all of the commission on the overbid amount to the successful overbidding broker (Broker C). For example, Broker A returns a \$100,000 bid for confirmation, and Broker C brings in an increased bid of \$110,000 on which the sale is confirmed. The court awards six percent of \$110,000 or \$6,600 in commissions. Broker A receives one-half of the commission on the original bid (\$100,000 at six percent commission equals \$6,000; one-half of \$6,000 equals \$3,000) or \$3,000. Broker C receives the other one-half of the commission on the original bid (\$3,000) plus all of the commission on the amount of the difference between the original bid and the amount for which the sale is confirmed (six percent of the difference between \$110,000 and \$100,000 (\$10,000) or \$600). Broker C thus receives \$3,600.

*Example 6. Exclusive listing contract; original bid produced by cooperating broker; successful overbid by purchaser represented by another broker.* The personal representative enters into a written exclusive sales contract with Broker A for the sale of real property of the estate. The contract provides for a commission to Broker A of six percent of the sale price. Broker B, a cooperating broker, finds a purchaser whose bid is returned to the court for confirmation. At the confirmation hearing, the highest bid is made by another bidder who is represented by Broker C. The court confirms the sale to the overbidder. Under Section 10165, Brokers A and B are entitled to share one-half of the commission on the original bid; Broker C is entitled to the remaining one-half of the commission on the original bid plus all of the commission on the overbid. Under Section 10165, where there are two brokers on the original bid—Broker A (broker holding a contract granting an exclusive right to sell the property) and Broker B (broker who produced the original bid returned to the court for confirmation)—the one-half commission on the original bid is divided equally between the brokers, unless otherwise provided in an agreement between them. See Section 10165.

For example, Broker B returns a \$100,000 bid for confirmation, and Broker C brings in an increased bid of \$110,000 on which the sale is confirmed. The court awards six percent of \$110,000 or \$6,600 in commissions. Broker A (holder of exclusive sales contract) and Broker B (broker

producing purchaser whose bid was returned to the court for confirmation) are entitled to share one-half of the commission on the original bid (\$100,000 at six percent commission equals \$6,000; one-half of \$6,000 equals \$3,000) or \$3,000. The one-half commission on the original bid (\$3,000) is divided equally between Brokers A and B (each receiving \$1,500), unless otherwise provided in an agreement between them. Broker C receives the other one-half of the commission on the original bid (\$3,000) plus all of the commission on the amount of the difference between the original bid and the amount for which the sale is confirmed (six percent of the difference between \$110,000 and \$100,000 (\$10,000) or \$600). Broker C thus receives \$3,600.

*Example 7. No exclusive listing contract; broker produces bid returned to court; no overbid.* The personal representative has not entered into an exclusive contract with a broker. Broker B finds a purchaser whose bid is confirmed by the court. The reasonable compensation allowed by the court on the amount for which the sale is confirmed is paid to Broker B. See Section 10162.3.

*Example 8. Exclusive listing contract; bidder not represented by broker; no overbid.* The personal representative has entered into an exclusive contract with Broker A. The bid returned to court for confirmation is made by a person who is not represented by a broker. The sale is confirmed to that bidder on that bid. The reasonable compensation allowed by the court on the amount for which the sale is confirmed is paid to Broker A. See Section 10162.5(a).

*Example 9. Exclusive listing contract; bidder whose bid is returned to court not represented by broker; overbidder not represented by broker.* The personal representative has entered into an exclusive contract with Broker A. The bid returned to court for confirmation is made by a person who is not represented by a broker. At the confirmation hearing the highest bid is made by another bidder who is not represented by a broker. The court confirms the sale to the overbidder. The commission payable to Broker A is such amount as the court determines is reasonable. See Section 10161. The commission is allowed on the amount of the original bid. See Section 10162.5(b). For example, where the commission is fixed by the court in a percentage amount, the percentage is applied to the amount of the original bid, not the amount of the successful overbid.

*Example 10. Exclusive listing contract; bidder whose bid is returned to court represented by another broker; no overbid.* The personal representative has entered into an exclusive contract with Broker A. The bid returned to court for confirmation is made by a person represented by Broker B. The sale is confirmed to that bidder on that bid. The reasonable compensation allowed by the court on the amount for which the sale is confirmed is divided between Broker A and Broker B as provided in any agreement between them, or, if there is no agreement, is divided equally. See Section 10162.7. For example, if the sale is confirmed to the bidder whose bid submitted to the court was \$100,000 and the court determines that a reasonable commission is six percent of that amount (six percent of \$100,000, or \$6,000), the \$6,000 is divided between Broker A and Broker B as provided in their agreement or, absent an agreement, Broker A receives \$3,000 and Broker B receives \$3,000.

#### CROSS-REFERENCES

Contract with agent or broker § 10150

Definitions

Personal representative § 58

Property § 62

### § 10162. Limitation on compensation of agent or broker producing successful overbidder

10162. (a) Subject to subdivision (b), where the bid returned to the court for confirmation is made by a person who is not represented by an agent or broker and the successful bidder is represented by an agent or broker, the compensation of the agent or broker who procured the purchaser to whom the sale is confirmed shall not exceed one-half of the difference between the amount of the bid in the original return and the amount of the successful bid.

(b) This section does not limit the compensation of the agent or broker who holds a contract under Section 10150 granting him or her the exclusive right to sell the property.

**Comment.** Section 10162 restates the fourth sentence of former Section 785 with the following changes:

(1) Section 10162 is limited to the case where the original bid returned to the court for confirmation is made by a person not represented by an agent or broker.

(2) Section 10162 applies to sales of real and personal property. Formerly, the provision applied only to real property sales.

(3) Section 10162 does not limit the compensation of the agent or broker who holds a contract under Section 10150 granting him or her the exclusive right to sell the property. Former Section 785 did not limit the compensation of the agent or broker who held the contract with the personal representative, whether or not the contract granted the exclusive right to sell the property.

For examples of the operation of this section, see the examples in the Comment to Section 10161.

#### CROSS-REFERENCES

##### Definitions

Person § 56

Personal representative § 58

Property § 62

### **§ 10162.3. Compensation where there is no exclusive contract and the sale is made on bid returned to court by purchaser represented by agent or broker**

10162.3. (a) This section applies if all of the following circumstances exist:

(1) There is no agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property.

(2) The bid returned to court for confirmation is made by a person represented by an agent or broker.

(3) The court confirms the sale to that purchaser on the bid returned to court for confirmation.

(b) If all the circumstances described in subdivision (a) exist, the court shall allow the agent or broker who procured the purchaser to whom the sale is confirmed the compensation determined under Section 10161 on the full amount for which the sale is confirmed.

**Comment.** Section 10162.3 makes clear the rule that applies where there is no exclusive contract and the sale is made on a bid returned to the court by a purchaser represented by an agent or broker. The reference to Section 10161 in Section 10162.3 recognizes that the court has discretion to determine the total amount of compensation to be paid. For an example of the operation of Section 10162.3, see Example 7 in the Comment to Section 10161.

## CROSS-REFERENCES

Definitions

Property § 62

**§ 10162.5. Compensation where there is an exclusive contract and no other broker or agent is involved**

10162.5. Where an agent or broker holds a contract under Section 10150 granting the exclusive right to sell the property, the court shall allow to the agent or broker holding the contract the compensation determined under Section 10161 on:

(a) The full amount for which the sale is confirmed if both of the following circumstances exist:

(1) The bid returned to the court for confirmation is made by a person who is not represented by an agent or broker.

(2) The court confirms the sale to that purchaser on that bid.

(b) The amount of the original bid if both of the following circumstances exist:

(1) The bid returned to court for confirmation is made by a person who is not represented by an agent or broker.

(2) The court confirms the sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser who was not procured by a bona fide agent or broker.

**Comment.** Section 10162.5 makes clear the rules that apply where there is an exclusive contract and no other agent or broker is involved in the sale. The references to Section 10161 in Section 10162.5 recognizes that the court has discretion to determine the amount of compensation to be paid. For examples of the operation of Section 10162.5, see Examples 8 and 9 in the Comment to Section 10161.

## CROSS-REFERENCES

Definitions

Property § 62

**§ 10162.7. Compensation where there is an exclusive contract and sale is made on bid returned to court by purchaser represented by another agent or broker**

10162.7. (a) This section applies if all of the following circumstances exist:

(1) There is an agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property.

(2) The bid returned to court for confirmation is made by a purchaser procured by another agent or broker.

(3) The court confirms the sale to that purchaser on the bid returned to court for confirmation.

(b) If all the circumstances described in subdivision (a) exist, the court shall allow the compensation determined under Section 10161 on the full amount for which the sale is confirmed. The compensation allowed by the court shall be divided between the agent or broker holding the contract and the other agent or broker as is provided in any agreement between the agent or broker holding the contract and the other agent or broker. If there is no agreement, the compensation shall be divided equally between the agent or broker holding the contract and the other agent or broker.

**Comment.** Section 10162.7 makes clear the rule that applies where there is an exclusive contract and the sale is made on a bid returned to court by a purchaser represented by another agent or broker. The reference to Section 10161 in Section 10162.7 recognizes that the court has discretion to determine the total amount of compensation to be paid. For an example of the operation of Section 10162.7, see Example 10 in the Comment to Section 10161. Section 10162.7 does not apply where the sale is confirmed on an overbid at the confirmation hearing. As to the rule in that case, see Section 10165.

CROSS-REFERENCES

Definitions  
Property § 62

**§ 10163. Compensation where original bid made by purchaser direct to estate and sale made on increased bid**

10163. Subject to Section 10162, the court shall allow the compensation determined under Section 10161 on the full

amount for which the sale is confirmed to the agent or broker who procured the purchaser to whom the sale is confirmed if all of the following circumstances exist:

(a) There is no agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property.

(b) The original bid was made direct to the estate by a purchaser who was not procured by an agent or broker.

(c) The court confirms a sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser procured by a bona fide agent or broker.

**Comment.** Section 10163 restates the substance of former Section 761.5. Section 10163 refers to Section 10161 which continues the last portion of former Section 761.5 without substantive change. The reference to Section 10161 in Section 10163 makes clear that the court has discretion to determine the total amount of compensation to be paid. Section 10163 applies only where there is no agent or broker holding an exclusive right to sell the property. For an example of the operation of Section 10163, see Example 4 in the Comment to Section 10161. Where Section 10163 would apply except for the fact that there is an agent or broker holding an exclusive right to sell contract, the compensation is determined under Section 10165. For a limitation on the amount of compensation that may be allowed to the agent or broker who produces the successful overbidder, see Section 10162.

#### CROSS-REFERENCES

Definitions

Property § 62

#### § 10164. Compensation where sale made on increased bid by purchaser not procured by agent or broker

10164. (a) This section applies only where the court confirms a sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser who was not procured by a bona fide agent or broker.

(b) Except as provided in subdivision (c), the court shall allow the compensation determined under Section 10161 on the amount of the original bid to the agent or broker whose original bid was returned to the court.

(c) If an agent or broker holds a contract under Section 10150 granting the exclusive right to sell the property and the original bid returned to the court is made by a purchaser who was procured by another agent or broker, the compensation determined under Section 10161 on the amount of the original bid shall be divided between the agent or broker holding the contract and the other agent or broker as is provided in any agreement between the agent or broker holding the contract and the other agent or broker. If there is no agreement, the compensation shall be divided equally between the agent or broker holding the contract and the other agent or broker.

**Comment.** Subdivision (b) of Section 10164 continues the last sentence of former Section 761 without substantive change. Subdivision (c) is a new provision that covers the situation where an agent or broker holds an exclusive right to sell contract and the original bid returned to the court is made by a purchaser who was procured by another agent or broker. Former Section 761 failed to cover this situation. If there is an agreement concerning the sharing of commissions, subdivision (c) requires that the court divide the commission as provided in the agreement, rather than requiring the court to “give consideration” to the agreement as under the second sentence of former Section 760.

The references to Section 10161 in Section 10164 make clear that the court has discretion to determine the total amount of compensation to be paid and allocated.

For examples of the operation of Section 10164, see Examples 2 and 3 in the Comment to Section 10161.

#### CROSS-REFERENCES

Definitions  
Property § 62

**§ 10165. Compensation where sale made on increased bid by purchaser represented by agent or broker and either the original bid returned to court was made by a purchaser procured by another agent or broker or there is another agent or broker who holds exclusive right to sell contract**

10165. (a) Where the court confirms a sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser procured by a bona fide agent or broker, the court shall allow the

compensation determined under Section 10161 on the full amount for which the sale is confirmed, as provided in this section, if either of the following conditions is satisfied:

(1) The original bid returned to the court for confirmation was made by a purchaser who was procured by another agent or broker.

(2) Another agent or broker holds a contract under Section 10150 granting the exclusive right to sell the property.

(b) The agent or broker who procured the purchaser to whom the sale is confirmed shall be paid one-half of the compensation on the amount of the original bid and all of the compensation on the difference between the original bid and the amount for which the sale is confirmed.

(c) The other one-half of the compensation on the amount of the original bid shall be paid as follows:

(1) If the original bid returned to the court is made by a purchaser who was procured by the agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property, the entire one-half of the compensation on the original bid shall be paid to that agent or broker.

(2) If the original bid returned to the court is made by a purchaser who was procured by a bona fide agent or broker and there is no agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property, the entire one-half of the compensation on the original bid shall be paid to that agent or broker.

(3) If there is an agent or broker who holds a contract under Section 10150 granting the exclusive right to sell the property and the original bid returned to the court is made by a purchaser who was procured by another agent or broker, the one-half of the compensation on the amount of the original bid shall be divided between the agent or broker holding the contract granting the exclusive right to sell the property and the other agent or broker whose original bid was returned to the court for confirmation as is provided in any agreement between the agent or broker holding the contract and the other agent or broker. If there is no agreement, the one-half of the compensation on the amount of the original bid shall be divided equally between

the agent or broker holding the contract and the other agent or broker whose original bid was returned to the court for confirmation.

**Comment.** Subdivision (a) of Section 10165 describes the circumstances that must exist before Section 10165 applies. The section applies only where the court confirms a sale on an increased bid made at the time of the hearing on the petition for confirmation. The successful overbidder must be one procured by a bona fide agent or broker. In addition, before the section applies one of the following requirements also must be satisfied:

(1) The original bid returned to court for confirmation was made by a purchaser who was procured by another agent or broker (*i.e.*, an agent or broker other than the one who procured the successful overbidder).

(2) An agent or broker (other than the one who procured the successful overbidder) holds an exclusive sales contract. All that is required to satisfy this requirement is that an exclusive right to sell the property has been granted to the agent or broker; there is no requirement that the agent or broker holding the exclusive sales contract have produced the purchaser whose original bid was returned to the court for confirmation.

The reference in subdivision (a) to Section 10161 makes clear that the court has discretion to determine the total amount of compensation to be allocated under Section 10165. See the Comment to Section 10161.

Subdivision (b) continues a portion of the first sentence of former Section 761 without substantive change.

Paragraphs (1) and (2) of subdivision (c) continue a portion of the first sentence of former Section 761 without substantive change. Paragraph (3) of subdivision (c) is a new provision that covers the situation where an agent or broker holds an exclusive right to sell contract and the original bid returned to the court is made by a purchaser who was procured by another agent or broker. Former Section 761 failed to cover this situation. Paragraph (3) makes clear that the agent or broker holding an exclusive right to sell contract is allowed a commission whether or not he or she returns a bid to the court. In this respect, paragraph (3) is consistent with what appears to have been prior law. See 1 H. Miller & M. Starr, *Current Law of California Real Estate* § 2:50, at 301 (rev. ed. 1975). If there is an agreement concerning the sharing of commissions, subdivision (c) requires that the court divide the commission as provided in the agreement, rather than requiring the court to “give

consideration” to the agreement as was the case under the second sentence of former Section 760. If the agent or broker who holds the contract under Section 10150 has not been granted an exclusive right to sell the property, the agent or broker is allowed a commission only if he or she returns the original bid to the court or procures the successful overbidder to whom the sale of the property is confirmed at the confirmation hearing. See Section 10161(b).

For examples showing the operation of Section 10165, see Examples 5 and 6 in the Comment to Section 10161.

#### CROSS-REFERENCES

Definitions

Property § 62

### § 10166. Condition of bid that certain amount of bid be paid to agent or broker

10166. Notwithstanding that a bid contains a condition that a certain amount of the bid shall be paid to an agent or broker by the personal representative, only such compensation as is proper under this article shall be allowed. Acceptance of the bid by the court binds the bidder even though the compensation allowed by the court is less than that specified by the condition.

**Comment.** Section 10166 restates the last portion of the sixth sentence of former Section 785 (real property) without substantive change, and generalizes it to apply also to sales of personal property.

#### CROSS-REFERENCES

Definitions

Personal representative § 58

### § 10167. Compensation and expenses of auctioneer

10167. (a) Subject to subdivision (b), whether or not the auctioneer has a contract with the personal representative, the fees, compensation, and expenses of an auctioneer in connection with a sale of property shall be the amount the court, in its discretion, determines to be a reasonable compensation for the services of the auctioneer to the estate.

(b) If the auctioneer has a contract with the personal representative, the amount of the compensation of the

auctioneer in connection with the sale of property shall not exceed the amount provided for in the contract.

**Comment.** Section 10167 is a new provision that is consistent with the second sentence of former Section 760.5 (auctioneer's fee "to be determined by the court"). The language of Section 10167 is drawn from the language used in Section 10161 (compensation of agent or broker). The compensation to an auctioneer may be for the sale of personal property only. See Section 10151.

#### CROSS-REFERENCES

Contract with auctioneer § 10151

Definitions

Personal representative § 58

### **Article 4. Special Provisions Applicable to Particular Types of Property**

#### **§ 10200. Sale or surrender for redemption or conversion of securities**

10200. (a) As used in this section, "securities" means "security" as defined in Section 70, land trust certificates, certificates of beneficial interest in trusts, investment trust certificates, mortgage participation certificates, or certificates of deposit for any of the foregoing, but does not include notes secured by a mortgage or deed of trust unless the note or notes have been authorized or permitted to be issued by the Commissioner of Corporations or have been made by a public utility subject to the Public Utilities Act (Part 1 (commencing with Section 201) of Division 1 of the Public Utilities Code).

(b) After authorization by order of court, securities may be sold or may be surrendered for redemption or conversion. Title to the securities sold or surrendered as authorized by an order obtained under this section passes without the need for subsequent court confirmation.

(c) To obtain an order under this section, the personal representative or any interested person shall file a petition stating the terms and conditions and the advantage to the estate of the proposed sale or redemption or conversion. If the court authorizes the sale, redemption, or conversion, the court's order shall fix the terms and conditions of sale, redemption, or conversion.

(d) Notice of the hearing on the petition shall be given as provided in Section 1220 and posted as provided in Section 1230, but the court may order that the notice be given for a shorter period or dispensed with.

(e) No notice of sale or of the redemption or conversion need be given if any of the following conditions is satisfied:

(1) The minimum selling price is fixed by the court.

(2) The securities are to be sold on an established stock or bond exchange.

(3) The securities to be sold are securities designated as a national market system security on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer.

(4) The securities are to be surrendered for redemption or conversion.

**Comment.** Section 10200 restates subdivisions (a) and (b) of former Section 771 without substantive change, except that (1) the first sentence of subdivision (c) and paragraph (3) of subdivision (e) are new, and (2) notice under subdivision (d) 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.

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. See also Section 10201 (sale or withdrawal of savings accounts and mutual capital certificates without court order).

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Interested person § 48

Personal representative § 58

Security § 70

Effect of court authorization or approval § 9612

Proof of giving notice § 1260

Verification required § 1284

**§ 10201. Sale or withdrawal of savings accounts and mutual capital certificates**

10201. (a) As used in this section:

(1) "Federal association" has the same meaning as defined in Section 5102 of the Financial Code.

(2) "Mutual capital certificate" has the same meaning as defined in Section 5111 of the Financial Code.

(3) "Savings account" has the same meaning as defined in Section 5116 of the Financial Code.

(4) "Savings association" has the same meaning as defined in Section 5102 of the Financial Code.

(5) "Withdrawal value" has the same meaning as defined in Section 5124 of the Financial Code.

(b) Notwithstanding Section 10200, savings accounts and mutual capital certificates of a savings association or federal association may be sold or surrendered for withdrawal by the personal representative, and title thereto passed, without notice of sale, prior order of court, or subsequent confirmation by the court, if an amount of money is obtained upon the sale or withdrawal not less than the withdrawal value of the savings account or the value of the mutual capital certificate.

(c) Notwithstanding Section 10200, credit union share accounts and certificates for funds may be sold or withdrawn by the personal representative, and title thereto passed, without notice of sale, prior order of court, or subsequent confirmation by the court, if an amount of money is obtained upon the sale or withdrawal not less than the withdrawal value of the share account or the value of the certificate for funds.

**Comment.** Subdivisions (a) and (b) of Section 10201 restate subdivision (c) of former Section 771 without substantive change. Subdivision (c) of Section 10201 is new.

CROSS-REFERENCES

Definitions

Personal representative § 58

**§ 10202. Sale of subscription rights**

10202. Notwithstanding Section 10200, if an estate by reason of owning securities, also owns or receives subscription rights for the purchase of additional securities,

the personal representative may sell all or part of the subscription rights without notice of sale, prior order of court, or subsequent confirmation by the court.

**Comment.** Section 10202 restates former Section 771.5 without substantive change except that language is added to make clear that notice of sale and confirmation of sale is not required. This new language makes Section 10202 consistent with subdivision (e) of Section 10200 and with Section 10201. The words “stocks” and “bonds” which appeared in former Section 771.5 are omitted in view of the broad definition of “securities” provided in Section 70. See also Sections 9734 (exercise of option rights), 9737 (exercise of subscription rights).

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.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Security § 70

#### § 10203. Decedent's leasehold interest

10203. (a) Except as provided in subdivision (b), where property to be sold consists of a leasehold interest, the sale shall be made as in the case of the sale of personal property of the estate.

(b) The sale of a leasehold interest shall be made as in the case of the sale of real property of the estate if the interest to be sold consists of any of the following:

(1) A leasehold interest in real property with an unexpired term of 10 years or longer. For this purpose, the leasehold interest shall be considered to have an unexpired term of 10 years or longer if the lessee has the right to extend the term and the term, if extended, would exceed 10 years.

(2) A leasehold interest in real property together with an option to purchase the leased property or some part thereof.

(3) A lease for the purpose of production of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy.

**Comment.** Section 10203 continues former Section 754.6 without substantive change, except that the second sentence of paragraph (1) of subdivision (b) is new, and paragraph (3) of subdivision (b) is broadened to include, in addition to an oil or gas lease, a lease for the production of minerals, other hydrocarbon substances, or geothermal resources. This makes Section 10203 consistent with Sections 9940(b) and 9946 (leases).

## CROSS-REFERENCES

## Definitions

Property § 62

Real property § 68

**§ 10204. Decedent's partnership interest**

10204. Property of the estate that consists of a partnership interest or an interest belonging to an estate by virtue of a partnership formerly existing may be sold in the same manner as other personal property.

**Comment.** Section 10204 continues a portion of the first sentence of former Section 774 without substantive change. A partner's interest in the partnership is that partner's share of the profits and surplus and is itself personal property. Corp. Code § 15026; *Kenworthy v. Hadden*, 87 Cal. App. 3d 696, 701, 151 Cal. Rptr. 169 (1978); see generally Annot., 80 A.L.R.2d 1107 (1961). See also Section 10261 (confirmation of sale of partnership interest).

**§ 10205. Decedent's chose in action**

10205. A chose in action belonging to the estate may be sold in the same manner as other personal property.

**Comment.** Section 10205 continues a portion of the first sentence of former Section 774 without substantive change.

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

10206. (a) Except as otherwise provided in this section, if the decedent at the time of death was possessed of a contract for the purchase of real property and the decedent's interest in the property and under the contract is to be sold, the sale shall be made as in the case of the sale of real property of the estate.

(b) If the decedent's interest in the property and under the contract is sold, the sale shall be made subject to all payments which are due at the time of sale or which may

thereafter become due on the contract. Except as provided in subdivision (d), if there are any payments due or to become due, the court shall not confirm the sale until the purchaser executes a bond to the personal representative that satisfies the requirements of subdivision (c).

(c) The bond shall be for the benefit and indemnity of the personal representative and the persons entitled to the interest of the decedent in the real property contracted for. The amount of the bond shall be equal to the amount of payments then due and thereafter to become due on the contract, with such sureties as the court or judge may approve. The bond shall be conditioned that the purchaser will (1) make all payments for the property which are then due or which become due after the date of the sale and (2) fully indemnify the personal representative and the person entitled to the interest of the decedent against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in the contract.

(d) The bond need not be given in either of the following cases:

(1) When no claim has been made against the estate on the contract and the time for filing claims has expired.

(2) When the person entitled to payment under the contract waives all recourse to the assets of the estate for payment and releases the estate and the personal representative from liability for payment.

**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. See also Section 10314 (assignment of contract right to purchaser after confirmation of sale and furnishing of bond).

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").

## CROSS-REFERENCES

## Definitions

Person § 56

Personal representative § 58

Real property § 68

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

10207. (a) Real property suitable for a shift-in-land-use loan to develop grazing or pasture facilities may be sold under this section by the personal representative to a grazing or pasture association in conformity with the federal Consolidated Farm and Rural Development Act, 7 U.S.C. Sec. 1921, et seq., after authorization by order of the court.

(b) The personal representative or any interested person may file a petition for an order under this section. Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) An order for sale of property under this section may be made only if the court determines both of the following:

(1) Either the sale is made pursuant to the will of the decedent or all the decedent's heirs or all of the devisees having an interest in the property under the decedent's will consent to the sale.

(2) The sale will not jeopardize the rights of creditors of the estate.

(d) If the court makes an order authorizing sale of the property, the personal representative may make the sale in accord with the terms and conditions set out in the order, subject to the following requirements:

(1) Except as provided in Sections 10002, 10301, 10303, and 10503, notice of the time and place of the sale shall be published pursuant to Section 10300.

(2) The price of the sale made shall be not less than the value of the property as established by an independent and competent appraiser mutually acceptable to the federal government, the grazing or pasture association, and the personal representative.

(3) Except as provided in Sections 10002 and 10503, the sale shall be reported to and confirmed by the court as

provided in Article 6 (commencing with Section 10300) before title to the property passes, but the sale may be made irrespective of whether a higher bid is made to the court at the hearing on the petition to confirm the sale.

**Comment.** Section 10207 restates subdivision (b) of former Section 794 without substantive change but with the addition of subdivision (b) of Section 10207.

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.

#### CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Devisee § 34

Heirs § 44

Interested person § 48

Personal representative § 58

Real property § 68

Will § 88

Effect of court authorization or approval § 9612

Proof of giving notice § 1260

Verification required § 1284

## Article 5. Sale of Personal Property

### § 10250. Notice of sale

10250. Subject to Sections 10251 and 10252 and except as otherwise provided by statute, personal property of the estate may be sold only after notice of sale is given by one or both of the following methods, as the personal representative may determine:

(a) Posting at the county courthouse of the county in which the proceedings are pending at least 15 days before:

(1) In the case of a private sale, the day specified in the notice of sale as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

(b) Publication pursuant to Section 6063a of the Government Code in a newspaper in the county in which the proceedings are pending, such publication to be completed before:

(1) In the case of a private sale, the day specified in the notice of sale as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

**Comment.** Section 10250 restates the first sentence of former Section 772 without substantive change, except that the former 10-day period for posting of notice of sale is extended to 15 days under subdivision (a). As to when property of the estate may or must be sold, see Sections 10000, 10001. See also Section 10251 (shortening time of notice of sale).

For provisions permitting sale of personal property without notice of sale, see Sections 10200 (securities), 10201 (savings accounts and mutual capital certificates), 10202 (subscription rights), 10252 (perishable property; property directed or authorized by will to be sold; property sold to pay family allowance). See also Section 9640 (independent administration authority not limited).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58  
 Direction in will as to mode of selling § 10002  
 Discretion of personal representative as to  
   Mode of selling property § 10003  
   Property to be sold § 10003  
 Interests treated as personal property  
   Certain leasehold interests § 10203  
   Chose in action § 10205  
   Partnership interest § 10204  
 Sale without notice of sale  
   Mutual capital certificates § 10201  
   Perishable property § 10252  
   Property authorized or directed by will to be sold § 10252  
   Property sold to pay family allowance § 10252  
   Savings accounts § 10201  
   Securities § 10200  
   Subscription rights § 10202  
 Shortening time of notice of sale § 10251

#### COMPARABLE PROVISIONS

Real property sales §§ 10300-10301

### § 10251. Shortening time of notice of sale

10251. (a) If it is shown that it will be to the advantage of the estate, the court or judge may by order shorten the time of notice of sale to not less than five days.

(b) If the court or judge makes an order under subdivision (a), notice of sale shall be given by one or both of the following methods, as the personal representative may determine:

(1) By posting as provided in Section 10250 except that the posting shall be for at least five days instead of 15 days as required by Section 10250.

(2) By publication as provided in Section 10250 except that the publication shall be pursuant to Section 6061 of the Government Code.

**Comment.** Section 10251 restates the second sentence of former Section 772 without substantive change. The reference in Section 10251 to a court “or judge” is drawn from former Probate Code Section 782 (real property).

#### COMPARABLE PROVISIONS

Real property sales § 10302

#### § 10252. Sale without notice of sale

10252. Personal property may be sold with or without notice, as the personal representative may determine, in any of the following cases:

(a) Where the property is directed by the will to be sold.

(b) Where authority is given in the will to sell the property.

(c) Where the property is perishable, will depreciate in value if not disposed of promptly, or will incur loss or expense by being kept.

(d) Where sale of the property is necessary to provide for the payment of a family allowance pending receipt of other sufficient funds.

**Comment.** Subdivisions (a) and (b) of Section 10252 restate a portion of the first sentence of former Section 757 without substantive change. Under Section 10252, it is not necessary that the will specifically grant the personal representative authority to sell without notice. If the will directs or authorizes the sale, whether or not notice should be given is within the discretion of the personal representative. See *Bagley v. City and County of San Francisco*, 19 Cal. App. 255, 271, 125 P. 931 (1912). However, unless there is some other statutory provision dispensing with the need for confirmation of the sale in the particular case, a sale of personal property made pursuant to a direction or authorization in the will must be confirmed by the court before title to the property passes to the purchaser. See Section 10260.

Subdivisions (c) and (d) restate the first portion of former Section 770 without substantive change.

For other provisions permitting sale of personal property without notice of sale, see Sections 10200 (securities), 10201 (savings accounts and mutual capital certificates), 10202 (subscription rights).

## CROSS-REFERENCES

## Definitions

Personal representative § 58

Property § 62

Direction in will as to mode of selling § 10002

Interests treated as personal property

Certain leasehold interests § 10203

Chose in action § 10205

Partnership interest § 10204

Sale without notice of sale

Mutual capital certificates § 10201

Savings accounts § 10201

Securities § 10200

Subscription rights § 10202

## COMPARABLE PROVISIONS

Real property sales § 10303

### § 10253. Contents of notice of sale

10253. (a) The notice of sale given pursuant to Section 10250 shall state all of the following:

(1) Whether the sale is to be a private sale or a public auction sale.

(2) In the case of a private sale, the place at which bids or offers will be received and a day on or after which the sale will be made or, in the case of a public auction sale, the time and place of sale.

(3) A brief description of the personal property to be sold.

(b) The notice of sale may state other matters in addition to those required by subdivision (a), including terms and conditions of sale.

**Comment.** Subdivision (a) of Section 10253 restates the third sentence and a portion of the fourth sentence of former Section 772 without substantive change.

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).

## CROSS-REFERENCES

Direction in will as to mode of selling § 10002  
 Discretion of personal representative  
   Sale either at public auction or private sale § 10003  
   Sale of assets of estate as unit § 10004  
   Sale of entire interest or lesser interest § 10003  
 Interests treated as personal property  
   Certain leasehold interests § 10203  
   Chose in action § 10205  
   Partnership interest § 10204  
 Sale pursuant to contract with auctioneer § 10151

## COMPARABLE PROVISIONS

Real property sales § 10304

**§ 10254. Sale at public auction**

10254. (a) Unless the court orders otherwise pursuant to subdivision (b):

(1) A sale of personal property at a public auction sale shall be made within this state at the courthouse door, at the auction house, at some other public place, or at the residence of the decedent.

(2) No public auction sale shall be made of any tangible personal property that is not present at the time of sale.

(b) Upon petition of the personal representative or any interested person, the court may order either or both of the following:

(1) That a sale of personal property at public auction be made at any place within or without the United States.

(2) That tangible personal property need not be present at the time of sale.

(c) The personal representative may postpone a public auction sale of personal property from time to time if all of the following conditions are satisfied:

(1) The personal representative believes that the postponement will serve the interests of all persons concerned.

(2) Notice of the postponement is given by public declaration at the time and place appointed for the sale.

(3) The postponement, together with previous postponements of sale of the property, does not exceed three months.

**Comment.** Section 10254 restates the fifth, sixth, and seventh sentences of former Section 772 without substantive change, except that the former requirement that personal property be

present at the time of sale is limited to “tangible” personal property, and the authority for the court to order that the auction be held somewhere other than as required in paragraph (1) of subdivision (a) is new. The court may order, for example, that rare art works be sold in some other country when to do so will afford a better market.

See also Section 10151 (manner of sale pursuant to contract with auctioneer). For the provision concerning passage of title to personal property sold at public auction without court confirmation or approval, see Section 10259. The overbid provision does not apply where property is sold at public auction. See Sections 10259(b), 10262(c).

#### CROSS-REFERENCES

Confirmation, when not required § 10259  
 Definitions  
   Interested person § 48  
   Personal representative § 58  
 Direction in will as to mode of selling § 10002  
 Discretion of personal representative  
   Sale either at public auction or private sale § 10003  
   Sale of assets of estate as unit § 10004  
 Compensation of auctioneer § 10167  
 Contract with auctioneer § 10151  
 Manner of sale pursuant to contract with auctioneer § 10151  
 Overbid provision not applicable § 10262

#### COMPARABLE PROVISIONS

Real property sales § 10305

### § 10255. Private sale

10255. (a) A private sale of personal property may not be made before the day stated in the notice of sale as the day on or after which the sale will be made, nor later than one year after that day.

(b) In the case of a private sale of personal property, the bids or offers shall be in writing and shall be left at the place designated in the notice of sale, or be delivered to the personal representative personally, at any time after the first publication or posting of notice of sale and before the making of the sale.

**Comment.** Subdivision (a) of Section 10255 restates a portion of the fourth sentence of former Section 772 without substantive change.

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).

## CROSS-REFERENCES

Compensation of agent or broker §§ 10160-10166  
 Contract with agent or broker § 10150  
 Direction in will as to mode of selling § 10002  
 Interests treated as personal property  
   Certain leasehold interests § 10203  
   Chose in action § 10205  
   Partnership interest § 10204  
 Sale to lienholder § 10363

## COMPARABLE PROVISIONS

Real property sales § 10306

**§ 10256. Bids to comply with notice of sale**

10256. Whether a sale of personal property is private or at public auction, bids shall substantially comply with any terms specified in the notice of sale.

**Comment.** Section 10256 is new and is consistent with existing case law. See *In re Estate of Dargie*, 33 Cal. App. 2d 148, 155-57, 91 P.2d 126 (1939) (personal property); *cf.* *Estate of Hunter*, 194 Cal. App. 2d 859, 865-68, 15 Cal. Rptr. 556 (1961) (real property). For the section prescribing required and optional contents of the notice of sale, see Section 10253.

## CROSS-REFERENCES

Credit sale §§ 10257, 10258  
 Discretion of personal representative  
   Sale either at public auction or private sale § 10003  
   Sale of assets of estate as unit § 10004  
   Sale of entire interest or lesser interest § 10003  
 Interests treated as personal property  
   Certain leasehold interests § 10203  
   Chose in action § 10205  
   Partnership interest § 10204

## COMPARABLE PROVISIONS

Real property sales § 10307

**§ 10257. Sale for cash or on credit**

10257. (a) Personal property may be sold for cash or on credit.

(b) Except as may otherwise be ordered by the court pursuant to Section 10258, if a sale is made on credit, not less than 25 percent of the purchase price shall be paid in cash at the time of sale, and the personal representative shall do one of the following:

(1) Take the note of the purchaser for the balance of the purchase money, with a security interest in the personal property sold, to secure the payment of the balance.

(2) Enter into a conditional sale contract under which title is retained until the balance is paid.

(c) The terms of the note and security interest or conditional sale contract shall be approved by the court at the time of confirmation of sale.

(d) Where property sold by the personal representative for part cash and part deferred payments consists of an undivided interest in personal property or any other interest therein less than the entire ownership and the owner or owners of the remaining interests therein join in the sale, the note and security interest may be made to the personal representative and such others having an interest in the property. The interest of the personal representative in the note and security interest shall be in the same interest and in the same proportions as the estate's interest in the property prior to the sale.

**Comment.** Subdivisions (a), (b), and (c) of Section 10257 restate the first, second, third, and fourth sentences of former Section 773 without substantive change. "Security interest" is substituted in Section 10257 for "pledge" and "chattel mortgage" which appeared in former Section 773. Under the California Commercial Code, the security interest replaces the pledge and chattel mortgage. See California State Bar Committee on the Commercial Code, A Special Report, The Uniform Commercial Code, 37 Cal. St. B.J. 117, 198-99 (1962). Concerning the requirement that 25 percent of the purchase price be paid in cash at the time of sale, see *Consolidated Copperstate Lines v. Frasher*, 141 Cal. App. 2d 916, 297 P.2d 692 (1956). See also Section 10258 (court order relaxing requirements for credit sale).

Subdivision (d) restates the second and third sentences of former Section 787 without substantive change as it applied to personal property.

#### CROSS-REFERENCES

##### Definitions

- Personal representative § 58
- Direction in will as to mode of selling § 10002
- Discretion of personal representative
  - Sale either at public auction or private sale § 10003
  - Sale of assets of estate as unit § 10004
  - Sale of entire interest or lesser interest § 10003
- Interests treated as personal property
  - Certain leasehold interests § 10203
  - Chose in action § 10205
  - Partnership interest § 10204

#### COMPARABLE PROVISIONS

- Real property sales § 10315

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

10258. (a) On petition of the personal representative, the court may by order authorize a sale of personal property on credit on terms providing for less than 25 percent of the purchase price to be paid in cash at the time of sale, or may waive or modify the requirement that a security interest or other lien shall be retained or taken to secure payment of the balance of the purchase price, where in the opinion of the court the terms are to the advantage of the estate and the property to be sold is of such a nature that it is impracticable to sell the property for a larger cash payment at the time of sale or to retain a security interest or other lien in the property. The order of the court shall fix the terms and conditions of the sale.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 and posted as provided in Section 1230. In addition, notice of the hearing shall be given by mail at least 15 days prior to the hearing to all heirs and devisees named in the petition for probate of the will or for letters of administration.

**Comment.** Section 10258 restates the fifth, sixth, seventh, and eighth sentences of former Section 773 without substantive change, except that notice under the first sentence of subdivision (b) 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.

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.

**CROSS-REFERENCES**

Clerk to set matter for hearing § 1285

Definitions

Devisee § 34

Heirs § 44

Personal representative § 58

Will § 88

Direction in will as to mode of selling § 10002

Effect of court authorization or approval § 9612

Proof of giving notice § 1260  
 Verification required § 1284  
 Interests treated as personal property  
   Certain leasehold interests § 10203  
   Chose in action § 10205  
   Partnership interest § 10204

### § 10259. Passage of title without court confirmation

10259. (a) Title to the following personal property passes upon sale without the need for court confirmation or approval:

(1) Personal property which is perishable, which will depreciate in value if not disposed of promptly, or which will incur loss or expense by being kept.

(2) Personal property the sale of which is necessary to provide for the payment of a family allowance pending receipt of other sufficient funds.

(b) Title to personal property sold at public auction passes without the need for court confirmation or approval upon receipt of the purchase price and:

(1) In the case of tangible personal property, the delivery of the property to the purchaser.

(2) In the case of intangible personal property, the delivery to the purchaser of the instrument that transfers the title to the property to the purchaser.

(c) The personal representative is responsible for the actual value of the property described in subdivision (a) or (b) unless the sale is reported to and approved by the court.

**Comment.** Section 10259 restates a portion of former Section 770 and the last sentence of former Section 772 without substantive change. Paragraph (2) of subdivision (b) is new and reflects the expansion of the authority to sell at public auction to include intangible personal property. See Section 10254.

For other provisions dispensing with the requirement of court confirmation, see Sections 10200 (securities), 10201 (mutual capital certificates; savings accounts), 10202 (subscription rights). For special confirmation provisions, see Sections 10206 (decedent's interest under contract to purchase real property), 10207 (property sold to grazing or pasture association).

#### CROSS-REFERENCES

Compensation of agent or broker §§ 10160-10166  
 Compensation of auctioneer § 10167  
 Definitions  
   Personal representative § 58

Direction in will as to mode of selling § 10002  
 Dispensing with court confirmation  
   Mutual capital certificates § 10201  
   Savings accounts § 10201  
   Securities § 10200  
   Subscription rights § 10202  
 Interests treated as personal property  
   Certain leasehold interests § 10203  
   Chose in action § 10205  
   Partnership interest § 10204  
 Sale for more or less than appraisal § 10005  
 Sale pursuant to contract with auctioneer § 10151

### § 10260. Report of sale and petition for confirmation of sale

10260. (a) Except as provided in Sections 10200, 10201, 10202, 10259, and 10503, all sales of personal property shall be reported to and be confirmed by the court before title to the property passes to the purchaser, notwithstanding that the property is directed by the will to be sold or authority is given in the will to sell the property.

(b) If the personal representative fails to file the report and a petition for confirmation of the sale within 30 days after the sale, the purchaser at the sale may file the report and petition for confirmation of the sale.

(c) Notice of the hearing on the petition for confirmation filed under subdivision (a) or (b) shall be given as provided in Section 1220 and posted as provided in Section 1230.

**Comment.** Section 10260 restates former Section 755 without substantive change as it applied to personal property with the following exceptions:

(1) Subdivision (b) substitutes the requirement that the report and petition be “filed” within 30 days after each sale for the requirement of former Section 755 that the report and petition be “made” within 30 days after each sale.

(2) Subdivision (b) gives the purchaser the right to file the report and petition if the personal representative fails to file the report and petition within 30 days after the sale. The former provision required that the report and petition be filed within 30 days but did not state the remedy, if any, the purchaser had if the report and petition were not filed within the 30-day period.

(3) Under subdivision (c), 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.

For provisions dispensing with the requirement of court confirmation, see Sections 10200 (securities), 10201 (mutual capital certificates; savings accounts), 10202 (subscription rights), 10259 (personal property which is perishable, which will depreciate in value if not disposed of promptly, or which will incur loss or expense by being kept; personal property the sale of which is necessary to provide for the payment of a family allowance pending receipt of other sufficient funds; personal property sold at public auction). See also Sections 10150 (liability on contract with agent or broker), 10151 (liability on contract with auctioneer), 10160-10167 (compensation of agent, broker, or auctioneer).

When property is directed by the will to be sold, or authority is given in the will to sell property, the personal representative may sell the property with or without notice of sale (Section 10252), but the personal representative must make a return of sale and obtain confirmation of the sale as in other cases and no title passes until the sale is confirmed by the court. See the last portion of subdivision (a) of Section 10260 which is drawn from former Section 757 ("When property is directed by the will to be sold, or authority is given in the will to sell property, the executor . . . must make a return of sales and obtain confirmation thereof as in other cases. In either case no title passes unless the sale is confirmed by the court . . ."). See also Section 10261(a) (when sale is directed or authorized by will, necessity and advantage of sale need not be shown at hearing on petition for confirmation of the sale). The provision for overbids at the confirmation hearing also applies to a sale authorized or directed by the will. See Section 10262. However, if the will provides for the mode of sale, the directions in the will must be followed. See Section 10002.

#### CROSS-REFERENCES

Application of purchase money when encumbered property sold §§ 10361-10362  
 Clerk to set matter for hearing § 1285  
 Contract with agent or broker § 10150  
 Contract with auctioneer § 10151  
 Direction in will as to mode of selling § 10002  
 Dispensing with court confirmation  
   Mutual capital certificates § 10201  
   Perishable property § 10259  
   Personal property sold at public auction § 10259  
   Personal property sold to pay family allowance § 10259  
   Savings accounts § 10201  
   Securities § 10200  
   Subscription rights § 10202

Effect of court authorization or approval § 9612  
 Interests treated as personal property  
   Certain leasehold interests § 10203  
   Chose in action § 10205  
   Partnership interest § 10204  
 Proof of giving notice § 1260  
 Sale for more or less than appraisal § 10005  
 Sale pursuant to contract with auctioneer § 10151  
 Transfer or conveyance pursuant to court order § 1293  
 Verification required § 1284

#### COMPARABLE PROVISIONS

Real property sales § 10308

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

10261. (a) Except as provided in this subdivision, at the hearing on the petition for confirmation of the sale, the court shall examine into the necessity for the sale or the advantage to the estate and the benefit to the interested persons in making the sale. If the decedent's will authorizes or directs the property to be sold, there need be no showing of the necessity of the sale or the advantage to the estate and the benefit to the interested persons in making the sale.

(b) Any interested person may file written objections to the confirmation of the sale at or before the hearing and may testify and produce witnesses in support of the objections.

(c) Before confirming the sale of a partnership interest, whether made to the surviving partner or to any other person, the court shall do both of the following:

- (1) Inquire into the condition of the partnership affairs.
- (2) Examine the surviving partner if the surviving partner is a resident within the state at the time of the hearing and able to be present in court.

(d) Upon its own motion or upon the request of the personal representative, the agent or broker, or any other interested person, made at the time of the confirmation hearing or at another time, the court shall fix the compensation of the agent or broker as provided in Article 3 (commencing with Section 10160).

**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, devisees, 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 requires examination where the surviving partner is able to be present at the hearing and is "a resident within the state at the time of the hearing." Under former Section 774, the provision applied only where the surviving partner is able to be present at the hearing and is "in the county."

Subdivision (d) is new and is drawn from portions of the second and third sentences of former Section 785 (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).

#### CROSS-REFERENCES

Application of purchase money when encumbered property sold §§ 10361-10362

Definitions

Interested person § 48

Will § 88

Direction in will as to mode of selling § 10002

Proof of giving notice § 1260

Sale for more or less than appraisal § 10005

Sale to lienholder § 10363

Vacating sale when purchaser defaults

Confirming sale to new higher bidder § 10351

Order for resale § 10350

#### COMPARABLE PROVISIONS

Real property sales § 10310

**§ 10262. Overbid**

10262. (a) Except as provided in subdivision (b), if a written offer to purchase the property is made to the court at the hearing on the petition for confirmation of the sale and the new bid is at least 10 percent more than the amount stated in the report made to the court, the court in its discretion may accept the new bid and confirm the sale to the offeror, or may order a new sale, if all of the following conditions are satisfied:

(1) The original bid as stated in the report to the court is more than one hundred dollars (\$100) or, if the original bid is less than one hundred dollars (\$100), the new bid is at least one hundred dollars (\$100) more than the original bid.

(2) The new bid is made by a responsible person.

(3) The new bid complies with all provisions of law.

(b) If there is more than one offer that satisfies the requirements of subdivision (a), the court shall do one of the following:

(1) Accept the highest such offer and confirm the sale to the offeror.

(2) Order a new sale.

(c) This section does not apply to a sale of property described in Section 10259.

**Comment.** Section 10262 restates former Section 756.5 without substantive change except that Section 10262 permits an overbid where the original bid is less than \$100 and the overbid is not less than \$100 more than the original bid. Subdivision (b) is a new provision drawn from former Section 785. See also Section 10207 (sale to grazing or pasture association permitted irrespective of whether higher bid made at confirmation hearing).

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).

## CROSS-REFERENCES

Agent or broker

Compensation §§ 10160-10166

Contract § 10150

Direction in will as to mode of selling § 10002

Sale for more or less than appraisal § 10005

Real property sales § 10311

**§ 10263. Proof that notice of sale was given**

**10263.** If notice of the sale was required, before an order is made confirming the sale, it shall be proved to the satisfaction of the court that notice of the sale was given as required by this article, and the order of confirmation shall show that such proof was made.

**Comment.** Section 10263 restates the last sentence of former Section 756 without substantive change as it applied to personal property.

## COMPARABLE PROVISIONS

Real property sales § 10312

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

**10264.** No omission, error, or irregularity in the proceedings under this article shall impair or invalidate the proceedings or the sale pursuant to an order made under this article.

**Comment.** Section 10264 is new, and is comparable to Sections 9923 (exchanges), 9948(d) (leases), 9966 (option to purchase real property), 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).

## COMPARABLE PROVISIONS

Real property sales § 10316

## Article 6. Sale of Real Property

### § 10300. Publication of notice of sale

10300. (a) Except as provided in Sections 10301 to 10303, inclusive, and in Section 10503, real property of the estate may be sold only after notice of sale has been published pursuant to Section 6063a of the Government Code (1) in a newspaper published in the county in which the real property or some portion thereof lies or (2) if there is no such newspaper, in such newspaper as the court or judge may direct.

(b) The publication of notice of sale shall be completed before:

(1) In the case of a private sale, the day specified in the notice as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

**Comment.** Section 10300 restates the first sentence of former Section 780 without substantive change, except that the requirement that the notice state the “time and place” of sale is continued in Section 10304. For provisions permitting sale of real property without notice of sale, see Sections 10301 (property appraised at not more than \$5,000), 10303 (property authorized or directed by will to be sold). See also Section 9640 (independent administration authority not limited). As to when property of the estate may or must be sold, see Sections 10000, 10001.

#### CROSS-REFERENCES

##### Definitions

Real property § 68

Direction in will as to mode of selling § 10002

Discretion of personal representative

Mode of selling property § 10003

Property to be sold § 10003

Dispensing with publication of notice of sale

Property appraised at not more than \$5,000 § 10301

Where will directs or authorizes sale § 10303

Interests treated as real property

Certain real property leasehold interests § 10203

Decedent's interest under contract to purchase real property § 10206

Oil or gas leasehold interest § 10203

Personal property sold with real property as a unit § 10004

Publication of notice of sale to grazing or pasture association § 10207

Sale without notice of sale

Property authorized or directed by will to be sold § 10303

Shortening time of notice of sale § 10302

#### COMPARABLE PROVISIONS

Personal property sales § 10250

**§ 10301. Notice of sale where property appraised at not more than \$5,000**

10301. (a) If it appears from the inventory and appraisal that the value of the real property to be sold does not exceed five thousand dollars (\$5,000), the personal representative may in his or her discretion dispense with publication of notice of sale and, in lieu of publication, post the notice of sale at the courthouse of the county in which the real property or some portion thereof lies.

(b) Except as provided in Section 10302, posting pursuant to this section shall be for at least 15 days before:

(1) In the case of a private sale, the day specified in the notice of sale as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

**Comment.** Section 10301 restates the second sentence of former Section 780, except that:

(1) Section 10301 increases the amount from \$1,000 to \$5,000. The amount was last increased to \$1,000 in 1959. The increase to \$5,000 recognizes to a limited extent the effect of inflation during the last 30 years.

(2) The former 10-day period for posting of notice of sale is extended to 15 days under subdivision (b).

CROSS-REFERENCES

Definitions

Personal representative § 58

Real property § 68

Direction in will as to mode of selling § 10002

Interests treated as real property

Certain real property leasehold interests § 10203

Decedent's interest under contract to purchase real property § 10206

Oil or gas leasehold interest § 10203

Personal property sold with real property as a unit § 10004

Publication of notice of sale to grazing or pasture association § 10207

Sale without notice of sale

Property authorized or directed by will to be sold § 10303

Shortening time of notice of sale § 10302

**§ 10302. Shortening time of notice of sale**

10302. (a) If it is shown that it will be to the advantage of the estate, the court or judge may by order shorten the time of notice of sale to not less than five days.

(b) Except as provided in subdivision (c), if the court or judge makes an order under subdivision (a), notice of sale

shall be published as provided in Section 10300 except that the publication shall be pursuant to Section 6061 of the Government Code.

(c) In a case described in Section 10301, if the court makes an order under subdivision (a), notice of sale shall be posted as provided in Section 10301 except that the notice of sale shall be posted at least five days before the sale instead of 15 days as required by Section 10301.

**Comment.** Section 10302 restates the last portion of the first sentence of former Section 782 without substantive change except that posting is required to be for at least five days instead of "one week" as required by former Section 782. The five-day posting period required by Section 10302 is consistent with the posting period required by Section 10251 (shortening time of notice of sale of personal property) which continues the five-day posting period required by former Section 772.

#### COMPARABLE PROVISIONS

Personal property sales § 10251

#### § 10303. Sale without notice where will directs or authorizes sale

10303. Real property may be sold with or without notice, as the personal representative may determine, in either of the following cases:

- (a) Where the property is directed by the will to be sold.
- (b) Where authority is given in the will to sell the property.

**Comment.** Section 10303 restates a portion of the first sentence of former Section 757 without substantive change as it applied to real property. Under Section 10303, it is not necessary that the will specifically grant the personal representative authority to sell without notice. If the will directs or authorizes the sale, whether or not notice should be given is within the discretion of the personal representative. See *Bagley v. City and County of San Francisco*, 19 Cal. App. 255, 271, 125 P. 931 (1912). However, a sale of real property made pursuant to a direction or authorization in the will must be confirmed by the court before title to the property passes to the purchaser. See Section 10308.

## CROSS-REFERENCES

## Definitions

Personal representative § 58  
 Real property § 68  
 Will § 88

Direction in will as to mode of selling § 10002

## Interests treated as real property

Certain real property leasehold interests § 10203  
 Decedent's interest under contract to purchase real property § 10206  
 Oil or gas leasehold interest § 10203  
 Personal property sold with real property as a unit § 10004

Publication of notice of sale to grazing or pasture association § 10207

## COMPARABLE PROVISIONS

Personal property sales § 10252

## § 10304. Contents of notice of sale

10304. (a) The notice of sale given pursuant to this article shall state all of the following:

(1) Whether the sale is to be a private sale or a public auction sale.

(2) In the case of a private sale, the place at which bids or offers will be received and a day on or after which the sale will be made or, in the case of a public auction sale, the time and place of sale.

(3) The street address or other common designation or, if none, a legal description of the real property to be sold.

(b) The notice of sale may state other matters in addition to those required by subdivision (a), including terms and conditions of sale.

**Comment.** Paragraphs (1) and (2) of subdivision (a) of Section 10304 restate a portion of the first sentence of former Section 780 and a portion of the first sentence of former Section 782 without substantive change. Paragraph (3) of subdivision (a) supersedes the third and fourth sentences of former Section 780.

Subdivision (b) is new and codifies existing practice. See Hudner, *Sales of Estate Property*, in 1 California Decedent Estate Administration § 14.22, at 514 (Cal. Cont. Ed. Bar 1971).

## CROSS-REFERENCES

## Definitions

Real property § 68

Direction in will as to mode of selling § 10002

## Discretion of personal representative

Sale either at public auction or private sale § 10003  
 Sale of assets of estate as unit § 10004  
 Sale of entire interest or lesser interest § 10003

## Interests treated as real property

Certain real property leasehold interests § 10203

Decedent's interest under contract to purchase real property § 10206

Oil or gas leasehold interest § 10203

Personal property sold with real property as a unit § 10004

Sale pursuant to contract with agent or broker § 10150

## COMPARABLE PROVISIONS

Personal property sales § 10253

**§ 10305. Sale at public auction**

10305. (a) A sale of real property at public auction shall be made in the county in which the property is located. If the property is located in two or more counties, it may be sold in any one of them.

(b) A sale of real property at public auction shall be made between 9:00 a.m. and 9:00 p.m., and the sale shall be made on the day specified in the notice of sale unless the sale is postponed.

(c) The personal representative may postpone a public auction sale of real property from time to time if all of the following conditions are satisfied:

(1) The personal representative believes that the postponement will serve the interests of all persons concerned.

(2) Notice of the postponement is given by public declaration at the time and place appointed for the sale.

(3) The postponement, together with previous postponements of sale of the property, does not exceed three months in all.

**Comment.** Subdivisions (a) and (b) of Section 10305 restate former Section 781 with the following change: An auction sale of real property must be between 9:00 a.m. and 9:00 p.m., instead of between 9 a.m. and sunset as formerly required.

Subdivision (c) restates former Section 783 without substantive change. Under subdivision (c), the notice of the postponement is given by public declaration at the time and place specified in the notice of sale unless the auction at that time and place was previously postponed and set for a new date. If the sale is to be again postponed, the notice of the postponement is given by public declaration at the time and place of the new auction as announced in the declaration that postponed the first auction. See also Estate of Hunter, 194 Cal. App. 2d 859, 863-64, 15 Cal. Rptr. 556 (1961) (former Section 783 applied to public auction sales but not to private sales).

## CROSS-REFERENCES

Compensation of agent or broker §§ 10160-10166  
 Contract with agent or broker § 10150  
 Definitions  
   Personal representative § 58  
   Real property § 68  
 Direction in will as to mode of selling § 10002  
 Discretion of personal representative  
   Sale either at public auction or private sale § 10003  
   Sale of assets of estate as unit § 10004  
   Sale of entire interest or lesser interest § 10003  
 Interests treated as real property  
   Certain real property leasehold interests § 10203  
   Decedent's interest under contract to purchase real property § 10206  
   Oil or gas leasehold interest § 10203  
   Personal property sold with real property as a unit § 10004

## COMPARABLE PROVISIONS

Personal property sales § 10254

**§ 10306. Private sale**

10306. (a) A private sale of real property may not be made before the day stated in the notice of sale as the day on or after which the sale will be made, nor later than one year after that day.

(b) In the case of a private sale of real property, the bids or offers shall be in writing and shall be left at the place designated in the notice of sale, or be delivered to the personal representative personally, at any time after the first publication or posting of notice of sale and before the making of the 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 change: The former authority for filing bids with the clerk of the court is not continued.

## CROSS-REFERENCES

Compensation of agent or broker §§ 10160-10166  
 Contract with agent or broker § 10150  
 Definitions  
   Personal representative § 58  
   Real property § 68  
 Direction in will as to mode of selling § 10002  
 Interests treated as real property  
   Certain real property leasehold interests § 10203  
   Decedent's interest under contract to purchase real property § 10206  
   Oil or gas leasehold interest § 10203  
   Personal property sold with real property as a unit § 10004  
 Sale on credit § 10315  
 Sale to lienholder § 10363

## COMPARABLE PROVISIONS

Personal property sales § 10255

**§ 10307. Bids to comply with notice of sale**

10307. Whether a sale of real property is private or at public auction, bids shall substantially comply with any terms specified in the notice of sale.

**Comment.** Section 10307 is new and is consistent with existing case law. See *Estate of Hunter*, 194 Cal. App. 2d 859, 865-68, 15 Cal. Rptr. 556 (1961) (real property); *cf. In re Estate of Dargie*, 33 Cal. App. 2d 148, 155-57, 91 P.2d 126 (1939) (personal property). See also Section 10304 (required and optional contents of notice of sale).

CROSS-REFERENCES

Definitions

Real property § 68

Discretion of personal representative

Sale either at public auction or private sale § 10003

Sale of assets of estate as unit § 10004

Sale of entire interest or lesser interest § 10003

Interests treated as real property

Certain real property leasehold interests § 10203

Decedent's interest under contract to purchase real property § 10206

Oil or gas leasehold interest § 10203

Personal property sold with real property as a unit § 10004

COMPARABLE PROVISIONS

Personal property sales § 10256

**§ 10308. Report of sale and petition for confirmation of sale**

10308. (a) Except as provided in Section 10503, all sales of real property shall be reported to and be confirmed by the court before title to the property passes to the purchaser, whether the sale is a private sale or a public auction sale and notwithstanding that the property is directed by the will to be sold or authority is given in the will to sell the property.

(b) If the personal representative fails to file the report and a petition for confirmation of the sale within 30 days after the sale, the purchaser at the sale may file the report and petition for confirmation of the sale.

(c) Notice of the hearing on the petition for confirmation filed under subdivision (a) or (b) shall be given as provided in Section 1220 and posted as provided in Section 1230.

**Comment.** Section 10308 restates former Section 755 without substantive change as it applied to real property with the following exceptions:

(1) Subdivision (b) gives the purchaser the right to file the report of sale and the petition for confirmation of the sale if the personal representative fails to file the report and petition within 30 days after the sale. The former provision required that the report and petition be filed within 30 days but did not state the remedy, if any, the purchaser had if the report and petition were not filed within the 30-day period.

(2) Under subdivision (c), 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 introductory clause of subdivision (a) recognizes that a sale of real property under independent administration authority does not require court confirmation. See Sections 9640, 10503. The language in subdivision (a) that confirmation is required whether the sale is public or private and whether made pursuant to a will is new, but continues the effect of former Section 755. See 1 H. Miller & M. Starr, *Current Law of California Real Estate* § 2:49, at 296 (rev. ed. 1975); former Probate Code § 757 (“When property is directed by the will to be sold, or authority is given in the will to sell property, the executor . . . must make a return of sales and obtain confirmation thereof as in other cases. In either case no title passes unless the sale is confirmed by the court . . .”).

For special confirmation provisions, see Sections 10206 (decedent’s interest under contract to purchase real property), 10207 (property sold to grazing or pasture association). See also Sections 10150 (liability on contract with agent or broker), 10160-10166 (compensation of agent or broker).

#### CROSS-REFERENCES

Application of purchase money when encumbered property sold §§ 10361-10362

Clerk to set matter for hearing § 1285

Definitions

Real property § 68

Direction in will as to mode of selling § 10002

Effect of court authorization or approval § 9612

Interests treated as real property

Certain real property leasehold interests § 10203

Decedent’s interest under contract to purchase real property § 10206

Oil or gas leasehold interest § 10203

Personal property sold with real property as a unit § 10004

Proof of giving notice § 1260

Sale for more or less than appraisal § 10005

Sale to lienholder § 10363

## Special confirmation provisions

Decedent's interest under contract to purchase real property § 10206

Property sold to grazing association § 10207

Verification required § 1284

## COMPARABLE PROVISIONS

Personal property sales § 10260

**§ 10309. Minimum price for private sale of real property**

**10309.** (a) Except as provided in Section 10207, no sale of real property at private sale shall be confirmed by the court unless all of the following conditions are satisfied:

(1) The real property has been appraised within one year of the date of the confirmation hearing.

(2) The valuation date used in the appraisal described in paragraph (1) is within one year prior to the date of the confirmation hearing.

(3) The sum offered for the property is at least 90 percent of the appraised value of the property as determined by the appraisal described in paragraph (1).

(b) An appraisal of the property may be had at any time before the sale or the confirmation of sale in any of the following cases:

(1) Where the property has not been previously appraised.

(2) Where the property has not been appraised within one year before the date of the confirmation hearing.

(3) Where the valuation date used in the latest appraisal is more than one year before the date of the confirmation hearing.

(4) Where the court is satisfied that the latest appraisal is too high or too low.

(c) A new appraisal made pursuant to subdivision (b) may be made by the probate referee who made the original appraisal without further order of the court or further request for the appointment of a new probate referee. A new probate referee shall be appointed, using the same procedure as for the appointment of an original referee, to make the new appraisal if the original probate referee is dead, has been removed, or is otherwise unable to act, or if there is other reason to appoint another probate referee.

**Comment.** Section 10309 restates former Section 784 without substantive change, except that (1) the appraisal and valuation date must be within one year of the confirmation hearing rather than the date of sale, and (2) subdivision (c) permits the appointment of a new probate referee if “there is other reason to appoint another probate referee” in place of the provision of former Section 784 that permitted appointment of new probate referee “for just cause.” The introductory “except” clause of subdivision (a) continues one effect of the “notwithstanding” clause of subdivision (b) of former Section 794.

Paragraph (2) of subdivision (a) of Section 10309 refers to the “valuation date” of the appraisement. This was the intent of former Section 784, pursuant to which an appraisement was deemed to relate back to the valuation date. See 1 A. Marshall, *California Probate Procedure* § 1403, at 14-200 (4th ed. 1984).

All sales of real property must be confirmed by the court, whether the sale is private or at public auction (Section 10308), and all sales must be for a sum not disproportionate to the value of the property (Section 10313(a)(4)). However, the requirement of Section 10309 that the offer be at least 90 percent of the appraised value applies only to private sales. As under prior law, the 90 percent requirement does not apply to sales made at public auction. 1 A. Marshall, *supra*, § 1407, at 14-204; 1 H. Miller & M. Starr, *Current Law of California Real Estate* § 2:49, at 296 n.19 (rev. ed. 1975). See also Section 10004 (sale of real and personal property as a unit).

#### CROSS-REFERENCES

##### Definitions

Real property § 68

Direction in will as to mode of selling § 10002

Interests treated as real property

Certain real property leasehold interests § 10203

Decedent's interest under contract to purchase real property § 10206

Oil or gas leasehold interest § 10203

Personal property sold with real property as a unit § 10004

Sale for more or less than appraisal § 10005

Special confirmation provisions

Decedent's interest under contract to purchase real property § 10206

Property sold to grazing association § 10207

### § 10310. Hearing on petition for confirmation of sale

10310. (a) Except as provided in this subdivision, at the hearing on the petition for confirmation of the sale of the real property, the court shall examine into the necessity for the sale or the advantage to the estate and the benefit to the interested persons in making the sale. If the decedent's will authorizes or directs the property to be sold, there need be

no showing of the necessity of the sale or the advantage to the estate and benefit to the interested persons in making the sale.

(b) The court shall examine into the efforts of the personal representative to obtain the highest and best price for the property reasonably attainable.

(c) Any interested person may file written objections to the confirmation of the sale at or before the hearing and may testify and produce witnesses in support of the objections.

**Comment.** The first sentence of subdivision (a) of Section 10310 restates a portion of the first sentence of former Section 785 without substantive change. The second sentence of subdivision (a) restates a portion of the second sentence of former Section 757 without substantive change.

The phrase "advantage of the estate and the benefit to the interested persons" has been substituted in subdivision (a) of Section 10310 for the phrase "advantage, benefit and interest of the estate" used in former Section 785. This substitution makes no substantive change in the provision and makes the provision consistent with subdivision (b) of Section 10000. See the Comment to that section.

Subdivision (b) restates a portion of the first sentence of former Probate Code Section 785 with the substitution of the phrase "to obtain the highest and best price for the property reasonably attainable" for the former language "to expose the property to the market, and must examine the return and witnesses in relation to the sale."

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

#### CROSS-REFERENCES

Authorization to sell real property § 10000

Definitions

Interested person § 48

Personal representative § 58

Real property § 68

Will § 88

Direction in will as to mode of selling § 10002

Interests treated as real property

Certain real property leasehold interests § 10203

Decedent's interest under contract to purchase real property § 10206

Oil or gas leasehold interest § 10203

Personal property sold with real property as a unit § 10004

Sale for more or less than appraisal § 10005

#### COMPARABLE PROVISIONS

Personal property sales § 10261

**§ 10311. Overbid**

10311. (a) Subject to subdivisions (b), (c), (d), and (e), and except as provided in Section 10207, if a written offer to purchase the real property is made to the court at the hearing on the petition for confirmation of the sale, the court shall accept the offer and confirm the sale to the offeror if all of the following conditions are satisfied:

(1) The offer is for an amount at least 10 percent more on the first ten thousand dollars (\$10,000) of the original bid and five percent more on the amount of the original bid in excess of ten thousand dollars (\$10,000).

(2) The offer is made by a responsible person.

(3) The offer complies with all provisions of law.

(b) Subject to subdivisions (c), (d), and (e), if there is more than one offer that satisfies the requirements of subdivision (a), the court shall accept the highest such offer and confirm the sale to the person making that offer.

(c) The court may, in its discretion, decline to accept the offer that satisfies the requirements of subdivisions (a) and (b); and, in such case, the court shall order a new sale.

(d) If the sale returned for confirmation is on credit and the higher offer is for cash or on credit, whether on the same or different credit terms, or the sale returned for confirmation is for cash and the higher offer is on credit, the court may not consider the higher offer unless the personal representative informs the court in person or by counsel prior to confirmation of sale that the higher offer is acceptable.

(e) For the purpose of this section, the amount of the original bid and any higher offer shall be determined by the court without regard to any of the following:

(1) Any commission on the amount of the bid to which an agent or broker may be entitled under a contract with the personal representative.

(2) Any condition of the bid that a certain amount of the bid be paid to an agent or broker by the personal representative.

**Comment.** Subdivision (a) of Section 10311 restates a portion of the second sentence of former Section 785 without substantive change. The reference to Section 10207 in the introductory

clause of subdivision (a) continues one effect of the "notwithstanding" clause of subdivision (b) of former Section 794.

Subdivision (b) restates a portion of the third sentence of former Section 785 without substantive change.

Subdivision (c) restates portions of the second and third sentences of former Section 785 without substantive change. If the court orders a new sale under subdivision (c), notice of the new sale shall be given and the new sale shall be conducted as if no previous sale had taken place. See Section 10313(d).

Subdivision (d) restates former Section 785.1 and the last sentence of former Section 785 without substantive change.

Subdivision (e) restates the fifth sentence and a portion of the sixth sentence of former Section 785 without substantive change. See also Sections 10162 (limitation on compensation of agent or broker producing successful overbidder), 10166 (effect of condition in bid that certain amount of bid be paid to agent or broker). As to compensation of agents and brokers generally, see Sections 10160-10166.

As under prior law, the overbid procedure applies both to private sales and to public auction sales. See 1 H. Miller & M. Starr, *Current Law of California Real Estate* § 2:48, at 294 (rev. ed. 1975).

#### CROSS-REFERENCES

Compensation of agents and brokers §§ 10160-10166, 10313(b)

Definitions

Person § 56

Personal representative § 58

Real property § 68

Direction in will as to mode of selling § 10002

New sale procedure § 10313(d)

Sale for more or less than appraisal § 10005

Sale on credit § 10315

#### COMPARABLE PROVISIONS

Personal property sales § 10262

### § 10312. Proof that notice of sale was given

10312. If notice of the sale was required, before an order is made confirming the sale it shall be proved to the satisfaction of the court that notice of the sale was given as required by this article, and the order of confirmation shall show that the proof was made.

**Comment.** Section 10312 restates the last sentence of former Section 756 without substantive change as it applied to real

property. As to when notice of sale is required, see Sections 10300-10303.

## COMPARABLE PROVISIONS

Personal property sales § 10263

**§ 10313. Order confirming or vacating sale**

10313. (a) The court shall make an order confirming the sale to the person making the highest offer that satisfies the requirements of this article, and directing conveyances or assignments or both to be executed, if it appears to the court that all of the following requirements are satisfied:

(1) Either the sale was authorized or directed to be made by the decedent's will or good reason existed for the sale.

(2) If notice of the sale was required, the proof required by Section 10312 has been made.

(3) The sale was legally made and fairly conducted.

(4) The amount for which the sale is to be confirmed is not disproportionate to the value of the property.

(5) In the case of a private sale, the sale complied with the requirements of Section 10309.

(6) If the sale is confirmed to the original bidder, it does not appear that a sum exceeding the original bid by at least 10 percent more on the first ten thousand dollars (\$10,000) of the original bid and five percent more on the amount of the original bid in excess of ten thousand dollars (\$10,000), exclusive of the expenses of a new sale, may be obtained.

(b) Upon its own motion or upon the request of the personal representative, the agent or broker, or any interested person, made at the time of the confirmation hearing or at another time, the court shall fix the compensation of the agent or broker as provided in Article 3 (commencing with Section 10160).

(c) If it appears to the court that the requirements of subdivision (a) are not satisfied, the court shall vacate the sale and order a new sale.

(d) If the court orders a new sale under subdivision (c) of this section or under subdivision (c) of Section 10311, notice of the new sale shall be given and the new sale shall in all respects be conducted as if no previous sale had taken place.

**Comment.** Subdivision (a) of Section 10313 restates portions of the first, second, and third sentences of former Section 785 without substantive change.

Paragraph (1) of subdivision (a) recognizes that it is not necessary to show that good reason existed for the sale if the sale was authorized or directed by the decedent's will. This continues the last portion of the second sentence of former Section 757 as it applied to real property.

Paragraph (5) of subdivision (a) recognizes that the 90 percent requirement of Section 10309 applies only to private sales, and not to public auction sales. This continues a portion of the first sentence of former Section 784. See 1 A. Marshall, *California Probate Procedure* § 1407, at 14-204 (4th ed. 1984); 1 H. Miller & M. Starr, *Current Law of California Real Estate* § 2:49, at 296 n.19 (rev. ed. 1975).

Subdivision (b) restates portions of the second and third sentences of former Section 785 without substantive change. See Sections 10160-10166 (compensation of agent or broker). See also Section 10150 (contract with agent or broker).

Subdivisions (c) and (d) continue the last portion of the first sentence of former Section 785 without substantive change.

#### CROSS-REFERENCES

##### Agents and brokers

Compensation §§ 10160-10166

Contract § 10150

Application of purchase money when encumbered property sold §§ 10361-10362

Conveyance or assignment after confirmation § 10314

##### Definitions

Person § 56

Real property § 68

Will § 88

Effect of court authorization or approval § 9612

Liability of purchaser who defaults § 10350(e)

Proof that notice of sale was given § 10312

Sale for more or less than appraisal § 10005

Sale on credit § 10315

Sale to lienholder § 10363

Vacating sale for purchaser's default

Confirming sale to new high bidder § 10351

Order for resale § 10350

#### § 10314. Conveyance or assignment after confirmation

10314. (a) Except as provided in subdivision (b), upon confirmation of the sale, the personal representative shall execute a conveyance to the purchaser which shall refer to the order confirming the sale and directing the conveyance to be executed. A certified copy of the order shall be

recorded in the office of the recorder of the county in which the real property or any portion thereof lies.

(b) Upon confirmation of a sale of the decedent's interest under a contract for the purchase of real property by the decedent and after the purchaser has furnished a bond if one is required under Section 10206, the personal representative shall execute an assignment of the contract to the purchaser.

(c) A conveyance made in compliance with the court order confirming the sale and directing the conveyance to be executed vests in the purchaser both of the following:

(1) All the right, title, and interest which the decedent had in the property at the time of the decedent's death.

(2) Any other or additional right, title, or interest in the property acquired by the estate of the decedent, by operation of law or otherwise, prior to the sale.

(d) An assignment made in compliance with the court order confirming the sale of the decedent's interest under a contract for the purchase of real property by the decedent vests in the purchaser all the right, title, and interest of the estate, or of the persons entitled to the interest of the decedent, at the time of sale in the property assigned. The purchaser of the decedent's interest under the contract for the purchase of the real property by the decedent has the same rights and remedies against the vendor of the property as the decedent would have had if living.

**Comment.** Subdivision (a) of Section 10314 restates the first sentence of former Section 786 without substantive change.

Subdivision (b) restates the first portion of former Section 802.

Subdivision (c) restates the second sentence of former Section 786 without substantive change. Subdivision (d) restates the last portion of former Section 802 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Real property § 68

Effect of court authorization or approval § 9612

Interests treated as real property

Certain real property leasehold interests § 10203

Decedent's interest under contract to purchase real property § 10206

Oil or gas leasehold interest § 10203

Personal property sold with real property as a unit § 10004

Recordation of order affecting real property § 1292

**§ 10315. Sale on credit**

10315. (a) If a sale is made on credit, the personal representative shall take the note of the purchaser for the unpaid portion of the purchase money, with a mortgage or deed of trust on the property to secure payment of the note. The mortgage or deed of trust shall be subject only to encumbrances existing at the date of sale and such other encumbrances as the court may approve.

(b) Where property sold by the personal representative for part cash and part deferred payments consists of an undivided interest in real property or any other interest therein less than the entire ownership and the owner or owners of the remaining interests therein join in the sale, the note and deed of trust or mortgage may be made to the personal representative and such others having an interest in the property. The interest of the personal representative in the note and deed of trust or mortgage shall be in the same interest and in the same proportions as the estate's interest in the property prior to the sale.

**Comment.** Section 10315 restates former Section 787 without substantive change as it applied to real property.

**CROSS-REFERENCES****Definitions**

Personal representative § 58

Real property § 68

Direction in will as to mode of selling § 10002

Discretion of personal representative

Sale either at public auction or private sale § 10003

Sale of assets of estate as unit § 10004

Sale of entire interest or lesser interest § 10003

Interests treated as real property

Certain real property leasehold interests § 10203

Decedent's interest under contract to purchase real property § 10206

Oil or gas leasehold interest § 10203

Personal property sold with real property as a unit § 10004

**COMPARABLE PROVISIONS**

Personal property sales § 10257

**§ 10316. Error does not invalidate proceedings**

10316. No omission, error, or irregularity in the proceedings under this article shall impair or invalidate the proceedings or the sale pursuant to an order made under this article.

**Comment.** Section 10316 is new, and is comparable to Sections 9923 (exchanges), 9948(d) (leases), 9966 (option to purchase real property), 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).

### **Article 7. Vacating Sale for Purchaser's Default; Liability of Defaulting Purchaser for Damages**

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

10350. (a) If after court confirmation of sale of real or personal property the purchaser fails to comply with the terms of sale, the court may, on petition of the personal representative, vacate the order of confirmation and order a resale of the property.

(b) Notice of the hearing on the petition shall be given to the defaulting purchaser as directed by the court, except that notice need not be given to a defaulting purchaser whose written consent to the vacation of the order confirming sale is filed with the court before the hearing.

(c) Notice of the resale of the property shall be given as provided in this chapter for a sale of the property in the first instance.

(d) Proceedings after notice of the resale shall be as provided in this chapter for a sale of the property in the first instance.

(e) If the property is resold, the defaulting purchaser is liable to the estate for damages equal to the sum of the following:

(1) The difference between the contract price of the first sale and the amount paid by the purchaser at the resale.

- (2) Expenses made necessary by the purchaser's breach.
- (3) Other consequential damages.

**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* § 664, at 563 (8th ed. 1973).

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 Civil Code § 3307 (general law). See also 1 B. Witkin, *supra* §§ 665-666, at 564-65. 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.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Real property § 68

##### Interests treated as personal property

Certain leasehold interests § 10203

Chose in action § 10205

Partnership interest § 10204

##### Interests treated as real property

Certain real property leasehold interests § 10203

Decedent's interest under contract to purchase real property § 10206

Oil or gas leasehold interest § 10203

Personal property sold with real property as a unit § 10004

Notice of sale §§ 10300-10304

Sale to new high bidder § 10351

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

10351. (a) The court may vacate the order of confirmation of a sale of real or personal property and make an order confirming the sale to the new high bidder if both of the following requirements are satisfied:

(1) A petition is filed within 45 days after confirmation of the sale showing that (A) the purchaser at the sale has failed to complete the purchase and (B) a bid has been made for the property in the same or a higher amount, on the same or better terms, and in the manner prescribed in the original notice of sale.

(2) The sale has not been vacated pursuant to Section 10350.

(b) Notice of the hearing on the petition shall be given to the defaulting purchaser as directed by the court, except that notice need not be given to a defaulting purchaser whose written consent to the vacation of the order confirming the sale is filed with the court prior to the hearing.

(c) If the report and petition for confirmation of the second sale are not filed within 45 days of the confirmation of the first sale, the property may be resold only in the manner provided in Section 10350.

**Comment.** Section 10351 restates former Sections 776 and 789 without substantive change.

CROSS-REFERENCES

Definitions

- Real property § 68
- Interests treated as personal property
  - Certain leasehold interests § 10203
  - Chose in action § 10205
  - Partnership interest § 10204
- Interests treated as real property
  - Certain real property leasehold interests § 10203
  - Decedent's interest under contract to purchase real property § 10206
  - Oil or gas leasehold interest § 10203
  - Personal property sold with real property as a unit § 10004

**Article 8. Application of Sale Proceeds  
of Encumbered Property; Sale to Lienholder**

**§ 10360. Definitions**

10360. As used in this article:

(a) "Amount secured by the lien" includes interest and any costs and charges secured by the lien.

(b) "Encumbered property" means real or personal property that is subject to a lien for a secured debt which is a valid claim against the estate and which has been allowed or approved.

(c) "Lien" means a mortgage, deed of trust, or other lien.

**Comment.** Section 10360 is new and is included for convenience in drafting.

CROSS-REFERENCES

Definitions

- Real property § 68

**§ 10361. Application of purchase money on sale of encumbered property**

10361. (a) If encumbered property is sold, the purchase money shall be applied in the following order:

(1) The payment and satisfaction of the amount secured by the lien on the property sold if payment and satisfaction of the lien is required under the terms of the sale.

(2) The payment of the expenses of the sale.

(3) Application in the due course of administration.

(b) The application of the purchase money to the payment and satisfaction of the amount secured by the lien on the property sold shall be made without delay; and, subject to Section 10362, the property sold remains subject to the lien until the purchase money has been actually so applied.

**Comment.** Section 10361 restates former Section 762 with the following changes:

(1) Section 10361 requires that the amount secured by the lien on the property sold be paid and satisfied (if required under the terms of the sale) before payment of the expenses of the sale. Former Section 762 required that the necessary expenses of the sale be paid before the lien on the property sold was paid and satisfied, and did not specifically permit sale of the property subject to the lien. The change made by Section 10361 recognizes that, unless the property is sold subject to the lien, the sale of the property cannot be completed until the lien is paid and satisfied, but Section 10361 requires that the lien be paid and satisfied only if required under the terms of the sale. This permits the property to be sold subject to the lien, a term of sale that might be beneficial to the estate if the terms of the existing financing are better than can be obtained at the time of the sale.

(2) Former Section 762 required that the “necessary” expenses of the sale be paid. Section 10361 provides that the purchase money be used to pay the expenses of sale. If the expenses of sale are unreasonable in amount, the personal representative is liable for the excess amount. See Sections 9600-9603.

#### CROSS-REFERENCES

##### Definitions

Amount secured by the lien § 10360

Encumbered property § 10360

Lien § 10360

Property § 62

#### § 10362. Payment to clerk of court

10362. (a) If encumbered property is sold, the purchase money, or so much of the purchase money as is sufficient to pay the amount secured by the lien on the property sold and the expenses of the sale, may be paid to the clerk of the court. Upon the payment being so made, the lien on the property sold ceases.

(b) The clerk of court without delay shall use the money paid to the clerk under this section to pay the expenses of

the sale and to pay and satisfy the amount secured by the lien on the property sold. The clerk shall at once return the surplus, if any, to the personal representative unless the court, for good cause shown and after notice to the personal representative, otherwise orders.

**Comment.** Section 10362 restates former Section 763 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Amount secured by the lien § 10360

Encumbered property § 10360

Lien § 10360

Property § 62

### § 10363. Sale to lienholder

10363. (a) At a sale of real or personal property subject to a lien, the lienholder may become the purchaser of the property, even though no claim for the amount secured by the lien on the property sold has been, or could have been, filed, allowed, or approved.

(b) Unless the property is sold subject to the lien:

(1) If the lienholder becomes the purchaser of the property and the amount secured by the lien on the property is a valid claim against the estate and has been allowed or approved, the receipt of the lienholder for the amount due the lienholder from the proceeds of the sale is a payment pro tanto.

(2) If the lienholder becomes the purchaser of the property and no claim for the amount secured by the lien on the property has been filed, allowed, or approved, the court may at the hearing on the petition for confirmation of the sale examine into the validity and enforceability of the lien and the amount secured by the lien, and the court may authorize the personal representative to accept the receipt of the lienholder for the amount secured by the lien as payment pro tanto.

(3) If the lienholder becomes the purchaser of the property and the amount for which the property is purchased is insufficient to pay the expenses of the sale and to discharge the lienholder's lien, whether or not a claim

has been filed, allowed, or approved, the lienholder shall pay to the clerk of the court an amount sufficient to cover the expenses of the sale.

(c) Nothing permitted under this section shall be deemed to be an allowance or approval of a claim based upon the lien or the amount secured by the lien.

**Comment.** Section 10363 restates former Section 764 without substantive change except for revisions necessary to reflect the new authorization under Section 10361 to sell property subject to the lien on the property.

#### CROSS-REFERENCES

##### Definitions

- Amount secured by the lien § 10360
- Lien § 10360
- Property § 62
- Real property § 68

### Article 9. Damages and Recovery of Property

#### § 10380. Damages for neglect or misconduct of personal representative

10380. The personal representative is liable to an interested person for damages suffered by the interested person by reason of the neglect or misconduct of the personal representative in the proceedings in relation to a sale.

**Comment.** Section 10380 restates former Section 759 without substantive change. The language that “[t]he personal representative is liable to an interested person” replaces the former language that “the party aggrieved may recover the damage by enforcing the liability upon the bond of the personal representative, or otherwise.” This change is nonsubstantive. When the personal representative is liable, the liability may be enforced against the bond of the personal representative or by other means of enforcement of a judgment. See Section 541; McGuire, *Bonds*, in 1 California Decedent Estate Administration § 8.29, at 318 (Cal. Cont. Ed. Bar 1971); Schifferman, *Actions by and Against Representatives*, in 2 California Decedent Estate Administration § 25.43, at 1085 (Cal. Cont. Ed. Bar 1975). But see the Comment to Section 10381 (liquidated damages for fraudulent sale of real property).

#### CROSS-REFERENCES

##### Definitions

- Interested person § 48
- Personal representative § 58

### § 10381. Liquidated damages for fraudulent sale of real property

10381. In addition to any other damages for which the personal representative is liable, if the personal representative fraudulently sells real property of the estate contrary to or otherwise than under the provisions of this chapter, the person having an estate of inheritance in the real property may recover from the personal representative, as liquidated damages, an amount equal to double the fair market value of the real property sold on the date of sale.

**Comment.** Section 10381 restates former Section 792 without substantive change except (1) the damages are double the value of the “real property” sold rather than double the value of the “land” sold and language is added to make clear that the damages are to be computed using the value of the property on the date it was sold and (2) Section 10381 makes clear that the liquidated damages provided for in the section are in addition to any other recoverable damages. See also Sections 9601-9603 (measure of liability for breach of fiduciary duty), 10380 (damages for neglect or misconduct of personal representative); Civil Code §§ 761-783.1 (estates in real property).

Although the person “may recover [liquidated damages] from the personal representative” under Section 10381, the surety on the personal representative’s bond is liable only for the damages under Section 10380 up to the limits on the bond. See *Weihe v. Statham*, 67 Cal. 245, 7 P. 673 (1885). See also Section 10380.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Real property § 68

### § 10382. Limitation of actions for recovery of property

10382. (a) No action for the recovery of property sold by a personal representative on the claim that the sale is void may be maintained by an heir or other person claiming under the decedent unless the action is commenced within whichever of the following is the later time:

(1) Three years after the settlement of the final account of the personal representative.

(2) Three years after the discovery of any fraud upon which the action is based.

(b) The limitation established by subdivision (a) is not tolled for any reason.

**Comment.** Subdivision (a) of Section 10382 continues the first sentence of former Section 793 without substantive change. Subdivision (b) replaces the second sentence of former Section 793 which provided for tolling of the limitation for minors and others under legal disability.

#### CROSS-REFERENCES

##### Definitions

Heirs § 44

Personal representative § 58

Property § 62

SEC. \_\_\_\_\_. (a) Sections 1 to 94.6, inclusive, of this act shall become operative on July 1, 1988.

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

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



STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

*relating to*

**Independent Administration of Estates Act**

**December 1986**

**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 Independent Administration of Estates Act*, 19 Cal. L. Revision Comm'n Reports 205 (1988).

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**CALIFORNIA LAW REVISION COMMISSION**

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TIM PAONE

January 16, 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 of the Independent Administration of Estates Act (existing Prob. Code §§ 591-591.9).

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

Respectfully submitted,

Arthur K. Marshall  
*Chairperson*



# RECOMMENDATION

*relating to*

## INDEPENDENT ADMINISTRATION OF ESTATES ACT

### INTRODUCTION

The Independent Administration of Estates Act,<sup>1</sup> enacted in 1974,<sup>2</sup> permits the court to authorize the personal representative to administer a decedent's estate with a minimum of supervision.<sup>3</sup> Authority to administer the estate under the Independent Administration of Estates Act is granted to the personal representative in the great majority of cases where administration is required.

The personal representative may petition the court for authority to administer the estate under the Act.<sup>4</sup> The court must grant the authority unless good cause is shown why it should not be granted.<sup>5</sup>

If the authority is granted, many actions that otherwise would be taken under court supervision may be taken without court supervision.<sup>6</sup> However, the personal representative must give notice of the proposed action to

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1. Prob. Code §§ 591-591.9.

2. 1974 Cal. Stat. ch. 961. For subsequent amendments and additions to the 1974 act, see 1977 Cal. Stat. ch. 243; 1978 Cal. Stat. ch. 298; 1980 Cal. Stat. ch. 955; 1982 Cal. Stat. ch. 1521; 1983 Cal. Stat. ch. 17; 1984 Cal. Stat. chs. 144, 451, 1017; 1985 Cal. Stat. chs. 359, 982.

3. The enactment was a response to public criticism of the probate process as requiring too much court involvement and attorneys' time, and being too complex and costly. See Note, *Probate Reform: California's Declaration of Independent Administration*, 50 S. Cal. L. Rev. 155 (1976).

4. Prob. Code § 591.1.

5. Prob. Code § 591.1. See also Prob. Code § 591.7 (revocation of authority where good cause shown). Independent administration authority may not be granted if the decedent's will provides that the decedent's estate shall not be administered under the Act. Prob. Code § 591.1.

6. Prob. Code § 591.6.

affected persons before taking some kinds of actions that affect the estate.<sup>7</sup> If an interested person objects, the personal representative may take the proposed action only under court supervision.<sup>8</sup>

The existing statutory provisions consist of long, overlapping sections that are incomplete and poorly organized. Some kinds of actions that affect the estate are not specifically mentioned in the statute. It is sometimes difficult to determine whether or not notice of the proposed action must be given before a particular action may be taken.<sup>9</sup>

The proposed legislation reorganizes the existing statutory provisions, fills in gaps, and makes clear whether notice is required before a particular action may be taken. A number of changes in existing law are proposed. The more important substantive changes are described below.<sup>10</sup>

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7. Prob. Code §§ 591.3-591.4, 591.8. The existing statute calls this notice "advice of proposed action." See Section 591.3(a) (2). "Advice of proposed action" must be given to the devisees and legatees whose interest in the estate is affected by the proposed action; to the heirs of the decedent in intestate estates; to the State of California if any portion of the estate is to escheat to it; and to persons who have filed a request for special notice pursuant to Probate Code Section 1202 (the persons who may request special notice include a creditor, a beneficiary under a trust, any other person interested in the estate, and the State Controller).

"Advice of proposed action" is required for the following actions: selling or exchanging real property, granting options to purchase real property, selling or exchanging personal property (with certain exceptions), leasing real property for more than a year, entering into any contract (other than a lease of real property) not to be performed within two years, selling or incorporating or operating for longer than six months an unincorporated business of the decedent, commencing payment of or increasing a family allowance or paying a family allowance for more than 12 months after the death of the decedent, investing funds of the estate (with certain exceptions), completing a contract of the decedent to convey real or personal property, borrowing money, executing a mortgage or deed of trust or giving other security, and determining specified claims to real or personal property. Prob. Code § 591.3.

8. Prob. Code § 591.5.

9. See, e.g., text accompanying notes 21 and 22 *infra*.

10. Minor and technical revisions are not described below. They are noted in the Comments which follow the text of the sections of the recommended legislation set out in this Recommendation.

## **RESTRICTING AUTHORITY OF PERSONAL REPRESENTATIVE HAVING "LIMITED AUTHORITY"**

Under existing law, the personal representative may be granted "full authority" or "limited authority."<sup>11</sup> Limited authority includes all the independent administration powers except the power to sell, exchange, or grant an option to purchase real property. Full authority includes all independent administration powers including the power to sell, exchange, or grant an option to purchase real property.

The proposed legislation adds a further limitation on the authority of a personal representative who has only limited authority. Limited authority no longer will allow the personal representative to borrow money with the loan secured by an encumbrance upon real property.<sup>12</sup> This new limitation is necessary to protect the beneficiaries of the estate. The bond of a personal representative having only limited authority does not protect against the risk that the personal representative will borrow money on real property of the estate and divert the money to his or her own use.<sup>13</sup>

## **RESTRICTING AUTHORITY OF PERSONAL REPRESENTATIVE IN CONFLICT OF INTEREST SITUATIONS**

Existing law does not preclude the use of independent administration authority in situations where the personal representative may have a conflict of interest. The proposed legislation permits the following actions to be taken only under the supervision of the court:

—Sale of property of the estate to the personal representative.

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11. See Prob. Code § 591.1(b). The proposed law uses the terms "full authority" and "limited authority." Although the existing statute does not use these terms, they are used in practice and in the Judicial Council form. See Petition for Probate (Form Approved by the Judicial Council of California DE 111 (Rev. January 1, 1986)).

12. The new limitation would not apply to a personal representative who was granted limited authority prior to July 1, 1988 (the operative date of the proposed legislation).

13. See Prob. Code § 591.9(b) (bond includes value of real property only if the personal representative has full authority).

—Exchange of property of the estate for property of the personal representative.

—Grant to the personal representative of an option to purchase property of the estate.

—Allowance, payment, or compromise a claim of the personal representative, or the attorney for the personal representative, against the estate.

—Compromise or settlement of a claim, action, or proceeding by the estate against the personal representative.

—Extension, renewal, or modification of the terms of a debt or other obligation of the personal representative owing to or running in favor of the decedent or the estate.

The Commission's separate recommendation relating to supervised administration of a decedent's estate includes special provisions that deal with these potential conflict of interest situations.<sup>14</sup>

## SPECIAL ADMINISTRATOR

The existing independent administration statute does not permit a special administrator to use the independent administration procedure.<sup>15</sup> The proposed legislation permits independent administration authority to be granted to a special administrator if the special administrator is appointed with, or has been granted, the powers of a general administrator.<sup>16</sup> This new authority will be useful, for example, in an estate with a lengthy will contest where virtually all of the administration is handled by the special administrator, and the only act which occurs after final resolution of the will contest is the distribution of estate assets.

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14. See proposed Sections 9830, 9834, 9880-9885 contained in *Recommendation Relating to Supervised Administration of Decedent's Estate* (October 1986). See also existing Prob. Code § 703.

15. Prob. Code § 591.1.

16. The independent administration authority will be granted upon request unless (1) good cause is shown why the authority should not be granted or (2) the decedent's will provides that the decedent's estate shall not be administered under independent administration authority.

## GIVING NOTICE OF PROPOSED ACTION

### Change in Terminology

Existing law designates the notice of the proposed action that is given to interested persons as an “advice of proposed action.”<sup>17</sup> The proposed legislation designates this notice as a “notice of proposed action.” This change will make the notice more understandable to interested persons who are given the notice.<sup>18</sup>

### Using Notice of Proposed Action Procedure Where Giving of Notice Not Mandatory

The proposed legislation includes a new procedure that permits the personal representative to give notice of a proposed action even though the independent administration statute does not require that notice be given before taking that action. Failure to object to the proposed action has the same effect as failure to object to a proposed action for which notice is required. This new procedure will permit the personal representative to determine whether an interested person objects to the proposed action and will protect the personal representative if no one objects. It will also encourage the personal representative to keep persons interested in the estate informed of proposed actions and will require court approval of the proposed action before it is taken if there is an objection.

### Time of Giving Notice of Proposed Action

Under existing law, notice of proposed action must be given not less than 15 days before the date specified in the notice of proposed action unless the notice is given by mail. If the notice is given by mail the time is extended to 20 days after the mailing.<sup>19</sup>

The proposed legislation provides for a minimum 15-day notice period, whether the notice is personally delivered or given by mail. This makes the period for giving notice of

17. Prob. Code § 591.3(a)(2).

18. In this recommendation, “notice of proposed action” is used in place of “advice of proposed action” in describing both the existing statute and the proposed legislation.

19. Prob. Code § 591.4(a).

proposed action consistent with the Commission's recommendation concerning the period for giving notice of hearing.<sup>20</sup>

### **Substituting Specific Powers for General Power to "Convey" Property**

Under existing law, the personal representative who has independent administration authority has a general power to "convey,"<sup>21</sup> but there is no general requirement that notice of proposed action be given for a conveyance made pursuant to the exercise of this general power.<sup>22</sup>

The proposed legislation includes a number of new provisions designed to fill in gaps in the existing statute so that the personal representative will have the power to engage in all of the specific types of estate transactions that might involve a conveyance. The proposed legislation makes clear whether or not notice of proposed action is required for each of the specific types of transactions that may involve a conveyance. A provision authorizing the personal representative to make any conveyance necessary to effectuate the exercise of any specific power is substituted in the proposed legislation for the general power to convey under the existing statute. This new statutory scheme will eliminate the existing uncertainty as to when notice is required for transactions that may require a conveyance.

### **Expanding Requirement That Notice of Proposed Action Be Given**

The Commission has reviewed each of the kinds of actions the personal representative is authorized to take under independent administration authority and has considered whether notice should be required. As a result of this review, the Commission has concluded that notice should be required in four cases where notice is not now required.

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20. See *Recommendation Relating to Notice in Probate Proceedings* (January 1987).

21. Prob. Code § 591.6(a).

22. However, in some cases, existing law requires notice of proposed action for specific types of actions that may involve a conveyance. E.g., Prob. Code § 591.3(b)(9) (notice of proposed action required for completing a contract entered into by the decedent to convey real or personal property).

**Abandonment of tangible personal property.** Existing law gives the personal representative the power to abandon worthless assets,<sup>23</sup> and this power may be exercised without giving notice of proposed action.<sup>24</sup> Some estate property may appear worthless, yet have sentimental or other subjective value to estate beneficiaries, such as a family photograph album. For this reason, estate beneficiaries should receive notice of the proposed abandonment and have an opportunity to object.

**Making disclaimer.** Existing law gives the personal representative the power to make a disclaimer,<sup>25</sup> and this power may be exercised without giving notice of proposed action.<sup>26</sup> A disclaimer on behalf of the estate could take property from estate beneficiaries and give it to another. For this reason, notice should be required for a disclaimer.

**Conveying to person given option in will to purchase property.** The proposed legislation adds a new provision to make clear that the personal representative has the power to convey or transfer property to a person given an option in the decedent's will to purchase the property. Notice is required to exercise this power. This requirement will protect the beneficiaries and creditors in a case where the option is for a price less than the fair market value of the property.

**Extending exclusive right to sell property.** The existing statute gives the personal representative the power to grant an exclusive right to sell property for a period not to exceed 90 days, but the statute is silent on whether the personal representative has the power to grant one or more extensions of the right.<sup>27</sup> Notice of proposed action is not required to grant an exclusive right to sell property.<sup>28</sup>

The proposed legislation makes clear that the personal representative has the power to grant to the same broker

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23. Prob Code § 591.6(d).

24. Prob. Code § 591.3 (proposed abandonment not included in list of proposed actions for which notice of proposed action required).

25. Prob. Code § 591.6(n).

26. See Prob. Code § 591.3 (disclaimer not included in list of proposed actions for which notice of proposed action required).

27. Prob. Code § 591.6(o).

28. See Prob. Code § 591.3 (granting exclusive right to sell not included in list of proposed actions for which notice of proposed action required).

one or more extensions of an exclusive right to sell property, each extension being for a period not to exceed 90 days. The proposed legislation permits the personal representative to grant two extensions without giving notice of proposed action. However, notice must be given if the period of the extension, together with the periods of the original exclusive right to sell the property and any previous extensions of that right, is more than 270 days. The persons interested in the estate are entitled to notice where it is proposed to tie up property of the estate under an exclusive right to sell agreement—and possibly delay the closing of probate—for more than 270 days. Notice of proposed action is not required where the personal representative grants an exclusive right to sell property to a new broker upon expiration of an exclusive right of sell that was given to another broker.

### **Selling Certain Over-the-Counter Securities Without Giving Notice of Proposed Action**

Under existing law,<sup>29</sup> notice of proposed action must be given where securities are proposed to be sold, unless the securities are to be sold on an established stock or bond exchange. The proposed legislation permits the sale of national market system over-the-counter securities without giving notice. Quotations for these securities are published daily in many newspapers.

### **STATUTORY WAIVER OF NOTICE OF PROPOSED ACTION FORM**

Existing law permits a person to waive the right to receive notice only with respect to a particular proposed action.<sup>30</sup> A general waiver of the right to receive notice of all proposed actions is not permitted. Nor is a waiver of the right to receive notice for all transactions of a particular kind permitted.

The proposed legislation provides for a Statutory Waiver of Notice of Proposed Action Form. Use of this form permits a person to waive the right to receive notice of all proposed

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29. Prob. Code § 591.3(b)(3).

30. Prob. Code § 591.3(d).

actions that might be taken in connection with the administration of the estate or to waive the right to receive notice of particular kinds of proposed actions. The new form includes an appropriate warning to the person using the form of the consequences of signing the form.

Using the new form, a person can, for example, waive the right to receive notice of proposed action with respect to investing funds of the estate without waiving the right to receive notice with respect to sales of real property. Or a person who trusts the personal representative and is not interested in the management of the estate can waive the right to any notice at all with respect to any actions the personal representative might decide to take.

### **REVOCAION OF WAIVER OR CONSENT**

The existing statute does not specify how a waiver of notice or a consent to a proposed action can be revoked. The proposed legislation fills in this gap: Revocation of a waiver or consent must be in writing and must be received by the personal representative in order to be effective.<sup>31</sup>

### **REVIEW UPON COURT'S OWN MOTION OF ACTIONS OF PERSONAL REPRESENTATIVE**

Under existing law, failure to object to a proposed action is a waiver of the right to have the court later review the action taken, unless the person who fails to object establishes that he or she did not actually receive notice of the proposed action before the time to object expired.<sup>32</sup> But, even though there are no objections to the proposed action, the court on its own motion can review the action of the personal representative after the action is taken.<sup>33</sup>

The right of a person who did not actually receive notice of proposed action to obtain later court review of the action taken is continued by the proposed legislation. But the court's power to review a proposed action on its own motion is limited: The court may review the proposed

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31. The revocation may be filed with the court, but whether or not it is filed with the court does not affect its effectiveness.

32. Prob. Code § 591.5(d).

33. Prob. Code § 591.5(d).

action on its own motion to protect an heir or devisee who lacks capacity or is a minor unless the guardian, conservator, or other legal representative of the heir or devisee either (1) waived notice or consented to the proposed transaction or (2) received notice of the proposed action and failed to object to the proposed action. The purpose of the notice of proposed action is to bind the persons who receive it if they fail to make a timely objection to the proposed action. Limiting the scope of review by the court on its own motion will further this purpose by protecting the personal representative from a later objection to the action taken where the person or the person's representative received notice<sup>34</sup> and failed to make a timely objection.

### NOTICE OF HEARING

If a petition for appointment of a personal representative also requests authority to administer the estate under the Independent Administration of Estates Act, existing law requires that the published notice of hearing on the petition state that the petition requests that a named person be appointed as personal representative to administer the estate of the decedent "under the Independent Administration of Estates Act."<sup>35</sup> For the quoted phrase, the proposed legislation requires that the notice of hearing state the following:

The petition requests authority to administer the estate under the Independent Administration of Estates Act. This will avoid the need to obtain court approval for many actions taken in connection with the estate. However, before taking certain actions, the personal representative will be required to give notice to interested persons unless they have waived notice or have consented to the proposed action. The petition will be granted unless good cause is shown why it should not be.

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34. The proposed legislation requires that notice of proposed action be given using the Judicial Council form or its substantial equivalent.

35. Prob. Code § 333. See also Petition for Probate - Form Approved by the Judicial Council of California, DE-111 (Rev. January 1, 1986).

The notice of hearing also is given to known heirs or devisees and to each person named as personal representative who is not petitioning.<sup>36</sup> The additional language added to the notice of hearing gives these persons information concerning the nature of independent administration authority.

### **SANCTION FOR FAILURE TO COMPLY WITH STATUTE**

The existing statute includes a provision that the personal representative may be removed from office for taking a proposed action after knowledge of an objection.<sup>37</sup> The proposed legislation adds language that makes clear that the personal representative also may be removed from office for failure to give notice of proposed action as required by the statute. In determining whether to remove the personal representative under this provision, the court should consider all the circumstances of the particular case.

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36. Notice of the hearing must be personally served upon or mailed to these persons. See Prob. Code § 328.

37. Prob. Code § 591.5(b) (last sentence). The existing provision also states that taking a proposed action after knowledge of an objection is "a violation of the fiduciary duty" of the personal representative. The proposed legislation omits this language as being unnecessary.



# OUTLINE OF PROPOSED LEGISLATION

## DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

### PART 6. INDEPENDENT ADMINISTRATION OF ESTATES

#### CHAPTER 1. GENERAL PROVISIONS

- § 10400. Citation of this part
- § 10401. "Court supervision" defined
- § 10402. "Full authority" defined
- § 10403. "Limited authority" defined
- § 10404. This part not applicable if will so provides
- § 10405. Special administrator
- § 10406. Application of part

#### CHAPTER 2. GRANTING OR REVOKING INDEPENDENT ADMINISTRATION AUTHORITY

- § 10450. Petition for order granting independent administration authority
- § 10451. Notice of hearing
- § 10452. Hearing; order; endorsement on letters
- § 10453. Amount of bond
- § 10454. Revoking or limiting independent administration authority

#### CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT ADMINISTRATION AUTHORITY

##### Article 1. General Provisions

- § 10500. Administration without court supervision
- § 10501. Matters requiring court supervision
- § 10502. Powers exercisable under independent administration authority
- § 10503. Manner of sale of property under independent administration authority

##### Article 2. Powers Exercisable Only After Giving Notice of Proposed Action

- § 10510. Article describes powers that may be exercised only after giving notice of proposed action
- § 10511. Selling or exchanging real property
- § 10512. Selling or incorporating decedent's business
- § 10513. Abandoning tangible personal property
- § 10514. Borrowing; encumbering estate property
- § 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
- § 10518. Determining claims to property claimed to belong to decedent or other person
- § 10519. Making a disclaimer

##### Article 3. Powers the Exercise of Which Requires Giving of Notice of Proposed Action Under Some Circumstances

- § 10530. Article describes powers that may in some circumstances be exercised only after giving notice of proposed action
- § 10531. Managing and controlling estate property generally
- § 10532. Entering into contracts

- § 10533. Investing money of the estate
- § 10534. Continuing operation of decedent's business
- § 10535. Paying family allowance
- § 10536. Leasing real and personal property
- § 10537. Selling or exchanging personal property
- § 10538. Granting or extending exclusive right to sell property

#### **Article 4. Powers Exercisable Without Giving Notice of Proposed Action**

- § 10550. Article describes powers that may be exercised without giving notice of proposed action
- § 10551. Powers that any personal representative may exercise without court supervision
- § 10552. Acting on claims against estate
- § 10553. Commencing and defending actions and proceedings
- § 10554. Modifying terms of obligation
- § 10555. Conveying property to effectuate a specific power
- § 10556. Paying taxes, assessments, and expenses
- § 10557. Purchasing annuity granted in will
- § 10558. Exercising option
- § 10559. Purchasing securities or commodities sold short
- § 10560. Holding securities in name of nominee or in other form
- § 10561. Exercising security subscription or conversion rights
- § 10562. Making repairs and improvements
- § 10563. Accepting deed in lieu of foreclosure or trustee's sale
- § 10564. Giving partial satisfaction of mortgage or partial reconveyance under trust deed

### **CHAPTER 4. NOTICE OF PROPOSED ACTION PROCEDURE**

#### **Article 1. Notice of Proposed Action Procedure**

- § 10580. When notice of proposed action required or permitted
- § 10581. Persons to whom notice must be given
- § 10582. Consent to proposed action
- § 10583. Waiver of notice
- § 10584. Revocation of consent or waiver
- § 10585. Form and contents of notice of proposed action
- § 10586. Mailing or delivery of notice
- § 10587. Delivery or mailing of objection to proposed action
- § 10588. Restraining order
- § 10589. Court supervision and notice of hearing required if personal representative has notice of objection
- § 10590. Effect of failure to object to proposed action
- § 10591. Protection of persons dealing in good faith with personal representative
- § 10592. Failure of personal representative to satisfy statutory requirements grounds for removal from office

#### **Article 2. Statutory Form for Waiver of Notice of Proposed Action**

- § 10600. Statutory Waiver of Notice of Proposed Action Form

## **DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS**

### **PART 6. INDEPENDENT ADMINISTRATION OF ESTATES**

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

##### **§ 10400. Citation of this part**

10400. This part shall be known and may be cited as the Independent Administration of Estates Act.

**Comment.** Section 10400 continues former Section 591 without substantive change.

##### **§ 10401. “Court supervision” defined**

10401. As used in this part, “court supervision” means the judicial order, authorization, approval, confirmation, or instructions that would be required if authority to administer the estate had not been granted under this part.

**Comment.** Section 10401 restates a portion of the second sentence of subdivision (a) of former Section 591.2 without substantive change. See also Section 10503 (requirements applicable to court confirmation of sales of real property do not apply to sales under independent administration). As to the order, authorization, approval, confirmation, or instructions required for estate management transactions when the personal representative has not been granted independent administration authority, see generally Part 5 (commencing with Section 9600) of Division 7.

##### **§ 10402. “Full authority” defined**

10402. As used in this part, “full authority” means authority to administer the estate under this part that includes all the powers granted under this part.

**Comment.** Sections 10402 and 10403 are new definitions that recognize the use in practice of the terms “full authority” and “limited authority” to describe the powers of a personal representative who has obtained independent administration authority. The Judicial Council form uses these terms. See Petition for Probate (Form Approved by the Judicial Council of

California DE 111 (Rev. January 1, 1986)). As to the exercise of powers under this part, see generally Section 10502 and the Comment to that section.

**§ 10403. “Limited authority” defined**

10403. As used in this part, “limited authority” means authority to administer the estate under this part that includes all the powers granted under this part except the power to do any of the following:

- (a) Sell real property.
- (b) Exchange real property.
- (c) Grant an option to purchase real property.
- (d) Borrow money with the loan secured by an encumbrance upon real property.

**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 (e) 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(e). 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.

CROSS-REFERENCES

Definitions

Real property § 68

**§ 10404. This part not applicable if will so provides**

10404. The personal representative may not be granted authority to administer the estate under this part if the decedent's will provides that the estate shall not be administered under this part.

**Comment.** Section 10404 restates the second sentence of subdivision (a) of former Section 591.1 without substantive change. For purposes of Section 10404, a provision in the decedent's will that the estate shall not be administered under former Article 2 of Chapter 8 of Division 3 of the Probate Code (former Sections 591 through 591.9, inclusive), or under the Independent Administration of Estates Act, is a provision that the estate shall not be administered under this part. See also Section 10502(b) (decedent's will may restrict powers exercisable under independent administration authority).

## CROSS-REFERENCES

## Definitions

Personal representative § 58

Will § 88

**§ 10405. Special administrator**

10405. A special administrator may be granted authority to administer the estate under this part if the special administrator is appointed with, or has been granted, the powers of a general administrator.

**Comment.** Section 10405 replaces the third sentence of subdivision (a) of former Section 591.1. That sentence provided that the independent administration provisions did not apply to special administrators. Section 10405 permits independent administration authority to be granted to a special administrator if the special administrator is appointed with, or has been granted, the powers of a general administrator. See Section 465. This new authority will be useful, for example, in an estate with a lengthy will contest where virtually all of the administration is handled by the special administrator, and the only act which occurs after the final resolution of the will contest is the distribution of the estate assets. In such a case, the special administrator may obtain independent administration authority unless good cause is shown why the authority should not be granted.

An applicant for letters of special administration with powers of a general administrator can obtain independent

administration authority only as provided in Sections 10450-10453, inclusive. The applicant must petition for the authority as provided in Section 10450; notice of the hearing must be given in compliance with the requirements of Section 10451; and the provisions of Sections 10452 and 10453 are applicable.

If there is an urgent need for appointment of a special administrator, the petition for independent administration authority can be filed under Chapter 2 (commencing with Section 10450) after the special administrator has been appointed. Using this procedure will permit the special administrator to be appointed without delay and yet permit compliance with the notice of hearing requirements of Section 10451 for the hearing on the petition for independent administration authority.

If the special administrator is not granted the powers of a general administrator at the time of appointment but is later granted the powers of a general administrator, the special administrator may be granted authority to administer the estate under this part at the same time the special administrator is granted the powers of a general administrator or at any time after the personal representative has been granted the powers of a general administrator.

#### **§ 10406. Application of part**

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

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

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

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

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

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

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

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

**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(e) 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.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Real property § 68

## CHAPTER 2. GRANTING OR REVOKING INDEPENDENT ADMINISTRATION AUTHORITY

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

10450. (a) To obtain authority to administer the estate under this part, the personal representative shall petition the court for that authority either in the petition for appointment of the personal representative or in a separate petition filed in the estate proceedings.

(b) The petition may request either of the following:

(1) Full authority to administer the estate under this part.

(2) Limited authority to administer the estate under this part.

**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(e) (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 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.

#### CROSS-REFERENCES

Bond, increase in amount where full authority granted § 10453

Definitions

Full authority § 10402

Limited authority § 10403

Personal representative § 58

Verification of petition § 1284

**§ 10451. Notice of hearing**

10451. (a) If the authority to administer the estate under this part is requested in the petition for appointment of the personal representative, notice of the hearing on the petition shall be given for the period and in the manner applicable to the petition for appointment.

(b) Where proceedings for the administration of the estate are pending at the time a petition is filed under Section 10450, notice of the hearing on the petition shall be given as provided in Section 1220. In addition, at least 15 days before the date set for hearing of the petition by the court, the petitioner shall cause notice of the hearing to be mailed to (1) any person named as executor in the will of the decedent if the person is not a petitioner, (2) all known devisees and all known heirs of the decedent, and (3) all persons who have requested notice as provided in Section 1250.

(c) The notice of hearing of the petition for authority to administer the estate under this part, whether included in the petition for appointment or in a separate petition, shall include the substance of the following statement: "The petition requests authority to administer the estate under the Independent Administration of Estates Act. This will avoid the need to obtain court approval for many actions taken in connection with the estate. However, before taking certain actions, the personal representative will be required to give notice to interested persons unless they have waived notice or have consented to the proposed action. The petition will be granted unless good cause is shown why it should not be."

**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. A provision is added to require that notice of hearing be given to the person named as executor in the will of the decedent if the person does not join in the petition. The phrase "known devisees" is substituted for "legatees and devisees." See Section 34 (defining "devisee"). See also Section 1206 (notice to known devisees). The reference in

former Section 591.1 to former Section 1200 (notice by posting) is corrected to refer to Section 1220 (notice by mail). The time for giving notice is changed from 10 to 15 days to conform to the general 15-day notice requirement of Section 1220.

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

#### CROSS-REFERENCES

Additional notice required by court § 1202

Clerk to set petition for hearing § 1285

Definitions

Devisee § 34

Heirs § 44

Personal representative § 58

Notice to known heirs or devisees § 1206

Notice to trust beneficiaries § 1208

Order shortening time § 1203

Proof of giving notice § 1260

Special notice § 1252

Waiver of notice § 1204

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

10452. (a) Any interested person may object to the granting of authority to administer the estate under this part by filing at or before the hearing a written statement setting forth the objection or by appearing at the hearing and making the objection.

(b) Unless the court determines that the objecting party has shown good cause why the authority requested in the petition should not be granted, the court shall grant the requested authority. If the objecting party has shown good cause why only limited authority should be granted, the court shall grant only limited authority.

(c) The letters shall be endorsed to the effect that the letters are issued under this part and, if the authority granted is limited authority, the endorsement shall include a statement that the personal representative has all of the powers granted by this part except the power to do any of the following:

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

**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 (e) of Section 10501. Subdivision (e) 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”).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Interested person § 48

Letters § 52

Limited authority § 10403

Real property § 68

Petition for limited authority § 10450(b)(2)

### § 10453. Amount of bond

10453. (a) If the personal representative is otherwise required to file a bond and has full authority, the court, in its discretion, shall fix the amount of the bond 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 of the property belonging to the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

(b) If the personal representative is otherwise required to file a bond and has limited authority, the court, in its discretion, shall fix the amount of the bond at not more than the estimated value of the personal property and the estimated value of the probable annual gross income of all

of the property belonging to the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

**Comment.** Subdivision (a) of Section 10453 restates subdivision (b) of Section 591.9 but makes clear that the court is required to fix the amount of the bond at not more than the amount specified in the section rather than at “not less than” that amount as formerly provided in Section 591.9.

Subdivision (b) is a new provision that makes clear that amount of the bond does not include the estimated net proceeds of the real property where only limited authority is granted. Subdivision (b) is consistent with the provision of Section 541 that excludes the value of real property in determining amount of the bond.

Section 10453 applies only where the personal representative is otherwise required to file a bond. See Sections 481 (no bond required of trust company serving as personal representative), 541 (waiver of bond in will or by all the heirs or beneficiaries under will).

#### CROSS-REFERENCES

##### Definitions

- Full authority § 10402
- Limited authority § 10403
- Personal representative § 58
- Property § 62
- Real property § 68

### § 10454. Revoking or limiting independent administration authority

10454. (a) Any interested person may file a petition requesting that the court make either of the following orders:

(1) An order revoking the authority of the personal representative to continue administration of the estate under this part.

(2) An order revoking the full authority of the personal representative to administer the estate under this part and granting the personal representative limited authority to administer the estate under this part.

(b) The petition shall set forth the basis for the requested order.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220. In addition, the personal

representative shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing. Service on the personal representative shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

(d) If the court determines that good cause has been shown, the court shall make an order revoking the authority of the personal representative to continue administration of the estate under this part. Upon the making of the order, new letters shall be issued without the endorsement described in subdivision (c) of Section 10452.

(e) If the personal representative was granted full authority and the court determines that good cause has been shown, the court shall make an order revoking the full authority and granting the personal representative limited authority. Upon the making of the order, new letters shall be issued with the endorsement described in subdivision (c) of Section 10452 that is required where the authority granted is limited authority.

**Comment.** Section 10454 restates former Section 591.7 with the following changes:

(1) Section 10454 makes clear that an order may be made which revokes full authority and instead grants limited authority.

(2) The requirement that notice of the hearing be given as provided in Section 1220 is new. Former Section 591.7 required notice of hearing only to the personal representative. Giving notice of hearing as provided in Section 1220 will give notice to other persons who may be interested in the petition.

#### CROSS-REFERENCES

Additional notice may be required by court § 1202

Clerk to set petition for hearing § 1285

Definitions

Interested person § 48

Letters § 52

Personal representative § 58

Notice to trust beneficiaries § 1208

Order shortening time § 1203

Proof of giving notice § 1260

Special notice § 1252

Verification of petition § 1284

Waiver of notice § 1204

## CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT ADMINISTRATION AUTHORITY

### Article 1. General Provisions

#### § 10500. Administration without court supervision

10500. (a) Subject to the limitations and conditions of this part, a personal representative who has been granted authority to administer the estate under this part may administer the estate as provided in this part without court supervision, but in all other respects the personal representative shall administer the estate in the same manner as a personal representative who has not been granted authority to administer the estate under this part.

(b) Notwithstanding subdivision (a), the personal representative may obtain court supervision as provided in this code of any action to be taken by the personal representative during administration of the estate.

**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 (e) (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 potential conflict of interest on part of personal representative).

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).

## CROSS-REFERENCES

Actions that can be taken only under court supervision § 10501

Definitions

Court supervision § 10401

Personal representative § 58

Limited authority §§ 10403, 10450(b)(2), 10452(c), 10501(e)

Will may restrict powers § 10502

### § 10501. Matters requiring court supervision

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

(a) Allowance of the personal representative's commissions.

(b) Allowance of attorney's fees.

(c) Settlement of accountings.

(d) Preliminary and final distributions and discharge.

(e) Where the personal representative has been granted limited authority:

(1) Sale of real property.

(2) Exchange of real property.

(3) Grant of an option to purchase real property.

(4) Borrow money with the loan secured by an encumbrance upon real property.

(f) Sale of property of the estate to the personal representative.

(g) Exchange of property of the estate for property of the personal representative.

(h) Grant to the personal representative an option to purchase property of the estate.

(i) Allow, pay, or compromise a claim of the personal representative, or the attorney for the personal representative, against the estate.

(j) Compromise or settle a claim, action, or proceeding by the estate against the personal representative.

(k) Extend, renew, or modify the terms of a debt or other obligation of the personal representative owing to or running in favor of the decedent or the estate.

**Comment.** Subdivisions (a) to (e), inclusive, of Section 10501 restate the last portion of the second sentence of subdivision (a)

of former Section 591.2 with the addition of paragraph (4) of subdivision (e) 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. 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 (e) of Section 10501, see Sections 10403, 10450(b)(2), and 10452(c) (limited authority). See also Section 10502 (decendent's will may restrict powers exercisable under independent administration authority).

Subdivisions (f) to (h), inclusive, of Section 10501 are new. Prior law did not expressly provide that the independent administration procedure could not be used for the types of actions listed in these subdivisions. The types of actions listed in these subdivisions are ones where there often will be a conflict of interest.

Subdivisions (f), (g), and (h) make clear that the personal representative cannot use the independent administration procedure to sell property of the estate to the personal representative, exchange estate property with the personal representative for other property, or grant to the personal representative an option to purchase property of the estate. Special supervised administration provisions govern these transactions. See, e.g., Sections 9880-9885. A purchase by or exchange with the personal representative may be accomplished only 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 may purchase property of the estate pursuant to a contract made during the lifetime of the decedent only if the statutory supervised administration requirements are satisfied. See Section 9884. The personal representative may exercise an option to purchase property of the estate given in the will of the decedent only if the statutory supervised administration requirements are satisfied. See Section 9885.

Subdivision (i) makes clear that the personal representative may not use the independent administration procedure for a

claim against the estate by the personal representative or the attorney for the personal representative. The personal representative must submit the claim for allowance or rejection by the judge pursuant to Section 9302.

Subdivisions (j) and (k) preclude the use of the independent administration authority to compromise or settle a claim, action, or proceeding of the estate against the personal representative or to modify the terms of a debt or similar obligation of the personal representative to the estate. A special provision governs these transactions. See Sections 9830 and 9834.

#### CROSS-REFERENCES

##### Definitions

Court supervision § 10401

Personal representative § 58

Property § 62

Real property § 68

Limited authority §§ 10403, 10450(b)(2), 10452(c), 10501(e)

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

10502. (a) Subject to the conditions and limitations of this part and to Section 9600, a personal representative who has been granted authority to administer the estate under this part has the powers described in Article 2 (commencing with Section 10510), Article 3 (commencing with Section 10530), and Article 4 (commencing with Section 10550).

(b) The will may restrict the powers that the personal representative may exercise under this part.

**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(e) (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).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Will § 88

##### Independent administration powers

Abandoning tangible personal property § 10513

Accepting deed in lieu of foreclosure or trustee's sale § 10563

##### Actions and proceedings

Compromising or settling § 10552

Instituting and defending § 10553

- Annuity granted by will, purchasing § 10557
- Borrowing § 10514
- Business of decedent
  - Continuing § 10534
  - Incorporating § 10512
  - Selling § 10512
- Claims against estate
  - Acting on § 10552
  - Compromising, settling, or releasing § 10552
- Contracts
  - Decedent's contract to convey property § 10517
  - Making contracts generally § 10532
- Conveying property to effectuate specific power § 10555
- Determining decedent's claim to property held by another § 10518
- Determining third-party claim § 10518
- Disclaimer § 10519
- Encumbering estate property § 10514
- Exclusive right to sell property, granting or extending § 10538
- Family allowance § 10535
- Foreclosure of mortgage, accepting deed in lieu of § 10563
- Investments
  - Manner provided by will § 10533
  - Securities § 10533
- Leases § 10536
- Management and control generally § 10531
- Obligations, modifying terms of § 10554
- Option, restricted, exercise of § 10558
- Option to purchase, granting § 10515
- Option to purchase given in will, conveyance pursuant to § 10516
- Partnership in which decedent was general partner § 10534
- Paying taxes, assessments, and other expenses § 10556
- Personal property
  - Completing decedent's contract to convey property § 10517
  - Conveying property to effectuate specific power § 10555
  - Leases § 10536
  - Manner of sale generally § 10503
  - Repairs or improvements § 10562
  - Sale or exchange generally § 10537
- Powers any personal representative may exercise without court supervision § 10551
- Purchasing securities or commodities sold short § 10559
- Real property
  - Accepting deed in lieu of foreclosure or trustee's sale § 10563
  - Borrowing § 10514
  - Borrowing or encumbering, limited authority excludes power to §§ 10403, 10450(b)(2), 10452(c), 10501(e)
  - Completing decedent's contract to convey property § 10517
  - Conveying property to effectuate specific power § 10555
- Exchanges
  - Limited authority excludes power to make §§ 10403, 10450(b)(2), 10452(c), 10501(e)
  - Power to make § 10511
- Exclusive right to sell, granting or extending § 10538
- Improvements § 10562
- Lease § 10536
- Manner of sale generally § 10503
- Option to purchase
  - Granting § 10515
  - Limited authority excludes power to grant §§ 10403, 10450(b)(2), 10452(c), 10501(e)

Option to purchase in will, transfer to person given § 10516  
 Partial satisfaction of mortgage or partial reconveyance under trust deed § 10564  
 Repairs § 10562  
 Selling estate property  
     Limited authority excludes power to §§ 10403, 10450(b) (2), 10452(c), 10501(e)  
     Power to sell § 10511  
 Repairs or improvements in property § 10562  
 Sale under deed of trust, acceptance of deed in lieu of § 10563  
 Securities  
     Holding in name of nominee or in other form § 10560  
     Listed, sale of § 10537  
     Over the counter, sale of § 10537  
     Sold short, purchase to complete contract § 10559  
     Surrender for redemption or conversion § 10537  
     Subscription or conversion rights, exercising § 10561  
 Taxes, paying § 10556  
 Third-party claims § 10518  
 Limited authority §§ 10403, 10450(b) (2), 10452(c), 10501(e)  
 Matters requiring court supervision § 10501  
 Powers excluded by will § 10502

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

10503. Subject to the limitations and requirements of this part, when the personal representative exercises the authority to sell property of the estate under this part, the personal representative may sell the property either at public auction or private sale, and with or without notice, for such price, for cash or on credit, and upon such terms and conditions as the personal representative may determine, and the requirements applicable to court confirmation of sales of real property (including but not limited to publication of notice of sale, court approval of agents' and brokers' commissions, sale at not less than 90 percent of appraised value, and court examination into the necessity for the sale, advantage to the estate and benefit to interested persons, and efforts of the personal representative to obtain the highest and best price for the property reasonably attainable), and the requirements applicable to court confirmation of sales of personal property, do not apply to the sale.

**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 Probate Code Section 591.6. As to the omission of the phrase "the applicable fiduciary duties" which appeared in subdivision (a) of former Section 591.9, see 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(e) (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, independent administration authority may not be used where estate property is proposed to be sold to the personal representative. 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.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

Real property § 68

Limited authority §§ 10403, 10450(b) (2), 10452(c), 10501(e)

## **Article 2. Powers Exercisable Only After Giving Notice of Proposed Action**

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

10510. The personal representative may exercise the powers described in this article only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied.

**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 (personal representative cannot use independent administration procedure to sell property of the estate to the personal representative, to exchange estate property for property of the personal representative, or to grant to the personal representative 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(e) (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.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Exercise of powers § 10502

Limited authority §§ 10403, 10450(b)(2), 10452(c), 10501(e)

Matters requiring court supervision § 10501

### § 10511. Selling or exchanging real property

10511. The personal representative who has full authority has the power to sell or exchange real property of the estate.

**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(e) (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).

The personal representative may not use independent administration authority to sell property of the estate to the personal representative or to exchange estate property for property of the personal representative. See Section 10501 and the Comment to that section.

#### CROSS-REFERENCES

Notice of proposed action required

Completing contract by decedent to convey property § 10517

Conveying property to person given option to purchase in will § 10516

Extending exclusive right to sell § 10538

Granting option to purchase § 10515

Sale of decedent's unincorporated business § 10512

Definitions

Personal representative § 58

Real property § 68

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

10512. The personal representative has the power to sell or incorporate any of the following:

(a) An unincorporated business or venture in which the decedent was engaged at the time of the decedent's death.

(b) An unincorporated business or venture which was wholly or partly owned by the decedent at the time of the decedent's death.

**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(e) (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).

The personal representative may not use independent administration authority to sell property of the estate to the personal representative. See Section 10501 and the Comment to that section.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

### § 10513. Abandoning tangible personal property

10513. The personal representative has the power to abandon tangible personal property where the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.

**Comment.** Section 10513 supersedes subdivision (d) of former Section 591.6 which did not require notice of proposed action to abandon property and was not limited to tangible personal property. Section 10513 uses language drawn from the provision governing supervised administration. See Sections 9780-9788. The language "or any interest therein," which appeared in subdivision (d) of former Section 591.6 has been omitted from Section 10513. This language is unnecessary in view of the definition of property which includes "any interest therein." See Section 62 (defining "property").

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 10513 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510.

Section 10513 applies only to tangible personal property. As to the power with respect to real property and intangible personal

property, see Sections 10552 (compromising or settling claim, action, or proceeding), 10553 (commencing and defending actions and proceedings).

## CROSS-REFERENCES

## Definitions

Personal representative § 58

Property § 62

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

10514. (a) Subject to subdivision (b), the personal representative has the following powers:

(1) The power to borrow.

(2) The power to place, replace, renew, or extend any encumbrance upon any property of the estate.

(b) Only a personal representative who has full authority has the power to borrow money with the loan secured by an encumbrance upon real 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(e)(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.

## CROSS-REFERENCES

## Definitions

Personal representative § 58

Property § 62

Real property § 68

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

10515. The personal representative who has full authority has the power to grant an option to purchase real property of the estate for a period within or beyond the period of administration.

**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 (e) (limited authority excludes power to grant an option to purchase real property). See also Sections 10403, 10450 (b) (2), and 10452 (c) (limited authority).

Independent administration authority may not be used to grant an option to the personal representative to purchase property of the estate. See Section 10501 and the Comment to that section.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Real property § 68

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

10516. If the will gives a person the option to purchase real or personal property and the person has complied with the terms and conditions stated in the will, the personal representative has the power to convey or transfer the property to the person.

**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.

## CROSS-REFERENCES

## Definitions

Person § 56

Personal representative § 58

Real property § 68

Will § 88

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

10517. The personal representative has the power to convey or transfer real or personal property to complete a contract entered into by the decedent to convey or transfer the property.

**Comment.** Section 10517 continues 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.

## CROSS-REFERENCES

## Definitions

Personal representative § 58

Property § 62

Real property § 68

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

10518. The personal representative has the power to determine any of the following:

(a) A third-party claim to real or personal property if the decedent died in possession of, or holding title to, the property.

(b) The decedent's claim to real or personal property title to or possession of which is held by another.

**Comment.** Section 10518 continues 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. Independent administration authority may not be used to compromise or settle a claim of the personal representative against the estate. See Section 10501 and the Comment to that section.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

Real property § 68

### § 10519. Making a disclaimer

10519. The personal representative has the power to make a disclaimer.

**Comment.** Section 10519 restates subdivision (n) of former Section 591.6 (powers of personal representative) except that notice of proposed action was not required to exercise this power under former law. For the provisions relating to disclaimers, see Division 2.5 (commencing with Section 260).

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 10519 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

**Article 3. Powers the Exercise of Which  
Requires Giving of Notice of Proposed Action  
Under Some Circumstances**

**§ 10530. Article describes powers that may in some circumstances be exercised only after giving notice of proposed action**

10530. Except to the extent that this article otherwise provides, the personal representative may exercise the powers described in this article without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

**Comment.** The powers set out in this article are powers that under some circumstances may be exercised without giving notice of proposed action and in other circumstances may be exercised only if the notice of proposed action procedure requirements are satisfied. Section 10530 permits the exercise of powers described in this article without giving notice of proposed action under Chapter 4 (commencing with Section 10580) except to the extent otherwise provided in this article.

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).

Subdivision (b) of Section 10580 permits a personal representative to use the procedure provided in Chapter 4 (notice of proposed action procedure) with respect to an action that the personal representative proposes to take under a power granted by this article even though the action is not one for which notice of proposed action is required under this article. For example, the personal representative may want to proceed under Chapter 4 where the proposed action is the making of a contract that will be fully performed within two years. Entering into such a contract ordinarily does not require notice of proposed action. See Section 10532. Or, for example, the personal representative may want to proceed under Chapter 4 where the proposed action is the entering into a lease of real property for

a term not in excess of one year. This action does not require notice of proposed action. See Section 10536(b). If the procedure provided by Chapter 4 is used with respect to the proposed action, the 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 Section 10589(b) and the Comment to that section.

The personal representative may not take certain actions under independent administration authority where there is a potential for conflict of interest between the interest of the personal representative and the interest of the estate. See Section 10501 and the Comment to that section.

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

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

### § 10531. Managing and controlling estate property generally

10531. (a) The personal representative has the power to manage and control property of the estate. Except as provided in subdivision (b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) in any case where a provision of Chapter 3 (commencing with Section 10500) governing the exercise of a specific power so requires.

**Comment.** The first sentence of Section 10531 restates without substantive change the part of the first portion of subdivision (a) of former Probate Code Section 591.6 that gave the personal representative the power to manage and control property of the estate. The second sentence of subdivision (a) and subdivision (b) of Section 10531 are new provisions that make clear that the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) must be satisfied where a provision governing the exercise of a specific power so requires.

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).

The provision of subdivision (a) of former Section 591.6 relating to “exchanges” is superseded by Sections 10511 (real property) and 10537 (personal property).

The portion of subdivision (a) of former Section 591.6 that gave the personal representative the power to “convey” property is superseded by various provisions of this chapter which give the personal representative the power to take particular actions that may involve a conveyance and by Section 10555 which makes clear that the personal representative is authorized to execute a conveyance in any case where a power is exercised and the conveyance is necessary to effectuate the exercise of the power.

The portion of subdivision (a) of former Section 591.6 that gave the personal representative the power to “divide” or “partition” property of the estate is not continued. Insofar as the power to “partition” related to partition proceedings, the inclusion of the word in Section 10531 is unnecessary in view of Section 10553 which authorizes the personal representative to institute, maintain, and defend actions and proceedings. Insofar as the power to “divide” or “partition” may have related to division or partition before distribution, the inclusion of this power as an independent administration power is unnecessary to authorize partition or division without court supervision if there is an agreement of the heirs or devisees. See Sections 1100-1106. If there is no agreement, the matter should be decided under the provisions of Sections 1100-1106 rather than by using the independent administration procedure.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

Limited authority §§ 10403, 10450(b)(2), 10452(c), 10501(e)

#### § 10532. Entering into contracts

10532. (a) The personal representative has the power to enter into a contract in order to carry out the exercise of a specific power granted by this part, including but not limited to the powers granted by Sections 10531 and 10551. Except as provided in subdivision (b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the contract is one that by its provisions is not to be fully performed within two years, except that the personal representative is not required to comply with those requirements if the personal representative has the unrestricted right under the contract to terminate the contract within two years.

(c) Nothing in this section excuses compliance with the requirements of Chapter 4 (commencing with Section 10580) when the contract is made to carry out the exercise of a specific power and the provision that grants that power requires compliance with Chapter 4 (commencing with Section 10580) for the exercise of the power.

**Comment.** Subdivisions (a) and (b) of Section 10532 restate subdivision (b) (5) of former Section 591.3 with two revisions:

(1) A new provision—that the contract is one that cannot be terminated by the personal representative within two years—is added in subdivision (b). This provision makes clear that notice of proposed action is not required by Section 10532 if a contract is one that by its terms can be terminated by the personal representative within two years. A contract that can be terminated within two years should be treated the same as a contract that is to be fully performed within two years.

(2) The word “fully” is added to subdivision (b) to make clear that the requirement that the contract be one that will be performed within two years is satisfied only if the contract is one that will be “fully” performed within two years.

Subdivision (c) of Section 10532 is a new provision. This subdivision makes clear that if a power given by another section is exercised and a contract is executed to carry out that power, the provisions of Chapter 4 (commencing with Section 10580) apply if the section that governs the exercise of the power requires compliance with Chapter 4.

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).

Where a contract is made to effectuate an independent administration power, the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) must be satisfied if the contract fits the description

of subdivision (b) of Section 10532. For example, the power to lease personal property of the estate under independent administration authority is governed by the limitation of subdivision (b) of Section 10532. See Section 10536(c). But the power to lease real property of the estate under independent administration authority is subject to a more stringent requirement concerning giving of notice of proposed action (see subdivision (b) of Section 10536), and subdivision (c) of Section 10532 makes clear that this more stringent requirement must be satisfied.

The power to make contracts under independent administration authority in connection with the management and control of the estate is included in the power granted by Section 10531. Other specific powers granted in this chapter—including the powers granted by Section 10551 (powers that any personal representative may exercise without court supervision)—by implication include the power to make a contract where necessary to effectuate the specific power granted.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

### § 10533. Investing money of the estate

10533. (a) The personal representative has the power to do all of the following:

(1) Deposit money belonging to the estate in an insured account in a financial institution in this state.

(2) Invest money of the estate in any one or more of the following:

(A) Direct obligations of the United States maturing not later than one year from the date of making the investment.

(B) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.

(C) Units of a common trust fund described in Section 1564 of the Financial Code. The common trust fund shall have as its objective investment primarily in short term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.

(D) Eligible securities for the investment of surplus state moneys as provided for in Section 16430 of the Government Code.

(3) Invest money of the estate in any manner provided by the will.

(b) Except as provided in subdivision (c), the personal representative may exercise the powers described in subdivision (a) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative exercises the power to make any investment pursuant to the power granted by subdivision (a) (2) (D) or subdivision (a) (3), except that the personal representative may invest in direct obligations of the United States maturing not later than one year from the date of making the investment without complying with the requirements of Chapter 4 (commencing with Section 10580).

**Comment.** Section 10533 restates without substantive change 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), except that 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, 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).

## CROSS-REFERENCES

## Definitions

Personal representative § 58

Security § 70

Will § 88

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

10534. (a) Subject to the partnership agreement and the provisions of the Uniform Partnership Act, the personal representative has the power to continue as a general partner in any partnership in which the decedent was a general partner at the time of death.

(b) The personal representative has the power to continue operation of any of the following:

(1) An unincorporated business or venture in which the decedent was engaged at the time of the decedent's death.

(2) An unincorporated business or venture which was wholly or partly owned by the decedent at the time of the decedent's death.

(c) Except as provided in subdivision (d), the personal representative may exercise the powers described in subdivisions (a) and (b) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(d) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) if the personal representative continues as a general partner under subdivision (a), or continues the operation of any unincorporated business or venture under subdivision (b), for a period of more than six months from the date of appointment of the personal representative.

**Comment.** Section 10534 restates the substance of 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).

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.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

### § 10535. Paying family allowance

10535. (a) The personal representative has the power to pay a reasonable family allowance. Except as provided in subdivision (b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) for all of the following:

- (1) Making the first payment of a family allowance.

(2) Making the first payment of a family allowance for a period commencing more than 12 months after the death of the decedent.

(3) Making any increase in the amount of the payment of a family allowance.

**Comment.** The first sentence of subdivision (a) of Section 10535 restates subdivision (m) of former Section 591.6 (powers of personal representative) without substantive change. The second sentence of subdivision (a) and subdivision (b) of Section 10535 restate subdivision (b) (7) of former Section 591.3 (notice of proposed action required under some circumstances) without substantive change.

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 provisions relating to payment of the family allowance, see Sections 6540-6545.

Although notice of proposed action is required for the first payment of a family allowance, the personal representative can continue to make the payment (without any increase) without giving notice of proposed action, except that another notice of proposed action is required if the family allowance is to be continued for a period commencing more than 12 months after the death of the decedent. Notice of proposed action also must be given if there is to be an increase in the amount of the payment of a family allowance. Notice of proposed action also must be given if a family allowance is proposed to be paid to a person who previously has not been receiving a family allowance, even where notice of proposed action previously has been given with reference to the payment of a family allowance to another person.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### § 10536. Leasing real and personal property

10536. (a) The personal representative has the power to enter as lessor into a lease of property of the estate for any purpose (including but not limited to exploration for and production or removal of minerals, oil, gas, or other hydrocarbon substances or geothermal energy, including a community oil lease or a pooling or unitization agreement)

for such period, within or beyond the period of administration, and for such rental or royalty or both, and upon such other terms and conditions as the personal representative may determine. Except as provided in subdivisions (b) and (c), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative enters into a lease of real property for a term in excess of one year. If the lease gives the lessee the right to extend the term of the lease, the lease shall be considered as if the right to extend had been exercised.

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative enters into a lease of personal property and the lease is one described in subdivision (b) of Section 10532.

**Comment.** Subdivision (a) of Section 10536 supersedes the portion of subdivision (a) of former Section 591.6 relating to leases. The first sentence of subdivision (a) of Section 10536 makes clear that the personal representative is authorized to determine the period, rental or royalty, and other terms and conditions of the lease. For the comparable provision under supervised administration, see Sections 9940-9948. For the comparable provisions of the Trust Law, see Sections 16231, 16232.

The second sentence of subdivision (a) and subdivision (b) of Section 10536 restate subdivision (b) (4) of former Section 591.3 with the addition of a provision dealing specifically with a lease that gives the lessee the option to extend the term of the lease. If the lease gives the lessee the option to extend the lease beyond the one-year term, notice of proposed action is required. The option to extend is taken into account in determining the term of the lease for the purpose of subdivision (b). This is consistent with the rule governing personal property leases under supervised administration. See Section 9940.

Subdivision (c) of Section 10536 is a new provision that is consistent with prior law. Under prior law, a lease of personal property was governed by subdivision (b) (5) of former Section 591.3 (contracts other than leases of real property), which is replaced by subdivisions (a) and (b) of Section 10532.

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).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

Real property § 68

### § 10537. Selling or exchanging personal property

10537. (a) The personal representative has the power to sell personal property of the estate or to exchange personal property of the estate for other property upon such terms and conditions as the personal representative may determine. Except as provided in subdivision (b), the personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) in exercising this power.

(b) The personal representative may exercise the power granted by subdivision (a) without giving notice of proposed action under Chapter 4 (commencing with Section 10580) in case of the sale or exchange any of the following:

(1) A security sold on an established stock or bond exchange.

(2) A security designated as a national market system security on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer.

(3) Personal property referred to in Section 10202 or 10259 when sold for cash.

(4) A security described in Section 10200 surrendered to the issuer for redemption or conversion.

**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. Independent administration authority may not be used for the sale of property to the personal representative or the exchange with the personal representative of property of the estate for property of the personal representative. See Section 10501.

Subdivision (a) of Section 10537 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) of Section 10537 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) of Section 10537, 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) of Section 10537 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) of Section 10537 is new. This paragraph makes clear that a security described in Section 10200 may be surrendered to the issuer for redemption or conversion without giving notice of proposed action. Section 10200 governs the surrender of securities for redemption or conversion.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

Security § 70

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

10538. (a) The personal representative has the following powers:

(1) The power to grant an exclusive right to sell property for a period not to exceed 90 days.

(2) The power to grant to the same broker one or more extensions of an exclusive right to sell property, each extension being for a period not to exceed 90 days.

(b) Except as provided in subdivision (c), the personal representative may exercise the powers described in subdivision (a) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative grants to the same broker an extension of an exclusive right to sell

property and the period of the extension, together with the periods of the original exclusive right to sell the property and any previous extensions of that right, is more than 270 days.

**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 Section 10501(e) (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.

## CROSS-REFERENCES

## Definitions

Personal representative § 58

Property § 62

### **Article 4. Powers Exercisable Without Giving Notice of Proposed Action**

#### **§ 10550. Article describes powers that may be exercised without giving notice of proposed action**

10550. The personal representative may exercise the powers described in this article without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

**Comment.** Section 10550 permits the exercise of the powers described in this article without giving notice of proposed action under Chapter 4 (commencing with Section 10580). However, subdivision (b) of Section 10580 permits a personal representative to use the procedure provided in Chapter 4 with respect to an action that the personal representative proposes to take even though the action is not one for which notice of proposed action is required. For example, the personal representative may want to proceed under Chapter 4 where the proposed action is the compromise of a claim by or against the estate (see Section 10552). This action is one that ordinarily does not require notice of proposed action. See Section 10550. If the procedure provided by Chapter 4 is used with respect to the proposed action, the 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 Section 10589(b) and the Comment to that section. Use of the notice of proposed action procedure avoids the need to petition the court for instructions on the proposed compromise (unless there is an objection to the proposed action) in order to preclude a later challenge to the accounts of the personal representative.

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

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

### § 10551. Powers that any personal representative may exercise without court supervision

10551. In addition to the powers granted to the personal representative by other sections of this chapter, the personal representative has all the powers that the personal representative could exercise without court supervision under this code if the personal representative had not been granted authority to administer the estate under this part.

**Comment.** Section 10551 supersedes the phrase "in addition to any other powers granted by this code" which appeared in the introductory portion 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 10551. See Section 10550.

The inclusion of Section 10551 makes it unnecessary to list in this article those powers that a personal representative not having independent administration authority can exercise without court supervision. This is the reason why some powers listed in former Section 591.6 are not listed in this article. Accordingly, the following powers listed in former Section 591.6 are not listed in this article: Power to vote a security, in person or by general or limited proxy (authorized without court supervision by Section 9655); power to insure estate and personal representative (authorized without court supervision by Section 9656). Section 10551 gives the personal representative who has been granted independent administration authority these powers as well as any other powers that can be exercised without

court supervision by a personal representative who has not been granted independent administration authority.

## CROSS-REFERENCES

## Definitions

Court supervision § 10401

Personal representative § 58

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

**10552.** The personal representative has the power to do all of the following:

(a) Allow, pay, reject, or contest any claim by or against the estate.

(b) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate.

(c) Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

**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.

Independent administration authority may not be used to compromise or settle a claim, action, or proceeding by the estate against the personal representative. Nor may independent administration authority be used to pay or compromise a claim of the personal representative against the estate, whether or not an action or proceeding is commenced on the claim. Notwithstanding a grant 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.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

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

10553. The personal representative has the power to do all of the following:

- (a) Commence and maintain actions and proceedings for the benefit of the estate.
- (b) Defend actions and proceedings against the decedent, the personal representative, or the estate.

**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.

Independent administration authority may not be used to compromise or settle a claim, action, or proceeding by the estate against the personal representative. Nor may independent

administration authority be used to pay or compromise a claim of the personal representative against the estate, whether or not an action or proceeding is commenced on the claim. See Section 10501.

## CROSS-REFERENCES

## Definitions

Personal representative § 58

**§ 10554. Modifying terms of obligation**

10554. The personal representative has the power to extend, renew, or in any manner modify the terms of an obligation owing to or in favor of the decedent or the estate.

**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.

Independent administration authority may not be used to extend, renew, or modify the terms of a debt or other obligation of the personal representative owing to or running in favor of the estate. Notwithstanding a grant 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.

## CROSS-REFERENCES

## Definitions

Personal representative § 58

**§ 10555. Conveying property to effectuate a specific power**

10555. The personal representative has the power to convey or transfer property in order to carry out the exercise of a specific power granted by this part.

**Comment.** Section 10555 supersedes the portion of subdivision (a) of former Section 591.6 that gave the personal representative the power to “convey” property. See the discussion in the Comment to Section 10531 concerning that portion 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. Under this part, there must be a specific power to act in the specific circumstances (such as the power to make a sale or exchange) in order to authorize the personal representative to execute a conveyance. Where the personal representative acts under one of these specific powers (and complies with the notice of proposed action procedure if notice of proposed action is required), Section 10555 gives the personal representative power to execute any conveyance that is necessary to effectuate the exercise of the specific power without giving notice of proposed action with respect to the execution of the conveyance.

Although notice of proposed action is not required to exercise the power granted by Section 10555 (see Section 10550), the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

### § 10556. Paying taxes, assessments, and expenses

10556. The personal representative has the power to pay all of the following:

(a) Taxes and assessments.

(b) Expenses incurred in the collection, care, and administration of the estate.

**Comment.** Section 10556 restates subdivision (k) of former Section 591.6 without substantive change. As to the payment of claims against the estate, see Section 10552. For provisions relating to payment of debts, expenses, and charges, see Part 9 (commencing with Section 11400). See also Section 10552 (compromise or settling claim against decedent, personal representative, or estate).

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 10556. See Section 10550. But see Section 10501 (notwithstanding grant of independent administration

authority, personal representative is required to obtain court supervision for allowance of commissions of personal representative and allowance of attorney's fees). Although notice of proposed action is not required to exercise the power described in Section 10556, the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

## CROSS-REFERENCES

## Definitions

Personal representative § 58

**§ 10557. Purchasing annuity granted in will**

10557. The personal representative has the power to purchase any of the following from an insurer admitted to do business in this state:

(a) An annuity granted by the will to a devisee named in the will.

(b) An annuity to provide for the payment of an amount granted by the will to a devisee named in the will.

**Comment.** Section 10557 is a new provision. For the comparable provision under supervised administration, see Section 9733.

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 10557. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

## CROSS-REFERENCES

## Definitions

Devisee § 34

Personal representative § 58

Will § 88

**§ 10558. Exercising option**

10558. The personal representative has the power to exercise an option right that is an asset of the estate.

**Comment.** Section 10558 is a new provision. For the comparable provision under supervised administration, see Section 9734. See also Section 10561 (exercising security subscription or conversion right under independent administration authority).

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 10558. See Section 10550.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

### § 10559. Purchasing securities or commodities sold short

10559. The personal representative has the power to purchase securities or commodities required to perform an incomplete contract of sale where the decedent died having sold but not delivered securities or commodities not owned by the decedent.

**Comment.** Section 10559 is a new provision. For the comparable provision under supervised administration, see Section 9735.

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 10559. See Section 10550.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Security § 70

### § 10560. Holding securities in name of nominee or in other form

10560. The personal representative has the power to hold a security in the name of a nominee or in any other form without disclosure of the estate, so that title to the security may pass by delivery.

**Comment.** Section 10560 restates subdivision (h) of former Section 591.6, except that Section 10560 does not continue the provision of former Section 591.6 that made the personal representative “liable for any act of the nominee in connection with the security so held.” The liability of the personal representative is now determined under Section 9600 which requires the personal representative to use ordinary care and diligence in managing and controlling the estate and not to exercise a power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600 and the Comment to that section. See also Section 10502 and the

Comment to that section. For the comparable provision under supervised administration, see Section 9736.

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 10560. See Section 10550.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Security § 70

### § 10561. Exercising security subscription or conversion rights

10561. The personal representative has the power to exercise security subscription or conversion rights.

**Comment.** Section 10561 restates the substance of the portion of subdivision (g) of former Section 591.6 that related to the exercise of subscription or conversion rights with the expansion of the scope of the provision to cover “securities” instead of “stock.” See Section 70 (defining “security”). For the comparable provision under supervised administration, see Section 9737 (exercise of security subscription rights). As to the sale under independent administration authority of security subscription or conversion rights, see Section 10537 (notice of proposed action not required if sold for cash).

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 10561. See Section 10550.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Security § 70

### § 10562. Making repairs and improvements

10562. The personal representative has the power to make repairs and improvements to real and personal property of the estate.

**Comment.** Section 10562 restates subdivision (e) of former Section 591.6 without substantive change. The phrase “repairs and improvements to real and personal property of the estate” has been substituted in Section 10562 for the language “make ordinary or extraordinary repairs or alterations in buildings or other property” which was used in former Section 591.6. The

language “ordinary or extraordinary” has been omitted. Whether a repair or improvement should or should not be made does not depend on whether it is ordinary or extraordinary. The personal representative is required to exercise a power 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.

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 10562. See Section 10550.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

### § 10563. **Accepting deed in lieu of foreclosure or trustee’s sale**

10563. The personal representative has the power to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust.

**Comment.** Section 10563 is a new provision. For the comparable provision under supervised administration, see Section 9850.

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 10563. See Section 10550.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

### § 10564. **Giving partial satisfaction of mortgage or partial reconveyance under trust deed**

10564. The personal representative has the power to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a deed of trust held by the estate.

**Comment.** Section 10564 is a new provision. For the comparable provision under supervised administration, see Section 9851.

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 10564. See Section 10550.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

## CHAPTER 4. NOTICE OF PROPOSED ACTION PROCEDURE

### Article 1. Notice of Proposed Action Procedure

#### § 10580. When notice of proposed action required or permitted

10580. (a) A personal representative who has been granted authority to administer the estate under this part shall give notice of proposed action as provided in this article prior to the taking of the proposed action without court supervision if the provision of Chapter 3 (commencing with Section 10500) giving the personal representative the power to take the action so requires. Nothing in this subdivision authorizes a personal representative to take an action under this part if the personal representative does not have the power to take the action under this part.

(b) A personal representative who has been granted authority to administer the estate under this part may give notice of proposed action as provided in this article even if the provision of Chapter 3 (commencing with Section 10500) giving the personal representative the power to take the action permits the personal representative to take the action without giving notice of proposed action. Nothing in this subdivision requires the personal representative to give notice of proposed action where not required under subdivision (a) or authorizes a personal representative to take any action that the personal representative is not otherwise authorized to take.

**Comment.** The first sentence of subdivision (a) of Section 10580 restates paragraph (1) of subdivision (a) of former Section 591.3 without substantive change except that a reference to Chapter 3 (commencing with Section 10500) has been substituted for the reference to subdivision (b) of former Section 591.3. Chapter 3 supersedes subdivision (b) of former Section 591.3.

The second sentence of subdivision (a) is a new provision that makes no substantive change in prior law. The sentence makes clear that if the personal representative has only limited authority, the mere fact that the power is listed in Chapter 3 (commencing with Section 10500) gives the personal representative no right or authority to exercise the power using the procedure provided in this chapter. See Section 10403 (limited authority does not include authority 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). Where the personal representative has only limited authority and does not have the power to take the proposed action under this part because the power to do so is not within the authority granted to the personal representative, the personal representative may exercise the power only pursuant to the provisions relating to court supervision, and the provisions of this part have no application to the transaction. See Sections 10501 and 10502 and the Comments to those sections.

Subdivision (b) of Section 10580 is a new provision that permits a personal representative to use the notice of proposed action procedure provided in this article with respect to an action that the personal representative proposes to take even though the action is not one for which notice of proposed action is required. For example, the personal representative may want to proceed under subdivision (b) of Section 10580 where the proposed action is the compromise of a claim against the estate (see Section 10552). This action is one that ordinarily does not require notice of proposed action. See the Comment to Section 10550. If the procedure provided by this article is used with respect to the proposed action, the 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 Section 10589(b) and the Comment to that section. Use of the notice of proposed action procedure avoids the need to petition the court for instructions on the proposed compromise in order to preclude a later challenge to the accounts of the personal representative.

The personal representative need not take an action under independent administration authority even though authorized to do so; if the personal representative so desires, the action may be taken using the applicable court supervised administration procedure. See Section 10500(b) and the Comment to Section 10500.

## CROSS-REFERENCES

## Definitions

Personal representative § 58

**§ 10581. Persons to whom notice must be given**

10581. Except as provided in Sections 10582 and 10583, notice of proposed action shall be given to all of the following:

(a) Each known devisee whose interest in the estate is affected by the proposed action.

(b) If the estate is an intestate estate, each known heir of the decedent whose interest in the estate is affected by the proposed action.

(c) Each person who has filed a request for special notice pursuant to Section 1250.

(d) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the proposed action.

**Comment.** Section 10581 continues the introductory clause and paragraph (2) of subdivision (a) of former Section 591.3 with the following revisions:

(1) In subdivision (a), “Each known devisee” is substituted for “the devisees and legatees.” See Section 34 (defining “devisee”).

(2) In subdivision (b), “each known heir” is substituted for “the heirs” and language is added to make clear that notice of proposed action need be given only to heirs whose interest in the estate is affected by the proposed action.

(3) Language is added in subdivision (d) to make clear that notice of proposed action need be given to the State of California only if its interest in the estate is affected by the proposed action.

As to giving notice to known heirs and known devisees, see Section 1206.

## CROSS-REFERENCES

Consent to proposed action § 10582

Definitions

Devisee § 34

Heirs § 44

Person § 56

Notice to known heirs and devisees § 1206

Waiver of right to receive notice of proposed action § 10583

### § 10582. Consent to proposed action

10582. Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

**Comment.** Section 10582 continues 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 revocation of a consent, see Section 10584.

## CROSS-REFERENCES

Definitions

Person § 56

Revocation of consent § 10584

### § 10583. Waiver of notice

10583. (a) Notice of proposed action need not be given to any person who, in writing, waives the right to notice of proposed action with respect to the particular proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver shall describe the particular proposed action and may waive particular aspects of the notice, such as the delivery, mailing, or time requirements of Section 10586, or the giving of the notice in its entirety for the particular proposed action.

(b) Notice of proposed action need not be given to any person who has executed a Statutory Waiver of Notice of Proposed Action Form that satisfies the requirements of Section 10600 and in that form has made either of the following:

(1) A general waiver of the right to notice of proposed action.

(2) A waiver of the right to notice of proposed action for all transactions of a type which includes the particular proposed action.

**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.

The personal representative is not excused from the obligations imposed by his or her fiduciary duties because a waiver has been executed. See Section 10502 and the Comment to that section. Concerning revocation of a waiver, see Section 10584.

#### CROSS-REFERENCES

Definitions

Person § 56

Revocation of waiver § 10584

### § 10584. Revocation of consent or waiver

10584. (a) A waiver or consent may be revoked only in writing and is effective only when the writing is received by the personal representative.

(b) A copy of the revocation may be filed with the court, but the effectiveness of the revocation is not dependent upon a copy being filed with the court.

**Comment.** Section 10584 is a new provision that prescribes the requirements for revocation of a consent or waiver. Subdivision (b) permits a copy of the revocation to be filed with the court. Such a filing may be of some value in proving that the consent or waiver was revoked.

CROSS-REFERENCES

Consent to proposed action § 10582

Definitions

Personal representative § 58

Waiver of notice of proposed action § 10583

**§ 10585. Form and contents of notice of proposed action**

10585. (a) The notice of proposed action shall state all of the following:

(1) The name and mailing address of the personal representative.

(2) The person and telephone number to call to get additional information.

(3) The action proposed to be taken, with a reasonably specific description of the action. Where the proposed action involves the sale or exchange of real property, or the granting of an option to purchase real property, the notice of proposed action shall state the material terms of the transaction, including, if applicable, the sale price and the amount of, or method of calculating, any commission or compensation paid or to be paid to an agent or broker in connection with the transaction.

(4) The date on or after which the proposed action is to be taken.

(b) The notice of proposed action may be given using the most current form prescribed by the Judicial Council for Notice of Proposed Action.

(c) If the most current form prescribed by the Judicial Council is not used to give notice of proposed action, the notice of proposed action shall satisfy all of the following requirements:

(1) The notice of proposed action shall be in substantially the same form as the form prescribed by the Judicial Council.

(2) The notice of proposed action shall contain the statements described in subdivision (a).

(3) The notice of proposed action shall contain a form for objecting to the proposed action in substantially the form set out in the Judicial Council form.

**Comment.** Section 10585 replaces the second, third, and fifth sentences of subdivision (a) former Section 591.4 and all of former Section 591.8. Section 10585 makes no change in existing practice, but substitutes subdivision (c) of Section 10585 for the statutory form set out in former Section 591.8 which was superseded by the Judicial Council form.

#### CROSS-REFERENCES

Definitions

Real property § 68

Time for mailing or delivery § 10586

### § 10586. Mailing or delivery of notice

10586. The notice of proposed action shall be mailed or personally delivered to each person required to be given notice of proposed action not less than 15 days before the date specified in the notice of proposed action on or after which the proposed action is to be taken. If mailed, the notice of proposed action shall be addressed to the person at the person's last-known address. Sections 1215 and 1216 apply to the mailing or delivery of the notice of proposed action.

**Comment.** Section 10586 supersedes the first and fourth sentences of subdivision (a) of former Section 591.4. Unlike former Section 591.4, the time is not extended if the notice of proposed action is given by mail. The mailing is complete when the notice of proposed action is deposited in the mail. See Section 1215. As to the manner of mailing, see Section 1215.

#### CROSS-REFERENCES

Consent to proposed action § 10582

Definitions

Person § 56

Manner of mailing § 1215

Waiver of notice of proposed action § 10583

When mailing complete § 1215

### § 10587. Delivery or mailing of objection to proposed action

10587. (a) Any person entitled to notice of proposed action under Section 10581 may object to the proposed action as provided in this section.

(b) The objection to the proposed action is made by delivering or mailing a written objection to the proposed action to the personal representative at the address stated in the notice of proposed action. The person objecting to the proposed action either may use the Judicial Council form or may make the objection in any other writing that identifies the proposed action with reasonable certainty and indicates that the person objects to the taking of the proposed action.

(c) The personal representative is deemed to have notice of the objection to the proposed action if it is delivered or received at the address stated in the notice of proposed action before whichever of the following times is the later:

(1) The date specified in the notice of proposed action on or after which the proposed action is to be taken.

(2) The date the proposed action is actually taken.

**Comment.** Section 10587 restates subdivision (a)(2) of former Section 591.5 without substantive change. The second sentence of subdivision (b) is drawn from the last sentence of subdivision (b) of former Section 591.8.

Section 10587 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).

Subdivision (a) of Section 10587 permits a person not given notice of proposed action to object to the proposed action. For example, the personal representative may for some reason fail to give notice of proposed action to a person entitled to the notice. The person may be informed of the proposed action by a relative who did receive a notice of proposed action. If the person entitled to the notice objects to the proposed action, the proposed action can be taken only under court supervision. See Section 10589. However, the person is not required to object to the proposed action in order to protect the right to have the court later review the action. Since the person was not given notice of proposed action, the person's right to have the court later review the proposed action is not affected. See Section 10590.

As an alternative to or in addition to objecting to the proposed action, a person who wants to prevent the proposed action from being taken other than under court supervision may apply for a restraining order under Section 10588.

## CROSS-REFERENCES

## Definitions

Person § 56

Personal representative § 58

Effect of failure to object § 10590

Effect of objection § 10589

Restraining order § 10588

**§ 10588. Restraining order**

10588. (a) If the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate under this part, any person entitled to notice of proposed action under Section 10581 may apply to the court having jurisdiction over the proceeding for an order restraining the personal representative from taking the proposed action without court supervision. The court shall grant the requested order without requiring notice to the personal representative and without cause being shown for the order.

(b) The personal representative is deemed to have notice of the restraining order if it is served upon the personal representative in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure, or in the manner authorized by the court, before whichever of the following times is the later:

(1) The date specified in a notice of proposed action on or after which the proposed action is to be taken.

(2) The date the proposed action is actually taken.

**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.

Section 10588 applies only where the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate under the Independent Administration of Estates Act. If notice of proposed action is given for an action that could be taken without court supervision even if independent administration authority had not been granted, the person who objects may deliver or mail an objection as provided in Section 10587.

## CROSS-REFERENCES

## Definitions

Court supervision § 10401

Person § 56

Personal representative § 58

Effect of restraining order § 10589

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

10589. (a) If the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate under this part and the personal representative has notice of a written objection made under Section 10587 or a restraining order issued under Section 10588, the personal representative shall, if the personal representative desires to take the proposed action, take the proposed action under the provisions of this code dealing with court supervision of that kind of action.

(b) If the proposed action is one that would not require court supervision even if the personal representative had not been granted authority to administer the estate under this part but the personal representative has given notice of the proposed action and has notice of a written objection made under Section 10587 to the proposed action, the personal representative shall, if he or she desires to take the proposed action, request instructions from the court concerning the proposed action and may take the proposed action only under such order as may be entered by the court.

(c) A person who objects to a proposed action as provided in Section 10587 or serves a restraining order issued under Section 10588 in the manner provided in that section shall be given notice of any hearing on a petition for court authorization or confirmation of the proposed action.

**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.

Subdivisions (a) and (b) of Section 10589 implement subdivision (b) of Section 10580. Subdivision (b) of Section 10580 is a new provision that permits a personal representative who has been granted independent administration authority to give notice of proposed action with respect to a proposed action that could be taken without giving notice of proposed action. The personal representative may give notice of proposed action (although not required to do so) in order that the person receiving the notice will waive the right to object to the proposed action if the person fails to object within the time allowed after receipt of the notice. See Section 10590.

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. 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 an objection to the proposed action or of a restraining order issued with respect to the proposed action.

Subdivision (b) of Section 10589 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.

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.

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).

#### CROSS-REFERENCES

##### Definitions

Court supervision § 10401

Personal representative § 58

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

10590. (a) Except as provided in subdivisions (b) and (c), a person described in Section 10581 who has been given notice of a proposed action, as provided in Sections 10580 to 10586, inclusive, and who has failed to object as provided in

subdivision (d) waives the right to have the court later review the proposed action or otherwise to object to the proposed action after it has been taken.

(b) Subject to Sections 10582 to 10584, inclusive, the court may review the action taken upon motion of a person described in Section 10581 who establishes that he or she did not actually receive the notice of proposed action before the time to object under subdivision (d) expired.

(c) The court may review the action of the personal representative on its own motion where necessary to protect the interests of an heir or devisee who establishes all of the following:

(1) At the time the notice was given, the heir or devisee lacked capacity to object to the proposed action or was a minor.

(2) No notice of proposed action was actually received by the guardian, conservator, or other legal representative of the heir or devisee.

(3) The guardian, conservator, or other legal representative did not waive notice of proposed action.

(4) The guardian, conservator, or other legal representative did not consent to the proposed action.

(d) For the purposes of this section, an objection to a proposed action is made only by one or both of the following methods:

(1) Delivering or mailing a written objection as provided in Section 10587 within the time specified in subdivision (c) of that section.

(2) Serving a restraining order obtained under Section 10588 in the manner prescribed and within the time specified in subdivision (b) of that section.

**Comment.** Section 10590 applies only where notice of proposed action was given as provided in Sections 10580-10586. See Sections 10585 (contents of notice), 10586 (delivery or mailing required). 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. If a person described in Section 10581 is not given notice of proposed action, the person's right to obtain review of the action of the personal representative is not limited by Section 10590.

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 to a person described in Section 10581 who was not given notice of proposed action.

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).

The introductory clause of subdivision (b) makes 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.

#### CROSS-REFERENCES

##### Definitions

Devisee § 34

Heirs § 44

Person § 56

Personal representative § 58

### § 10591. Protection of persons dealing in good faith with personal representative

10591. (a) The failure of the personal representative to comply with subdivision (a) of Section 10580 and with Sections 10581, 10585, 10586, and 10589, and the taking of the action by the personal representative without such compliance, does not affect the validity of the action so taken or the title to any property conveyed or transferred

to bona fide purchasers or the rights of third persons, dealing in good faith with the personal representative, who changed their position in reliance upon the action, conveyance, or transfer without actual notice of the failure of the personal representative to comply with those provisions.

(b) No person dealing with the personal representative has any duty to inquire or investigate whether or not the personal representative has complied with the provisions listed in subdivision (a).

**Comment.** Section 10591 restates subdivision (b) of former Section 591.4 and subdivision (c) of former Section 591.5 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Person § 56

Personal representative § 58

Property § 62

### § 10592. Failure of personal representative to satisfy statutory requirements grounds for removal from office

10592. (a) In a case where notice of proposed action is required by this chapter, it is grounds for removal of the personal representative from office unless the personal representative does one of the following:

(1) Gives notice of proposed action as provided in this chapter.

(2) Obtains a waiver of notice of proposed action as provided in this chapter.

(3) Obtains a consent to the proposed action as provided in this chapter.

(b) It is grounds for removal of the personal representative from office if the personal representative takes a proposed action in violation of the provisions of Section 10589.

**Comment.** Section 10592 is drawn from the last sentence of subdivision (b) of former Section 591.5. Section 10592 expands the provision of former law to permit removal from office for failure to give notice of proposed action as required by this chapter. The court has discretion whether to remove the personal representative. In determining whether to remove the personal representative, the court should consider all the

circumstances of the particular case. Among the significant considerations are whether the personal representative violated the statute with the intent to deprive the person entitled to notice of his or her rights or whether the failure was inadvertent or merely negligent.

CROSS-REFERENCES

Definitions

Personal representative § 58

**Article 2. Statutory Form for Waiver of Notice of Proposed Action**

**§ 10600. Statutory Waiver of Notice of Proposed Action Form**

10600. (a) The Judicial Council may prescribe a Statutory Waiver of Notice of Proposed Action Form. A form prescribed by the Judicial Council pursuant to this subdivision shall include the substance of the warning set out in subdivision (b). If the Judicial Council prescribes a form pursuant to this subdivision, that form shall be used instead of the form set out in subdivision (b).

(b) Except as provided in subdivision (a), a Statutory Waiver of Notice of Proposed Action Form shall be in substantially the form set out in this subdivision and shall include the warning set out in this subdivision, either printed in not less than 10-point boldface type or a reasonable equivalent thereof or typed in all capital letters:

**STATUTORY WAIVER OF PROPOSED ACTION FORM**

(California Probate Code Section 10600)

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF \_\_\_\_\_**

Estate of \_\_\_\_\_  
  
(deceased)

No. \_\_\_\_\_

**WARNING. THE LAW REQUIRES THAT THE PERSONAL REPRESENTATIVE GIVE YOU NOTICE OF CERTAIN ACTIONS THE PERSONAL**

REPRESENTATIVE PROPOSES TO TAKE WITH RESPECT TO THE ESTATE. THE PERSONAL REPRESENTATIVE MUST GIVE YOU THIS NOTICE BEFORE TAKING THE ACTION.

YOU HAVE THE RIGHT (1) TO OBJECT TO A PROPOSED ACTION AND (2) TO REQUIRE THAT THE COURT SUPERVISE THE PROPOSED ACTION. IF YOU DO NOT OBJECT BEFORE THE PERSONAL REPRESENTATIVE ACTS, THEN YOU LOSE THAT RIGHT AND YOU CANNOT OBJECT LATER.

IF YOU SIGN THIS FORM, YOU GIVE UP YOUR RIGHT TO RECEIVE NOTICE. THIS MEANS THAT YOU GIVE THE PERSONAL REPRESENTATIVE THE RIGHT TO TAKE ACTIONS CONCERNING THE ESTATE WITHOUT FIRST GIVING YOU THE NOTICE REQUIRED BY LAW, AND YOU CANNOT OBJECT AFTER THE ACTION IS TAKEN.

IF YOU SIGN THIS FORM, YOU MUST ALSO CHECK ONE OF THE BOXES BELOW TO INDICATE WHETHER YOU GIVE UP YOUR RIGHT TO RECEIVE:

(1) A NOTICE OF ANY AND ALL ACTIONS THE PERSONAL REPRESENTATIVE MAY DECIDE TO TAKE.

(2) A NOTICE OF ANY OF THE PARTICULAR KINDS OF ACTIONS YOU LIST IN THIS FORM.

YOU HAVE THE RIGHT TO REVOKE (CANCEL) THIS WAIVER AT ANY TIME. A REVOCATION MUST BE IN WRITING AND IS NOT EFFECTIVE UNTIL IT IS ACTUALLY RECEIVED BY THE PERSONAL REPRESENTATIVE.

IF YOU DO NOT UNDERSTAND THIS FORM, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

1. The name of the personal representative of the estate of the deceased and the address to which notices to the personal representative may be delivered or mailed are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The personal representative has authority to administer the estate without court supervision under the Independent Administration of Estates Act (California Probate Code Sections 10400-10600)

3. By signing below, I waive my right to receive prior notice of (check only one box to indicate your choice):

[ ] (a) Any and all actions the personal representative is authorized to take under the Independent Administration of Estates Act.

[ ] (b) Any of the kinds of transactions listed below that the personal representative is authorized to take under the Independent Administration of Estates Act.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(SIGNATURE OF PERSON SIGNING WAIVER)

Print your name: \_\_\_\_\_

Your address: \_\_\_\_\_  
\_\_\_\_\_

**Comment.** Section 10600 is new. As to the effect of execution of the waiver, see the Comments to Sections 10583 and 10584. The waiver may be revoked by executing a writing revoking the waiver and then delivering the writing to the personal

representative. The revocation is effective only with respect to proposed actions that have not been taken at the time the revocation is actually received by the personal representative. See Section 10584.

#### CROSS-REFERENCES

##### Definitions

- Personal representative § 58
- Revocation of waiver § 10584
- Waiver of notice of proposed action § 10583



STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Creditor Claims Against Decedent's  
Estate

January 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 Creditor Claims Against Decedent's Estate*, 19 Cal. L. Revision Comm'n Reports 299 (1988).

**CALIFORNIA LAW REVISION COMMISSION**

4000 Middlefield Road, Suite D-2  
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TIM PAONE

January 16, 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 creditor claims and payment of debts (existing Prob. Code §§ 700-738, 950-956, and 980).

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

Respectfully submitted,

Arthur K. Marshall  
*Chairperson*



# RECOMMENDATION

*relating to*

## CREDITOR CLAIMS AGAINST DECEDENT'S ESTATE

The provisions of the proposed legislation governing creditor claims and payment of debts generally follow both the organization and substance of existing law. The proposed legislation accomplishes some reorganization and also makes many simplifications and technical and clarifying changes. Minor changes are noted in the Comments to the specific provisions of the proposed legislation; major changes are described below.

### CREDITOR CLAIMS

#### Notice to Creditors

Under existing law, the only notice required to be given to creditors is published notice of the commencement of administration proceedings.<sup>1</sup> The effect of published notice is that claims of creditors are barred if not presented within four months.<sup>2</sup> Even if the existence of a creditor is actually known to the personal representative, existing law enables the personal representative to bar the creditor's claim simply by publication and passage of time.

The existing law on this point is inequitable and is of questionable constitutionality. Recent developments in the United States Supreme Court and in state courts raise the likelihood that the existing scheme violates due process of law.<sup>3</sup> To cure this defect, the proposed legislation replaces the existing scheme with provisions for actual notice to creditors.

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1. Prob. Code §§ 333, 700.

2. Prob. Code § 707.

3. See *Mennonite Board of Missions v. Adams*, 130 S.Ct. 2706 (1983); *Continental Insurance Co. v. Mosely*, 653 P.2d 158 (Nev. S. Ct. 1982), 683 P.2d 20 (Nev. S. Ct. 1984).

Under the proposed legislation, the personal representative would continue to publish notice to creditors; this will help achieve *in rem* effect in probate, binding on all persons. In addition, the personal representative would serve notice on creditors actually known to the personal representative within four months after commencement of administration proceedings. However, the personal representative is not charged with a duty to make a special search for creditors or to speculate as to potential creditors who might have a claim against the decedent. The personal representative is required only to notify persons who have actually demanded payment by the decedent or the estate in the form of a bill, request for payment, or the like. To minimize the notice burden, the personal representative would not be required to give notice where the personal representative waives formal probate claim requirements and pays a bill or other informal request for payment.<sup>4</sup> A creditor would have 30 days after notice is given in which to make a formal claim, but in no case would the creditor be barred before the four month claim period has run.

The Law Revision Commission believes that this scheme is both fair and constitutional, and that it will also be workable without disrupting the flow of decedent estate administration.

### How Claim is Made

Existing law requires claims to be either filed with the court or presented to the personal representative.<sup>5</sup> This scheme creates a number of problems. The filing of a claim with the court imposes an added burden on the clerk to transmit a duplicate to the personal representative and on the personal representative to examine court files to make sure no claim is overlooked. On the other hand, if the claim is presented to the personal representative, the creditor may have difficulty later proving to the court that the claim was actually made in case of fraud or neglect by the personal representative. For these reasons, the proposed

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4. See discussion of "How Claim is Made", *infra*.

5. Prob. Code §§ 700, 710.

legislation requires the claim to be filed both with the court and with the personal representative. This will ease the administrative burden on the personal representative as well as assure the creditor that the claim is securely lodged with the court.

Often a creditor may demand payment through presentation of a monthly statement or other routine bill. As a matter of practice, the personal representative may pay the bill, even though it is not filed as a formal claim. The proposed legislation recognizes this practice by expressly authorizing the personal representative to waive formal requirements and pay the debt as if it were a properly filed claim. This procedure applies only during the four-month creditor claim period, and only if the debt is justly due and paid in good faith, and the estate is solvent.<sup>6</sup>

### **Time for Making Claims**

Existing law requires a creditor's claim to be made within four months after first issuance of letters to a personal representative.<sup>7</sup> The proposed legislation permits amendment or revision of a claim after the time for making the claim has expired. However, an amendment or revision may not be used to increase the amount of the claim after the four-month period has run. An amendment or revision may not be made if a year has passed since the start of the claim period or the court has made an order for final distribution. The amendment or revision procedure will add flexibility to the law without impairing the ability to administer and close estates expeditiously.

### **Late Claims**

A creditor who was absent from California during the claim period and did not receive notice is entitled to make a late claim.<sup>8</sup> The proposed legislation limits this procedure to a non-business creditor who was absent during the entire claim period. A creditor doing business in California should be subject to the same requirements as other creditors.

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6. These requirements are drawn from Probate Code Section 929.

7. See discussion under "Notice to Creditors", *supra*.

8. Prob. Code § 707(a).

### **Time for Personal Representative or Court to Act**

Existing law provides that a creditor may treat a claim as rejected and bring an action on the claim if the personal representative or court fails to act on it within 10 days after it is filed.<sup>9</sup> This is an unrealistically short period in which the personal representative must act before the creditor commences a lawsuit on the claim. The proposed legislation allows the personal representative and the court 30 days in which to act, and tolls the statute of limitations applicable to the creditor's claim during that time.<sup>10</sup>

### **Allowance or Rejection of Claim**

The proposed legislation provides a single document for allowance or rejection of a claim. This will simplify paperwork and help ensure uniformity of procedure throughout the state. The proposed legislation also encourages the Judicial Council to develop official forms for allowance and rejection of claims.

In the ordinary course of administration, a claim is initially allowed or rejected by the personal representative and an allowed claim is presented to the court for approval.<sup>11</sup> Where the personal representative is a creditor, the claim of the personal representative must be presented directly to the court for approval.<sup>12</sup> The proposed law requires that a claim of the personal representative's attorney also be presented directly to the court, since there may be an equally serious conflict of interest in such a situation.

### **Alternative Resolution of Disputed Claim**

Existing law permits a disputed claim to be referred to a disinterested person or to a court commissioner, referee, or temporary judge for determination.<sup>13</sup> This procedure is

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9. Prob. Code § 712.

10. See discussion of "Action on Rejected Claim", *infra*.

11. Prob. Code § 710.

12. Prob. Code § 703.

13. Prob. Code § 718.

superseded by general provisions for summary resolution of disputes in all aspects of estate management,<sup>14</sup> drawn from the guardianship and conservatorship law.<sup>15</sup>

### Action on Rejected Claim

Under existing law, the filing of a claim does not toll the statute of limitations applicable to the cause of action on the claim.<sup>16</sup> As a result, a creditor who in good faith files a claim in probate may find, if the personal representative rejects the claim, that the statute of limitations has run and the creditor is without recourse. The law may also prompt a creditor to commence a lawsuit as a precaution against the running of the statute of limitations even though the personal representative has not yet acted and may approve the claim. The proposed legislation addresses these problems by providing that the decedent's death extends the statute of limitations until one year after the date of death, and the filing of a claim tolls the statute until rejection of the claim. Thereafter, the creditor has three months within which to bring an action, regardless of the time otherwise remaining on the statute of limitations.<sup>17</sup> This will ensure that a creditor has adequate time in which to act, and to obtain appointment of a personal representative if necessary, and does not lose a cause of action by filing a claim and waiting, but still imposes a sufficiently short limitations period that the estate proceeding is not unduly delayed.

If a creditor's action to enforce a claim is unsuccessful, the proposed legislation gives the court discretion to assess reasonable attorney's fees against the creditor. This will help minimize unnecessary litigation over a claim that has already been reviewed and rejected by the personal representative or the court. The provision is drawn from the requirement in existing law that a personal representative who is also a creditor must pay reasonable

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14. See proposed Probate Code Sections 9620 and 9621 in *Recommendation Relating to Supervised Administration of Decedent's Estate*, 19 Cal. L. Revision Comm'n Reports (October 1986).

15. Prob. Code § 2406.

16. See, e.g., *Nally v. McDonald*, 66 Cal. 530, 6 P. 390 (1885).

17. See Prob. Code § 714.

attorney's fees if the personal representative brings an unsuccessful action on the claim.<sup>18</sup>

## PAYMENT OF DEBTS

### Priority Debts

The Probate Code prescribes a priority for payment of certain debts, such as funeral expenses, expenses of last illness, and wage claims.<sup>19</sup> However, other California laws, as well as federal laws, provide supervening priorities.<sup>20</sup> The proposed legislation gives explicit recognition to the supervening priority of federal and other state laws.

The existing wage claim priority is limited to \$900.<sup>21</sup> This amount was set more than 25 years ago<sup>22</sup> and fails to take into account the change that has occurred in the value of the dollar during that period. The proposed legislation increases the amount of the wage claim priority to \$2,000, consistent with the current wage claim priority in bankruptcy.<sup>23</sup>

### Court Order for Payment of Debts

Existing law makes clear that the personal representative is not obligated to pay a non-priority debt until so ordered by the court, but fails to address the practice of paying routine debts subject to later court confirmation. The proposed legislation recognizes the existing practice by making clear that the personal representative may, without liability, pay a debt in appropriate circumstances without obtaining prior court authorization.

### Allocation of Debts Between Spouses

Existing law provides a mechanism for allocating responsibility for marital debts between a surviving spouse and property in the estate of a deceased spouse.<sup>24</sup>

18. Prob. Code § 703.

19. See, e.g., Prob. Code § 950.

20. See, e.g., Estate of Muldoon, 128 Cal. App. 2d 284, 275 P.2d 597 (1954) (federal preference); Estate of Jacobs, 61 Cal. App. 2d 152, 142 P.2d 454 (1943) (state preference).

21. Prob. Code §§ 950, 951.

22. 1961 Cal. Stat. ch. 1084, § 1.

23. 11 U.S.C. § 507(a)(3).

24. Prob. Code § 980.

Notwithstanding this procedure, the law fails to make clear the substantive basis for the allocation. There is some indication that allocation may be based on the character of the debt as community or separate, but this practice is not supported by statutory language.<sup>25</sup>

The proposed legislation makes clear that the allocation is to be based on the liability the spouses would have had for the debt at the time of death. This has the effect of incorporating a known body of law governing liability for marital debts,<sup>26</sup> and avoids the problems inherent in litigation over “separate” versus “community” character of a debt. Whether a marital debt is separate or community in character is highly problematical. Such a determination made after one of the spouses is deceased and no longer able to testify is suspect.

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25. See, Reppy, *Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage*, 18 San Diego L. Rev. 143, 180-81 (1981).

26. Civil Code §§ 5120.010-5122.



# **OUTLINE OF PROPOSED LEGISLATION**

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**CONFORMING REVISIONS**

# DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

## PART 4. CREDITOR CLAIMS

### CHAPTER 1. GENERAL PROVISIONS

#### § 9000. “Claim” defined

9000. As used in this division:

(a) “Claim” means a demand for payment for any of the following, whether due, not due, or contingent, and whether liquidated or unliquidated:

(1) Liability of the decedent, whether arising in contract, tort, or otherwise.

(2) Liability for taxes incurred before the decedent’s death, other than property taxes and assessments secured by real property liens.

(3) Liability of the estate for funeral expenses of the decedent.

(b) “Claim” does not include a dispute regarding title of a decedent to specific property alleged to be included in the decedent’s estate.

**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 against the decedent at 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).

### § 9001. Notice to creditors

9001. (a) The publication or posting of notice under Section 333 and the giving of notice of administration of the estate of the decedent under Chapter 2 (commencing with Section 9050) constitute notice to creditors of the requirements of this part.

(b) Nothing in subdivision (a) affects a notice or request to a public entity required by Chapter 5 (commencing with Section 9200).

**Comment.** Subdivision (a) of Section 9001 restates the first portion of former Section 700, with the addition of the reference to notice to creditors under Chapter 2 (commencing with Section 9050). Subdivision (b) is intended for cross-referencing purposes only.

#### CROSS-REFERENCES

##### Definitions

Public entity § 9200(b)

### § 9002. Claim requirement

9002. Except as otherwise provided by statute:

(a) All claims shall be filed in the manner and within the time provided in this part.

(b) A claim that is not filed as provided in this part is barred.

(c) The holder of a claim may not maintain an action on the claim unless the claim is first filed as provided in this part.

**Comment.** Subdivision (a) of Section 9002 restates a portion of the first sentence of former Section 707 (a) without substantive change. Subdivision (b) restates a portion of the second sentence of former Section 707 (a) without substantive change. Subdivision (c) restates former Section 716(a) without substantive change.

Section 9002 applies to all claims, whether due, not due, or contingent, and whether liquidated or unliquidated, and whether in contract, tort, or otherwise, including claims for funeral expenses and claims for damages for injuries to or death of a person or injury to property and all claims against the personal representative of any 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 Section 9000 (“claim” defined) and the Comment thereto.

The requirement that a claim be filed as provided in this part is subject to exception under other provisions. See Section 9154 (waiver of formal defects). See also Sections 716 (enforcement of security interest), 721 (claim covered by insurance).

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

### § 9003. Payment of claims

9003. A claim that is established under this part shall be included among the debts to be paid in the course of administration.

**Comment.** Section 9003 restates the first portion of the first sentence of former Section 713 without substantive change. For payment of debts, see Part 9 (commencing with Section 11400); see also Section 11421 (immediate payment of priority debts).

## CROSS-REFERENCES

## Definitions

## Claim § 9000

**§ 9004. Application of part**

9004. (a) This part applies in any proceeding commenced on or after July 1, 1988.

(b) The applicable law in effect before July 1, 1988, continues to apply in any proceeding commenced before July 1, 1988, notwithstanding its repeal by the act that enacted this part.

**CHAPTER 2. NOTICE TO CREDITORS****§ 9050. Notice required**

9050. (a) If, within four months after the date letters are first issued to a general personal representative, the personal representative has knowledge of a creditor of the decedent, the personal representative shall give notice of administration of the estate to the creditor, subject to Section 9054. The notice shall be given as provided in Section 1215. For the purpose of this subdivision, a personal representative has knowledge of a creditor of the decedent if the personal representative is aware that the creditor has demanded payment from the decedent or the estate.

(b) The giving of notice under this chapter is in addition to the publication or posting of the notice under Section 333.

**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's 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).

#### CROSS-REFERENCES

##### Definitions

General personal representative § 58

Letters § 52

Personal representative § 58

### § 9051. Time of notice

9051. (a) Except as provided in subdivision (b), the notice shall be given within four months after the date letters are first issued to a general personal representative.

(b) If the personal representative first has knowledge of a creditor less than 30 days before expiration of the time provided in subdivision (a), the notice shall be given within 30 days after the personal representative first has knowledge of the creditor.

**Comment.** Failure of the personal representative to give notice within the time required by Section 9051 does not preclude a creditor from filing a claim within the time provided in Section 9100 (claim period).

CROSS-REFERENCES

Definitions

- General personal representative § 58
- Letters § 52
- Personal representative § 58

§ 9052. Form of notice

9052. The notice shall be in substantially the following form:

**NOTICE OF ADMINISTRATION OF ESTATE OF \_\_\_\_\_, DECEDENT**

Notice to creditors:

Administration of the estate of \_\_\_\_\_ (deceased) has been commenced by \_\_\_\_\_ (personal representative) in Estate No. \_\_\_\_\_ in the Superior Court of California, County of \_\_\_\_\_.

You must file copies of your claim with both the court and the personal representative within four months after \_\_\_\_\_ (the date letters were issued to the personal representative), or 30 days after the date this notice was mailed to you or, in the case of personal delivery, 30 days after the date this notice was delivered to you, whichever is later, as provided in Section 9100 of the California Probate Code. A claim form may be obtained from the court clerk. For your protection, you are encouraged to file your claim by certified mail, with return receipt requested.

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(Date of mailing this notice)

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(Name and address of personal representative or attorney)

**Comment.** Section 9052 prescribes the form of notice given to creditors. The Judicial Council may adopt an optional form.

§ 9053. Immunity of personal representative and attorney

9053. (a) If the personal representative or attorney for the personal representative in good faith believes that notice to a particular creditor is or may be required by this

chapter and gives notice based on that belief, the personal representative or attorney is not liable to any person for giving the notice, whether or not required by this chapter.

(b) If the personal representative or attorney for the personal representative in good faith fails to give notice required by this chapter, the personal representative or attorney is not liable to any person for the failure. Liability, if any, for the failure in such a case is on the estate.

(c) Nothing in this chapter imposes a duty on the personal representative or attorney for the personal representative to make a search for creditors of the decedent.

**Comment.** Subdivision (a) of Section 9053 is intended to encourage full and adequate notice in cases where it is a close question whether a personal representative has actual knowledge of a creditor within the meaning of Section 9050. If, for example, the personal representative believes that notice may be required and if the notice given generates claims or litigation that would not otherwise have arisen, Section 9053 immunizes the personal representative from liability even though notice turns out not to have been legally required.

Subdivision (b) protects the personal representative or attorney against inadvertent and other good faith failures to give a required notice to a creditor. For example, where a creditor's bill is accidentally lost so that failure to give the creditor notice is purely inadvertent, subdivision (b) provides an immunity from liability for the personal representative or attorney. The remedy, if any, of a creditor who suffers loss as a result of such a failure is against the estate and not against the personal representative or attorney.

Subdivision (c) implements the principle that the personal representative need not make a special search for creditors, but must only notify those who come to the attention of the personal representative during the course of administration. Section 9050 (notice required). However, subdivision (c) does not authorize the personal representative willfully to ignore information that would likely impart knowledge of a creditor. Evidentiary inferences and presumptions may be available to prove knowledge of the personal representative in a disputed case.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

**§ 9054. When notice not required**

9054. Notwithstanding Section 9050, the personal representative need not give notice to a creditor even though the personal representative has knowledge of the creditor if any of the following conditions is satisfied:

- (a) The creditor has filed a claim as provided in this part.
- (b) The creditor has demanded payment and the personal representative elects to treat the demand as a claim under Section 9154.

**Comment.** Section 9054 eliminates the need for notice to a creditor who has filed a satisfactory claim in the administration proceeding. The personal representative may waive formal defects in a demand for payment made during the four month claim period and accept the demand as a statutory claim, thereby avoiding the need for additional notice to the creditor. Section 9154 (waiver of formal defects).

**CROSS-REFERENCES****Definitions**

Claim § 9000

Personal representative § 58

**CHAPTER 3. TIME FOR FILING CLAIMS****§ 9100. Claim period**

9100. A creditor shall file a claim before expiration of the later of the following times:

- (a) Four months after the date letters are first issued to a general personal representative.
- (b) Thirty days after the date notice of administration is given to the creditor, if notice is given within the time provided in Section 9051.

**Comment.** Section 9100 supersedes the last portion of subdivision (a) and 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 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.

## CROSS-REFERENCES

## Definitions

Claim § 9000

General personal representative § 58

Letters § 52

Late claims § 9103

**§ 9101. Time not extended by vacancy in office**

9101. A vacancy in the office of the personal representative that occurs before expiration of the time for filing a claim does not extend the time.

**Comment.** Section 9101 restates former Section 700(b) without substantive change. A vacancy includes the resignation, death, or removal of the personal representative from office. See, e.g., Sections 520-526 (resignation, suspension, and removal).

## CROSS-REFERENCES

## Definitions

Claim § 9000

Personal representative § 58

**§ 9102. Where personal representative acts on claim after expiration of time**

9102. A claim that is filed before expiration of the time for filing the claim is timely even if acted on by the personal representative or by the court after expiration of the time.

**Comment.** Section 9102 restates the last sentence of former Section 712 without substantive change.

## CROSS-REFERENCES

## Definitions

Claim § 9000

Personal representative § 58

**§ 9103. Late claims**

9103. (a) Upon petition by a creditor, the court may allow a claim to be filed after expiration of the time provided in Section 9100 if it appears by clear and convincing evidence that all of the following conditions are satisfied:

(1) The creditor was out of the state during the entire four-month period after the date letters were first issued to a general personal representative.

(2) The creditor did not have knowledge of the administration of the estate within four months after the

date letters were first issued to a general personal representative by reason of being out of the state.

(3) The claim does not arise out of the conduct by the creditor of a trade, business, or profession in this state.

(b) The court shall not allow a claim to be filed under this section after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after the date letters are first issued to a general personal representative.

(c) Property distributed under court order and payments otherwise properly made before a claim is filed under this section are not subject to the claim, regardless of whether the claim is later established in whole or in part.

**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. Under Section 9150, such a situation can no longer occur since a claim must be filed with the personal representative. Section 9103 also 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).

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

General personal representative § 58

Letters § 52

Property § 62

### § 9104. Amended or revised claim

9104. (a) If a claim is filed within the time provided in this chapter, the creditor may later amend or revise the claim, subject to subdivision (b). The amendment or revision shall be filed in the same manner as the claim.

(b) An amendment or revision may not be made to increase the amount of the claim after the time for filing a claim has expired. An amendment or revision may not be made for any purpose after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after letters are first issued to a general personal representative.

**Comment.** Section 9104 is new. A claim is timely if filed within the time prescribed by Section 9100 or allowed by the court under Section 9103. Amendment or revision of a claim to specify the amount of a claim that is not due, contingent, or not yet ascertainable, is not an increase in amount within the meaning of this section.

If letters are issued by more than one court or if subsequent letters are issued by the same court, the one year amendment or revision period 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 period commences to run on first issuance of letters reciting the general powers of the special administrator.

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

General personal representative § 58

Letters § 52

## CHAPTER 4. FILING OF CLAIMS

### § 9150. How claim is filed

9150. (a) A claim may be filed by the creditor or a person acting on behalf of the creditor.

(b) A claim shall be filed with both the court and the personal representative.

(c) A claim is deemed filed when either of the following occurs, whichever is earlier:

(1) A copy of the claim is deposited for filing with the court clerk.

(2) A copy of the claim is mailed or delivered to the personal representative or attorney for the personal representative.

(d) Notwithstanding subdivision (b), the failure of either the court or the personal representative to receive a copy of a properly filed claim does not invalidate the filing so long as the other receives a copy of the claim.

**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. For the form of the claim, see Section 9153.

Subdivisions (b)-(d) supersede former Section 700(a). Under the former provision, the creditor was required either to file the claim with the court or present the claim to the personal representative. Section 9150 requires the claim to be filed with both. See also Section 9153 (form of claim).

The filing requirement supersedes the less formal presentation concept of former law. Thus the holding in a case such as *Estate of Schweitzer*, 182 Cal. App. 3d 330, 227 Cal. Rptr. 11 (1986)—that settlement negotiations satisfy the claim presentation requirement—would no longer be applicable. However, the requirement of a formal claim would not preclude application of estoppel or other equitable doctrines if warranted under the facts of the case.

Under Section 9150, a claim is deemed filed when filed with either the court or the personal representative, even if the other does not receive a copy of the claim. The court clerk must accept the claim when and as received, and must not attempt to reject the claim on the basis of formal defects.

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

Person § 56

Personal representative § 58

Mailing § 1215

### § 9151. Documentary support of claim

9151. (a) A claim shall be supported by the affidavit of the creditor or a person on behalf of the creditor stating:

(1) That the claim is a just claim.  
 (2) If the claim is due, the facts supporting the claim, the amount of the claim, and that all payments on and offsets to the claim have been credited.

(3) If the claim is not due or contingent, or the amount is not yet ascertainable, the facts supporting the claim.

(4) If the affidavit is made by a person other than the creditor, the reason it is not made by the creditor.

(b) The personal representative may require satisfactory vouchers or proof to be produced to support the claim. If the creditor includes an original voucher with the claim, the creditor may withdraw the voucher after a copy is attached to the claim.

**Comment.** Section 9151 restates former Section 705 without substantive change. The claim may be supported by a declaration under penalty of perjury in lieu of an affidavit. Code Civ. Proc. § 2015.5. The affidavit may be made on information and belief. *Cf.* Code Civ. Proc. § 446.

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

Person § 56

Personal representative § 58

### § 9152. Claim based on written instrument

9152. (a) If a claim is based on a written instrument, either the original or a copy of the original with all endorsements shall be attached to the claim. If a copy is attached, the original instrument shall be exhibited to the personal representative or court or judge on demand unless it is lost or destroyed, in which case the fact that it is lost or destroyed shall be stated in the claim.

(b) If the claim or a part of the claim is secured by a mortgage, deed of trust, or other lien that is recorded in the office of the recorder of the county in which the property subject to the lien is situated, it is sufficient to describe the mortgage, deed of trust, or lien and refer to the date or volume and page of its record.

**Comment.** Section 9152 restates former Section 706 without substantive change. A creditor need not file a claim in order to enforce a secured obligation against the security if recourse against other property in the estate is waived. Section 716 (enforcement of security interest).

#### CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

##### Definitions

Claim § 9000

Personal representative § 58

Enforcement of security interest § 716

### § 9153. Form of claim

9153. (a) The Judicial Council may prescribe a form for the claim. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this chapter.

(b) A claim form adopted by the Judicial Council shall inform the creditor that the claim must be filed with both the court and the personal representative.

**Comment.** Subdivision (a) of Section 9153 is consistent with Government Code Section 68511. Subdivision (b) is new.

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

Personal representative § 58

### § 9154. Waiver of formal defects

9154. Notwithstanding any other provision of this part, if a creditor makes a written demand for payment within four months after the date letters are first issued to a general personal representative, the personal representative may waive formal defects and elect to treat the demand as a claim that is filed and established under this part by paying the amount demanded before the expiration of 30 days after the four-month period if all of the following conditions are satisfied:

- (a) The debt was justly due.
- (b) The debt was paid in good faith.
- (c) The amount paid was the true amount of the indebtedness over and above all payments and offsets.
- (d) The estate is solvent.

**Comment.** Section 9154 is drawn from Section 929 (accounts). It authorizes the personal representative to waive technical claim requirements, such as the form and manner of filing a claim, in appropriate cases. This may be useful, for example, for regular bills received by the personal representative in the ordinary course of business concerning which there is no dispute. This authority enables the personal representative to avoid the need for additional notice to the creditor. See Section 9054 (when notice not required). For approval of the personal representative's account where payment is made without prior court order, see Sections 11422 (payment of debts on court order) and 929 (accounts).

## CROSS-REFERENCES

## Definitions

Claim § 9000

General personal representative § 58

Personal representative § 58

**CHAPTER 5. CLAIMS BY PUBLIC ENTITIES****§ 9200. Claim by public entity required**

9200. (a) Except as provided in this chapter, a claim by a public entity shall be filed within the time otherwise provided in this part. A claim not so filed is barred, including any lien imposed for the claim.

(b) As used in this chapter, “public entity” has the meaning provided in Section 811.2 of the Government Code, and includes an officer authorized to act on behalf of the public entity.

**Comment.** Section 9200 restates former Section 707.5(a), with the addition of the reference to an authorized officer. See, e.g., Section 9202 (claim by Director of Health Services). “Public entity” is defined in Government Code Section 811.2 to include the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State. This section does not govern obligations owed to the United States which are governed by federal law.

## CROSS-REFERENCES

## Definitions

Claim § 9000

**§ 9201. Claims governed by special statutes**

9201. (a) Notwithstanding any other provision of this part, a claim of a public entity arising under a law, act, or code listed in subdivision (b) is barred only after written notice or request to the public entity and expiration of the period provided in the applicable section. If no written notice or request is made, the claim is barred at the time otherwise provided in the law, act, or code.

(b) Law, Act, or Code	Applicable Section
Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code
Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
Motor Vehicle Transportation License Tax Law (commencing with Section 9601 of the Revenue and Taxation Code)	Section 9881.1 of the Revenue and Taxation Code
Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code
Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code
Unemployment Insurance Code	Section 1090 of the Unemployment Insurance Code
State Hospitals for the Mentally Disordered (commencing with Section 7200 of the Welfare and Institutions Code)	Section 7277.1 of the Welfare and Institutions Code
Medi-Cal Act (commencing with Section 14000 of the Welfare and Institutions Code)	Section 9202 of the Probate Code
Waxman-Duffy Prepaid Health Plan Act (commencing with Section 14200 of the Welfare and Institutions Code)	Section 9202 of the Probate Code

**Comment.** Section 9201 restates former Section 707.5(b) and a portion of the first sentence of subdivision (a) of former Section 700.1 without substantive change.

## CROSS-REFERENCES

## Definitions

Claim § 9000

Public entity § 9200

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

**9202.** (a) If the decedent has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, the personal representative shall give the Director of Health Services notice of the decedent's death in the manner provided in Section 215.

(b) The director has four months after notice is given in which to file a claim.

**Comment.** Section 9202 restates a portion of the first sentence of subdivision (a), 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).

## CROSS-REFERENCES

## Definitions

Claim § 9000

Personal representative § 58

**§ 9203. Distribution before claim**

**9203.** (a) The written notice or request to a public entity required by this chapter shall be made not later than 90 days after the date letters are first issued to a general personal representative. Failure of a person to give the written notice or request does not affect the validity of any proceeding under this division.

(b) If property in the estate is distributed before expiration of the time allowed a public entity to file a claim, the public entity has a claim against the distributees to the full extent of the public entity's claim, or each distributee's share of the distributed property, whichever is less. The

public entity's claim against distributees includes interest at a rate equal to that earned in the Pooled Money Investment Account, Article 4.5 (commencing with Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, from the date of distribution or the date of filing the claim by the public entity, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

**Comment.** Section 9203 restates a portion of the first sentence of subdivision (a), the last two sentences of subdivision (c), and subdivision (d) of former Section 700.1, and generalizes them to apply to all public entities. The time within which a written notice or request must be made to a public entity runs from the date of issuance of letters rather than from the date of death, to simplify administration.

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

General personal representative § 58

Person § 56

Property § 62

Public entity § 9200

### § 9204. Priority of claims not affected by chapter

9204. Nothing in this chapter shall be construed to affect the order of priority of claims provided for under other provisions of law.

**Comment.** Section 9204 restates former Section 707.5(d) without substantive change.

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

### § 9205. Limitation on application of chapter

9205. This chapter does not apply to liability for the restitution of amounts illegally acquired through the means of a fraudulent, false, or incorrect representation, or a forged or unauthorized endorsement.

**Comment.** Section 9205 restates former Section 707.5(e), omitting the reference to a "claim," which is included in "representation."

## CHAPTER 6. ALLOWANCE AND REJECTION OF CLAIMS

### § 9250. Procedure by personal representative

9250. (a) When a claim is filed, the personal representative shall allow or reject the claim in whole or in part.

(b) The allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the court clerk and give notice to the creditor, together with a copy of the allowance or rejection, as provided in Section 1215.

(c) The allowance or rejection shall contain the following information:

- (1) The name of the creditor.
- (2) The total amount of the claim.
- (3) The date of issuance of letters.
- (4) The date of the decedent's death.
- (5) The estimated value of the decedent's estate.
- (6) The amount allowed or rejected by the personal representative.

(7) Whether the personal representative is authorized to act under the Independent Administration of Estates Act.

(8) A statement that the creditor has three months in which to act on a rejected claim.

(d) The Judicial Council may prescribe an allowance or rejection form, which may be part of the claim form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section.

**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.

#### CROSS-REFERENCES

Definitions

Claim § 9000

Letters § 52

Personal representative § 58

Independent Administration of Estates Act § 10400 *et seq.*

### § 9251. Procedure by court

9251. If the personal representative is not authorized to act under the Independent Administration of Estates Act:

(a) Immediately on the filing of the allowance of a claim, the clerk shall present the claim and allowance to the court or judge for approval or rejection.

(b) On presentation of a claim and allowance, the court or judge may, in its discretion, examine the creditor and others on oath and receive any evidence relevant to the validity of the claim. The court or judge shall endorse on the claim whether the claim is approved or rejected and the date.

**Comment.** Section 9251 supersedes the second sentence of former Section 708, the last two sentences of former Section 710, the second sentence of former Section 711, and the second sentence of former Section 713.

#### CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Claim § 9000

Personal representative § 58

Independent Administration of Estates Act § 10400 *et seq.*

Register of actions and preservation of records, Gov't Code §§ 69845-6

### § 9252. Where personal representative is creditor

9252. (a) If the personal representative or the attorney for the personal representative is a creditor of the decedent, the clerk shall present the claim to the court or judge for approval or rejection. The court or judge may in its discretion require the creditor to file a petition and give notice of hearing.

(b) If the court or judge approves the claim, the claim is established and shall be included with other established claims to be paid in the course of administration.

(c) If the court or judge rejects the claim, the personal representative or attorney may bring an action against the estate. Summons shall be served on the judge, who shall appoint an attorney at the expense of the estate to defend the action.

**Comment.** Section 9252 restates former Section 703, expanding it to cover the personal representative's attorney and authorizing the court to impose a hearing procedure. An

approved claim is paid as other claims in the course of administration. If the personal representative or attorney fails to recover in an action on the claim, the personal representative or attorney must pay costs, and may be required to pay reasonable litigation expenses, including attorney's fees. See Section 9257 (action on rejected claim).

## CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

## Definitions

Claim § 9000

Personal representative § 58

### § 9253. Effect of statute of limitations

9253. (a) The filing of a claim tolls the statute of limitations otherwise applicable to the claim until allowance, approval, or rejection.

(b) A claim barred by the statute of limitations may not be allowed by the personal representative or approved by the court or judge.

(c) The allowance or approval of a claim further tolls the statute of limitations during the administration of the estate.

(d) Notwithstanding the statute of limitations otherwise applicable to a claim, an action on a rejected claim shall be commenced within the time prescribed in Section 9257.

**Comment.** Subdivision (a) of Section 9253 reverses existing case law that the filing of a claim does not toll the statute of limitations. See, e.g., *Nally v. McDonald*, 66 Cal. 530, 6 P. 390 (1885). Subdivisions (b) and (c) restate the first and third sentences of former Section 708 without substantive change. Subdivision (d) is intended for cross-referencing only. See Section 9257 (action on rejected claim).

## CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

## Definitions

Claim § 9000

Personal representative § 58

### § 9254. Contest of allowed and approved claims

9254. (a) The validity of an allowed or approved claim may be contested by any interested person at any time before settlement of the report or account of the personal representative in which it is first reported as an allowed or

approved claim. The burden of proof is on the contestant, except where the personal representative has acted under the Independent Administration of Estates Act, in which case the burden of proof is on the personal representative.

(b) Subdivision (a) does not apply to a claim established by a judgment.

**Comment.** Section 9254 restates a portion of the first sentence of former Section 713, with the addition of the provision relating to burdens of proof. For claims established by judgments, see Chapter 7 (commencing with Section 9300).

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

Interested person § 48

Personal representative § 58

Exception to account § 927

### § 9255. Partial allowance

9255. (a) The personal representative may allow a claim, or the court or judge may approve a claim, in part. The allowance or approval shall state the amount for which the claim is allowed or approved.

(b) A creditor who refuses to accept the amount allowed or approved in satisfaction of the claim may bring an action on the claim in the manner provided in Section 9257. The creditor may not recover costs in the action unless the creditor recovers an amount greater than that allowed or approved.

**Comment.** Section 9255 restates former Section 717 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

Personal representative § 58

### § 9256. Failure of personal representative or court to act

9256. If within 30 days after a claim is filed the personal representative or the court or judge has refused or neglected to act on the claim, the refusal or neglect may, at the option of the creditor, be deemed equivalent to the giving of a notice of rejection on the 30th day.

**Comment.** Section 9256 supersedes the first sentence of former Section 712. Section 9256 substitutes a 30-day period for the 10-day period formerly provided.

## CROSS-REFERENCES

## Definitions

Claim § 9000

Personal representative § 58

**§ 9257. Action on rejected claim**

**9257.** (a) A rejected claim is barred unless the creditor brings an action on the claim or the matter is referred to a referee or to arbitration within the following times, excluding the time during which there is a vacancy in the office of the personal representative:

(1) If the claim is due at the time of giving the notice of rejection, three months after the notice is given.

(2) If the claim is not due at the time of giving the notice of rejection, three months after the claim becomes due.

(b) In addition to any other county in which an action may be brought, an action on the claim may be brought in the county in which the proceeding for administration of the decedent's estate is pending.

(c) The plaintiff shall file a notice of the pendency of the action with the court clerk in the estate proceeding, together with proof of giving a copy of the notice to the personal representative as provided in Section 1215. Personal service of a copy of the summons and complaint on the personal representative is equivalent to the filing and giving of the notice. Any property distributed under court order, or any payment properly made, before the notice is filed and given is not subject to the claim. The personal representative, distributee, or payee is not liable on account of the prior distribution or payment.

(d) If the creditor fails to recover, the creditor shall pay court costs and, in the court's discretion, reasonable litigation expenses, including attorney's fees.

**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) generalizes a provision of former Section 703.

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

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

Personal representative § 58

Submission of dispute to arbitration § 9621

Submission of dispute to temporary judge § 9620

## CHAPTER 7. CLAIMS ESTABLISHED BY JUDGMENT

### § 9300. Money judgment against decedent

9300. (a) Except as provided in Section 9303, after the death of the decedent all money judgments against the decedent or against the personal representative on a claim against the decedent or estate are payable in the course of administration and are not enforceable against property in the estate of the decedent under the Enforcement of Judgments Law.

(b) Subject to Section 9301, a judgment referred to in subdivision (a) shall be filed in the same manner as other claims.

**Comment.** Section 9300 restates former Section 730(a)-(b) and extends it to all money judgments. See also Code Civ. Proc. § 686.020. For an exception to the rule of Section 9300, see Section 9303 (property under levy of execution). Section 9300 applies to federal as well as state judgments.

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

Personal representative § 58

**§ 9301. Money judgment against personal representative**

9301. When a money judgment against a personal representative in a representative capacity becomes final, it conclusively establishes the validity of the claim for the amount of the judgment. The judgment shall provide that it is payable out of property in the decedent's estate in the course of administration. An abstract of the judgment shall be filed in the administration proceedings.

**Comment.** Section 9301 restates former Section 731 without substantive change.

## CROSS-REFERENCES

## Definitions

Claim § 9000

Personal representative § 58

**§ 9302. Enforcement of nonmoney judgment**

9302. (a) Notwithstanding the death of the decedent, a judgment for possession of property or a judgment for sale of property may be enforced under the Enforcement of Judgments Law. Nothing in this subdivision authorizes enforcement under the Enforcement of Judgments Law against any property in the estate of the decedent other than the property described in the judgment for possession or sale.

(b) After the death of the decedent, a demand for money that is not satisfied from the property described in a judgment for sale of property shall be filed as a claim in the same manner as other claims and is payable in the course of administration.

**Comment.** Section 9302 restates former Section 730(d) without substantive change. The former reference to unsatisfied demands for money under a judgment for possession is omitted. Amounts due under a judgment for possession are enforced in the same manner as a money judgment and thus are governed by the general rule applicable to money judgments under Section 9300. See Code Civ. Proc. §§ 680.270, 712.040, 714.020.

## CROSS-REFERENCES

## Definitions

Claim § 9000

Property § 62

**§ 9303. Property subject to execution lien**

9303. If property of the decedent is subject to an execution lien at the time of the decedent's death, enforcement against the property may proceed under the Enforcement of Judgments Law to satisfy the judgment. The levying officer shall account to the personal representative for any surplus. If the judgment is not satisfied, the balance of the judgment remaining unsatisfied is payable in the course of administration.

**Comment.** Section 9303 restates former Section 730(c) without substantive change.

## CROSS-REFERENCES

## Definitions

Personal representative § 58

Property § 62

**§ 9304. Converting attachment lien to judgment lien**

9304. (a) An attachment lien may be converted into a judgment lien on property in the estate subject to the attachment lien, with the same priority as the attachment lien, in either of the following cases:

(1) Where the judgment debtor dies after entry of judgment in an action in which the property was attached.

(2) Where a judgment is entered after the death of the defendant in an action in which the property was attached.

(b) To convert the attachment lien into a judgment lien, the levying officer shall, after entry of judgment in the action in which the property was attached and before the expiration of the attachment lien, do one of the following:

(1) Serve an abstract of the judgment, and a notice that the attachment lien has become a judgment lien, on the person holding property subject to the attachment lien.

(2) Record or file in any office where the writ of attachment and notice of attachment are recorded or filed an abstract of the judgment and a notice that the attachment lien has become a judgment lien. If the attached property is real property, the plaintiff or the plaintiff's attorney may record the required abstract and notice with the same effect as if recorded by the levying officer.

(c) After the death of the decedent, any members of the decedent's family who were supported in whole or in part by the decedent may claim an exemption provided in Section 487.020 of the Code of Civil Procedure for property levied on under the writ of attachment if the right to the exemption exists at the time the exemption is claimed. The personal representative may claim the exemption on behalf of members of the decedent's family. The claim of exemption may be made at any time before the time the abstract and notice are served, recorded, or filed under subdivision (b) with respect to the property claimed to be exempt. The claim of exemption shall be made in the same manner as an exemption is claimed under Section 482.100 of the Code of Civil Procedure.

**Comment.** Section 9304 restates former Section 732 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Person § 56

Personal representative § 58

Property § 62

Real property § 68

## PART 9. PAYMENT OF DEBTS

### CHAPTER 1. DEFINITIONS

#### § 11400. Application of definitions

11400. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

#### § 11401. Debt

11401. "Debt" means:

(a) A claim that is established under Part 4 (commencing with Section 9000) or that is otherwise payable in the course of administration.

(b) An expense of administration.

(c) A charge against the estate including, but not limited to, taxes, expenses of last illness, and family allowance.

**Comment.** Section 11401 supersedes the introductory portion of former Section 950. It is intended for drafting convenience.

Subdivision (a) includes debts payable under the Independent Administration of Estates Act that are not established under Section 9000 *et seq.* (creditor claims), as well as other debts paid even though not presented through the formal claim procedure. See Sections 929 (accounts), 9154 (waiver of formal defects), and 11422 (payment of debts on court order).

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

Family allowance § 38

### § 11402. Wage claim

11402. “Wage claim” means a claim for wages, not exceeding two thousand dollars (\$2,000), of each employee of the decedent for work done or personal services rendered within 90 days before the death of the decedent.

**Comment.** Section 11402 restates the first sentence of former Section 950(6) and a portion of former Section 951, and increases the amount from \$900 to \$2,000.

#### CROSS-REFERENCES

##### Definitions

Claim § 9000

## CHAPTER 2. GENERAL PROVISIONS

### § 11420. Priority for payment

11420. (a) Debts shall be paid in the following order of priority among classes of debts, except that debts owed to the United States or to this state that have preference under the laws of the United States or of this state shall be given the preference required by such laws:

- (1) Expenses of administration.
- (2) Funeral expenses.
- (3) Expenses of last illness.

(4) Family allowance.

(5) Wage claims.

(6) Obligations secured by a mortgage, deed of trust, or other lien, including but not limited to a judgment lien, in the order of their priority, so far as they may be paid out of the proceeds of the property subject to the lien. If the proceeds are insufficient, the part of the obligation remaining unsatisfied shall be classed with general debts.

(7) General debts, including judgments not secured by a lien and all other debts not included in a prior class.

(b) Except as otherwise provided by statute, the debts of each class are without preference or priority one over another. No debt of any class may be paid until all those of prior classes are paid in full. If property in the estate is insufficient to pay all debts of any class in full, each debt in that class shall be paid a proportionate share.

**Comment.** Subdivision (a) of Section 11420 restates former Section 950, except that Section 11420 makes clear that preferred debts owed to the United States and to California must be recognized to the extent required by law. See, e.g., Rev. & Tax. Code § 19265 (priority of claim for taxes under Personal Income Tax Law). Subdivision (b) restates the third sentence of former Section 952 without substantive change and supersedes the last sentence of former Section 953.

#### CROSS-REFERENCES

##### Definitions

Debt § 11401

Family allowance § 38

Property § 62

Wage claim § 11402

#### § 11421. Immediate payment of priority debts

11421. As soon as the personal representative has sufficient funds, after retaining sufficient funds to pay expenses of administration and debts owed to the United States or to this state that have preference under the laws of the United States or of this state, the personal representative shall pay the following debts:

(a) Funeral expenses.

(b) Expenses of last illness.

- (c) Family allowance.
- (d) Wage claims.

**Comment.** Section 11421 restates the first portion of former Section 951, with the addition of the reference to other debts given preference by federal or state law. See, e.g., *Estate of Muldoon*, 128 Cal. App. 2d 284, 275 P.2d 597 (1954) (federal preference); *Estate of Jacobs*, 61 Cal. App. 2d 152, 142 P.2d 454 (1943) (state preference). Section 11421 is an exception to the rule of Section 11422 (payment of debts on court order) in that payment under Section 11421 is required even though the court has not ordered payment.

#### CROSS-REFERENCES

##### Definitions

- Debt § 11401
- Family allowance § 38
- Personal representative § 58
- Wage claim § 11402

### § 11422. Payment of debts on court order

11422. (a) Except as provided in Section 11421, the personal representative is not required to pay a debt until payment has been ordered by the court.

(b) On the settlement of any account of the personal representative after the expiration of four months after the date letters are first issued to a general personal representative, the court shall order payment of debts, as the circumstances of the estate permit. If property in the estate is insufficient to pay all of the debts, the order shall specify the amount to be paid to each creditor.

(c) If the estate will be exhausted by the payment ordered, the account of the personal representative constitutes a final account, and notice of hearing shall be the notice given for the hearing of a final account. The personal representative is entitled to a discharge when the personal representative has complied with the terms of the order.

(d) Nothing in this section precludes settlement of an account of a personal representative for payment of a debt made without prior court authorization.

**Comment.** Subdivision (a) of Section 11422 restates the last portion of former Section 951 without substantive change. Subdivisions (b) and (c) restate the first, second, and fourth sentences of former Section 952 without substantive change. Subdivision (d) is new.

Section 11422 makes clear that the notice of hearing of an account that will result in the estate being exhausted must comply with the requirements for notice of hearing of a final account. See Section 926 (final account). Discharge may be obtained by court order. Section 1066 (order of discharge).

For approval of the personal representative's account where payment is made without prior court order, see Sections 929 (accounts) and 9154 (waiver of formal defects).

#### CROSS-REFERENCES

##### Definitions

Debt § 11401

General personal representative § 58

Personal representative § 58

Property § 62

Settlement of account § 929

Waiver of formal defects § 9154

### § 11423. Interest

11423. (a) Interest accrues on a debt from the date the court orders payment of the debt until the date the debt is paid. Interest accrues at the legal rate on judgments.

(b) Notwithstanding subdivision (a), in the case of a debt based on a written contract, interest accrues at the rate and in accordance with the terms of the contract. The personal representative may, by order of the court, pay all or part of the interest accumulated and unpaid at any time when there are sufficient funds, whether the debt is then due or not.

(c) Notwithstanding subdivision (a), in the case of a debt for unpaid taxes or any other debt for which interest is expressly provided by statute, interest accrues at the rate and in accordance with the terms of the statute.

**Comment.** Section 11423 supersedes former Section 733. The legal rate of interest on judgments is provided in Code of Civil Procedure Section 685.010. For special statutory rates of interest, see, e.g., Rev. & Tax. Code §§ 19269 (adjusted annual rate under Personal Income Tax Law), 6591.5 (modified adjusted rate under Sales and Use Tax Law). In the case of a debt reduced to judgment, interest commences on entry of the judgment. Code Civ. Proc. § 685.020.

#### CROSS-REFERENCES

##### Definitions

Debt § 11401

Personal representative § 58

**§ 11424. Enforcement of order for payment**

11424. (a) The personal representative shall pay a debt to the extent of the order for payment of the debt, and is liable personally and on the bond, if any, for failure to make the payment.

(b) An order for payment of a debt may be enforced in the same manner as enforcement of a money judgment under the Enforcement of Judgments Law.

**Comment.** Section 11424 restates former Section 954 without substantive change. For provisions on abatement of devises, see Sections 750-753.

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

**§ 11425. Payment of debt not due**

11425. If a creditor whose debt is not due waives interest for the time until the debt is due, the creditor is entitled to payment of the debt.

**Comment.** Section 11425 restates the second sentence of former Section 953 without substantive change.

CROSS-REFERENCES

Definitions

Debt § 11401

**§ 11426. Trust for installment or contingent debt**

11426. (a) Notwithstanding any other statute, the court may in its discretion appoint a trustee to whom payment of a debt that is contingent or is payable in installments shall be made, with the direction that the trustee invest the payment in investments that would be proper for a personal representative or as authorized by the court. The court in determining the amount of the payment shall compute the present value of the debt, giving consideration to a reasonable interest rate on the amount to be invested.

(b) The trustee shall pay the debt as ordered by the court. On completion of payment, any excess in possession of the trustee shall be paid or distributed in accordance with the order for distribution.

**Comment.** Section 11426 restates the first paragraph of former Section 953.1, authorizing investments that would be proper for a personal representative rather than for a savings bank.

## CROSS-REFERENCES

## Definitions

Debt § 11401

Personal representative § 58

**§ 11427. Disputed and contingent debts**

11427. Except as otherwise provided in this part, if a debt is not due or is contingent, or if a claim is disputed, the amount of the debt or claim or the part that would be payable if the debt were due or absolute or the claim established, shall be paid into court. The amount paid into court shall remain there, to be paid to the creditor when the debt is due or absolute or the claim is established or, if the claim is not established, to be paid or distributed as the circumstances of the estate require.

**Comment.** Section 11427 restates the first sentence of former Section 953 without substantive change. Payment into court under this section is subject to the general provisions of Section 11420 relating to priority of payment. If the estate is insolvent, payment may not be made under this section unless payment of proportionate shares is ordered. For other provisions relating to payment of installment and contingent debts and debts not yet due, see Sections 11425 (payment of debt not due) and 11426 (trust for installment or contingent debt).

## CROSS-REFERENCES

## Definitions

Claim § 9000

Debt § 11401

**§ 11428. Deposit for missing creditor**

11428. (a) If an estate is in all other respects ready to be closed, and it appears to the satisfaction of the court, on affidavit or evidence taken in open court, that a debt has not been and cannot be paid because the creditor cannot be found, the court or judge shall make an order fixing the amount of the payment and directing the personal representative to deposit the payment with the county treasurer of the county in which the proceeding is pending.

(b) The county treasurer shall give a receipt for the deposit, for which the county treasurer is liable on the official bond. The receipt shall be treated by the court or judge in favor of the personal representative with the same force and effect as if executed by the creditor.

(c) A deposit with the county treasurer under the provisions of this section shall be received, accounted for, and disposed of as provided by Section 1444 of the Code of Civil Procedure. A deposit in the State Treasury under the provisions of this section shall be deemed to be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

**Comment.** Section 11428 restates former Section 738 without substantive change. The amount of the deposit under this section includes interest on the debt from the date payment was ordered. Section 11423 (interest).

#### CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Debt § 11401

Personal representative § 58

### § 11429. Unpaid creditor

11429. (a) Where the accounts of the personal representative have been settled and an order made for the payment of debts and distribution of the estate, a creditor who is not paid has no right to require contribution from creditors who are paid or from distributees.

(b) Nothing in this section precludes recovery against the personal representative personally or on the bond, if any, by a creditor who is not paid.

**Comment.** Section 11429 supersedes former Section 955.

#### CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

### CHAPTER 3. ALLOCATION OF DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE

#### § 11440. When allocation may be made

11440. If it appears that a debt of the decedent has been paid or is payable in whole or in part by the surviving spouse, or that a debt of the surviving spouse has been paid or is payable in whole or in part from property in the decedent's estate, the personal representative, the surviving spouse, or a beneficiary may, at any time before an order for final distribution is made, petition for an order to allocate the debt.

**Comment.** Section 11440 combines former Section 980(a) with portions of former Sections 704.2 and 704.4 (claim by surviving spouse), but allows the petition to be made at any time before the court order for final distribution. Under this section a petition may be made for allocation of a debt of the decedent or of the surviving spouse even though the creditor has not made a claim and the debt has not been established under Part 4 (commencing with Section 9000). In this respect, the term "debt" is used in this section more broadly than the definition in Section 11401 ("debt" defined).

#### CROSS-REFERENCES

##### Definitions

Beneficiary § 24

Personal representative § 58

Surviving spouse § 78

#### § 11441. Petition for allocation

11441. The petition shall include a statement of all of the following:

(a) All debts of the decedent and surviving spouse known to the petitioner that are alleged to be subject to allocation and whether paid in whole or part or unpaid.

(b) The reason why the debts should be allocated.

(c) The proposed allocation and the basis for allocation alleged by the petitioner.

**Comment.** Section 11441 combines former Section 980(b) and portions of former Sections 704.2 and 704.4. The term "debt" is used in this section more broadly than the definition in Section 11401 ("debt" defined). See Comment to Section 11440.

## CROSS-REFERENCES

## Definitions

Surviving spouse § 78

**§ 11442. Inventory of property of surviving spouse**

11442. If it appears from the petition that allocation would be affected by the value of the separate property of the surviving spouse and any community property and quasi-community property not administered in the estate and if an inventory and appraisal of the property has not been provided by the surviving spouse, the court shall make an order to show cause why the information should not be provided.

**Comment.** Section 11442 restates former Section 980(c) without substantive change and supersedes portions of former Sections 704.2 and 704.4.

## CROSS-REFERENCES

## Definitions

Community property § 28

Property § 62

Quasi-community property § 66

Surviving spouse § 78

**§ 11443. Notice of hearing**

11443. The petitioner shall give notice of the hearing as provided in Section 1220, together with a copy of the petition and the order to show cause, if any.

**Comment.** Section 11443 supersedes former Section 980(d) and incorporates general service of notice procedures.

**§ 11444. Allocation**

11444. (a) The personal representative and the surviving spouse may provide for allocation by agreement and, on a determination by the court that the agreement substantially protects the rights of interested persons, the allocation provided in the agreement shall be ordered by the court.

(b) In the absence of an agreement, each debt of the decedent shall be apportioned based on all of the property of the spouses liable for the debt at the date of death that is not exempt from enforcement of a money judgment, in the proportion determined by the value of the property less

any liens and encumbrances at the date of death, adjusted to take into account any right of reimbursement that would have been available if the property were applied to the debt at the date of death, and the debt shall be allocated accordingly.

**Comment.** Section 11444 combines former Section 980(e) and a portion of former Section 713.5. Section 11444 makes clear that allocation of liability is to be based on rules applicable to liability of marital property for debts during marriage. See Civil Code Sections 5120.010-5122.

#### CROSS-REFERENCES

##### Definitions

Debt § 11401

Interested person § 48

Personal representative § 58

Property § 62

Surviving spouse § 78

### § 11445. Order implementing allocation

11445. On making a determination as provided in this chapter, the court shall make an order that:

(a) Directs the personal representative to make payment of the amounts allocated to the estate by payment to the surviving spouse or creditors.

(b) Directs the personal representative to charge amounts allocated to the surviving spouse against any property or interests of the surviving spouse that are in the possession or control of the personal representative. To the extent that property or interests of the surviving spouse in the possession or control of the personal representative are insufficient to satisfy the allocation, the court order shall summarily direct the surviving spouse to pay the allocation to the personal representative.

**Comment.** Section 11445 combines former Section 980(f) and a portion of former Section 713.5.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

Surviving spouse § 78

**§ 11446. Funeral expenses and last illness expenses**

11446. Notwithstanding any other statute, funeral expenses and expenses of last illness shall be charged against the estate of the decedent and shall not be allocated to, or charged against the community share of, the surviving spouse, whether or not the surviving spouse is financially able to pay the expenses and whether or not the surviving spouse or any other person is also liable for the expenses.

**Comment.** Section 11446 restates former Section 951.1 without substantive change.

**CROSS-REFERENCES****Definitions**

Person § 56

Surviving spouse § 78

## CONFORMING REVISIONS

*Note.* This portion of the report sets out the text of selected conforming revisions needed to implement the recommendation. The bill introduced to implement the recommendation should be consulted for the text of other conforming revisions. Comments to the other conforming revisions may be found in the Appendix to this report.

### **Code of Civil Procedure § 353 (amended). Statute of limitations**

SEC. \_\_\_\_\_. Section 353 of the Code of Civil Procedure is amended to read:

353. If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his representatives, after the expiration of that time, and within six months from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives, after the expiration of that time, and within one year after the ~~issuing of letters testamentary or of administration~~ *date of death*, or an action against the estate provided for by subdivision (b) of Section 385 of the Code of Civil Procedure, subdivision (b) of Section 707 of the Probate Code or Section 721 of the Probate Code may be commenced within one year after the expiration of the time otherwise limited for the commencement thereof.

**Comment.** Section 353 is amended to limit an action to the later of one year after the decedent's death or the limitation period otherwise applicable. The former provision for tolling until one year after issuance of letters is made unnecessary by the rule that the filing of a claim tolls the statute of limitations. Prob. Code § 9253 (effect of statute of limitations).

**Probate Code § 58 (amended). Personal representative**

SEC. \_\_\_\_\_. Section 58 of the Probate Code is amended to read:

58. (a) “Personal representative” means executor, administrator, administrator with the will annexed, special administrator, successor personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person’s status.

(b) *“General personal representative” excludes a special administrator, except a special administrator having the powers, duties, and obligations of a general personal representative under Section 465.*

**Comment.** Subdivision (b) of Section 58 is drawn from Section 465 and former Section 700, and from Section 1-201 (3) of the Uniform Probate Code. The defined term 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), 9203 (distribution before claim), and 11422 (payment of debts on court order).

**Probate Code § 200 (part heading) (amended)**

SEC. \_\_\_\_\_. The heading of Part 4 (commencing with Section 200) of Division 2 of the Probate Code is amended to read:

**PART 4. ESTABLISHING AND REPORTING  
FACT OF DEATH**

**Probate Code § 215 (added). Reporting fact of death**

SEC. \_\_\_\_\_. Chapter 3 (commencing with Section 215) is added to Part 4 of Division 2 of the Probate Code, to read:

**CHAPTER 3. REPORTING FACT OF DEATH**

**§ 215. Report to Direct of Health Services**

215. (a) If the decedent has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) or Chapter 8

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

**Comment.** Section 215 restates subdivision (b) and a portion of subdivision (a) of former Section 700.1, omitting notice by the personal representative. Notice by the personal representative is required under Section 9202 (claim by Director of Health Services).

## CROSS-REFERENCES

## Definitions

Beneficiary § 24

Property § 62

Mailing § 1215

**Probate Code § 303 (amended). Disqualification of judge**

SEC. \_\_\_\_\_. Section 303 of the Probate Code is amended to read:

303. (a) No will shall be admitted to probate or letters of administration granted or other proceeding had (except the ordering of a transfer as ~~hereinafter~~ provided *in subdivision (b)*), before any judge who is interested as an heir of the decedent, or as a legatee or devisee under a will, or when ~~he~~ *the judge* is named as executor or trustee in the will, or *a creditor* or is in any other manner interested or disqualified from acting. A judge who was a witness to a will is disqualified from acting in any proceeding prior to and including the admission of the will to probate or in any proceeding involving its validity or interpretation.

(b) When a petition is filed praying for the admission of a will to probate or for the granting of letters of administration, or when proceedings are pending with respect to an estate, and there is no judge of the superior court in that county qualified to act, the court or judge must make an order transferring the proceedings to the superior court of an adjoining county, and the clerk, *on receipt of the*

*clerk's fee*, must transmit to the clerk of the court to which the proceedings are transferred a certified copy of the order together with all papers in the proceedings on file in ~~his~~ *the clerk's* office; and thereafter the court to which the proceedings are transferred shall exercise the same jurisdiction over the estate and all matters relating to the administration thereof as if it had original jurisdiction. But such transfer shall not be ordered when some other judge qualified to act is assigned by the chairman of the judicial council to sit in the county where such proceedings are pending, to hear such proceedings.

**Comment.** Section 303 is amended to make clear that a judge who is a creditor of an estate is disqualified from acting in the proceeding. This supersedes former Section 704 (claim by judge). The other changes in the section are technical.

**Probate Code §§ 700-738 (repealed). Presentation and payment of claims**

SEC. \_\_\_\_\_. Chapter 12 (commencing with Section 700) of Division 3 of the Probate Code is repealed.

**Comment.** For disposition of the provisions of this chapter, see the Appendix to this report.

**Probate Code §§ 950-956 (repealed). Payment of debts, expenses, and charges**

SEC. \_\_\_\_\_. Article 4 (commencing with Section 950) of Chapter 15 of Division 3 of the Probate Code is repealed.

**Comment.** For disposition of the provisions of this article, see the Appendix to this report.

**Probate Code § 980 (repealed). Apportionment of taxes**

SEC. \_\_\_\_\_. Article 5 (commencing with Section 980) of Chapter 15 of Division 3 of the Probate Code is repealed.

**Comment.** For disposition of Section 980, see the Appendix to this report.

**Revenue & Taxation Code § 19265 (amended)**

SEC. \_\_\_\_\_. Section 19265 of the Revenue and Taxation Code is amended to read:

19265. Every fiduciary who pays in whole or in part any claim, other than claims for taxes, expenses of administration, funeral expenses, expenses of last illness, ~~and~~ family allowance, *or wage claims as defined in Section 11402 of the Probate Code*, against the person, estate, or trust for whom or for which ~~he~~ *the fiduciary* acts, or who makes any distribution of the assets of the person, estate, or trust, before ~~he~~ *satisfies and pays satisfaction and payment* of taxes, interest, and penalties, except penalties due from a decedent, which are imposed by this part on the person, estate, or trust for whom or for which ~~he~~ *the fiduciary* acts, or which constitute a claim against ~~such~~ *the* person, estate, or trust, or which are a lien or charge on or against the assets of ~~such~~ *the* person, estate, or trust, is personally liable to the State for the taxes, interest, and penalties to the extent of ~~such~~ *the* payments and distributions.

**Comment.** Section 19265 is amended for consistency with probate law. See Prob. Code § 11421 (immediate payment of priority debts). The other changes are technical.



STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*relating to*

Notice in Probate Proceedings

January 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 Notice in Probate Proceedings*, 19 Cal. L. Revision Comm'n Reports 357 (1988).

**CALIFORNIA LAW REVISION COMMISSION**

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TIM PAONE

February 20, 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 code to 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 general notice and procedural provisions (Probate Code Sections 1200-1242).

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

Respectfully submitted,

Arthur K. Marshall  
*Chairperson*



# RECOMMENDATION

*relating to*

## NOTICE IN PROBATE PROCEEDINGS

### Introduction

This recommendation deals with the notice required at stages of estate administration following the opening of probate.<sup>1</sup> The goal of the proposed law is to provide a consistent set of rules relating to notice, to the extent practicable, and to consolidate these general notice provisions in one place in the Probate Code.<sup>2</sup>

The proposed law thus includes miscellaneous provisions of a general nature, specific rules governing the different manners of notice, and provisions governing citations, requests for special notice, and the manner of making proof of notice.

The general rules concerning the manner of giving notice by personal delivery, by mail, or by posting are set out in one part of the code and then specifically incorporated as needed by each relevant section.<sup>3</sup> The Probate Code currently uses this approach in many instances, but the general notice provisions also purport to list the sections where notice is to be given by posting or by mailing.<sup>4</sup> In order to avoid burdening the general notice

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1. The notice required to be given upon commencement of a proceeding for the probate of a will or administration of an estate will be the subject of a separate recommendation.

2. The proposed law does not attempt to revise the provisions relating to publication of notice.

3. As a general rule, the general notice provisions are not applicable to guardianships and conservatorships or to trusts. See Prob. Code §§ 1200(c)-(d), 1200.5(d)-(e).

4. See Prob. Code §§ 1200 (posting), 1200.5 (mailing). The scheme under existing law is confused because of an incomplete revision occurring in 1980. See 1980 Cal. Stat. ch. 955, §§ 29, 31. The provisions relating to notice by mail were split out of Section 1200 into a new Section 1200.5. However, not all references to the mailed notice provisions formerly appearing in Section 1200 were revised to refer to Section 1200.5. For example, the provisions relating to requests for special notice still refer to Section 1200 whereas they should refer to Section 1200.5. See Prob. Code § 1202. The proposed law corrects these defects in existing law.

provisions with references to a multitude of other sections, the proposed law relies on incorporation by reference. As under existing law,<sup>5</sup> the proposed law also provides that if the manner of notice is not specified, notice is to be given by mail.

### **Manner of Mailing Notice of Hearing in Estate Proceedings**

Where notice of a hearing in an estate proceeding is to be given by mail, the proposed law requires notice to be sent at least 15 days before the date set for the hearing. This increases the generally applicable period of notice from 10 to 15 days.<sup>6</sup> As under existing law,<sup>7</sup> notice is given to the personal representative, to any person who has given notice of appearance in the estate proceeding, and to any person who has requested special notice.

### **Mailing in General**

The proposed law contains a new section that provides for mailing by first class mail<sup>8</sup> within the United States and by airmail outside the country.<sup>9</sup> Mailing is complete when the notice or other paper is deposited in the mail; the applicable period of notice is not extended where a notice or other paper is mailed.<sup>10</sup> Where a notice or other paper is required or permitted to be mailed, it may be delivered personally under the proposed law.<sup>11</sup> The proposed law also

5. Prob. Code § 1200.5(a)(20).

6. See Prob. Code § 1200.5(b).

7. Prob. Code § 1200.5(b).

8. Under the proposed law, first class mail includes certified, registered, and express mail. *Cf.* Prob. Code § 5 (mailing by certified mail complies with requirement of registered mail).

9. This generalizes a provision in the guardianship and conservatorship law. See Prob. Code § 1465.

10. The proposed law makes clear that the period of notice is not extended when notice is given by mail, as it would be under Code of Civil Procedure Section 1013. This is consistent with the guardianship and conservatorship law. See Prob. Code § 1465(b). However, the court has authority to require that notice be given for a longer period. In addition, where existing law provides for 10 days' notice by mail, the proposed law provides for 15 days' notice.

11. This provision is generalized from the guardianship and conservatorship law. See Prob. Code § 1466.

provides as a back-up rule that a notice or other paper may be mailed where a statute does not provide a specific means of service. This provision is consistent with the back-up rule applicable to notice of hearing.<sup>12</sup>

### **Manner of Posting Notice of Hearing**

As in the case of mailed notice, where notice of a hearing is required to be posted, the proposed law increases the notice period from 10 to 15 days.<sup>13</sup> In other respects, the proposed law continues the substance of existing law relating to posting.

### **Citations**

The proposed law continues the general law relating to citations. However, the proposed law does not continue the existing rule that a citation is to be used where personal notice is required and no mode of notice is prescribed by the Probate Code.<sup>14</sup> Under the proposed law, where notice is required to be given by citation, the relevant section will so provide. If a section is silent on the manner of notice of a hearing, notice is given by mail.

### **Request for Special Notice**

Like existing law,<sup>15</sup> the proposed law permits interested persons, including devisees, heirs, creditors, trust beneficiaries and others, to request special notice of estate proceedings. Unlike existing law, however, the proposed law does not contain a specific list of all the matters of which special notice may be requested.<sup>16</sup> Rather, the proposed

12. See Prob. Code § 1200.5(a) (20).

13. See Prob. Code § 1200(a) (4).

14. Prob. Code § 1206 (first sentence).

15. See Prob. Code §§ 1202-1202.5.

16. Probate Code Section 1202 provides that notice may be requested of any of the petitions or accounts "mentioned in Section 1200." Section 1202 was not amended to reflect the amendment of Section 1200 and enactment of Section 1200.5 in 1980. See 1980 Cal. Stat. ch. 955, §§ 29, 31. Thus, on its face, Section 1202 permits a request for special notice only in cases where notice is to be posted. It is assumed that this was not the intention of the 1980 legislation. The situation is further confused in existing law because various other sections located elsewhere in the code provide for giving notice to those who have made a request for special notice. See, e.g., Prob. Code §§ 591.1, 926.

law permits notice to be requested of any petition filed in an estate proceeding, an inventory and appraisal or an objection thereto, a personal representative's account, or a report of status of administration. The proposed law also makes clear that the person requesting special notice may request notice of all matters by reference to the general section or may request notice of specified matters.

The proposed law contains a new provision drawn from the guardianship and conservatorship law<sup>17</sup> permitting a request for special notice to be modified or withdrawn in the same manner provided for making an initial request.

### **Proof of Giving Notice**

Like existing law,<sup>18</sup> the proposed law requires proof of giving notice of a hearing to be made. The proposed law also provides general rules governing the manner of proof of mailing, publication, posting, and personal delivery.<sup>19</sup> Existing law provides that proof of notice is to be made at the hearing.<sup>20</sup> The proposed law also permits proof of notice to be made before the hearing.<sup>21</sup>

### **Waiver of Notice**

The proposed law contains a new provision permitting the waiver of notice by a writing signed by the person who would otherwise be required to be given notice, or the person's attorney, and filed in the proceeding.<sup>22</sup> The provision also makes clear that a guardian ad litem, guardian, conservator, trustee, or other fiduciary may waive notice.

### **Notice to Known Heirs or devisees**

The proposed law sets out new rules governing who is to be given notice where notice is required to be given to known heirs or devisees. Where an estate is intestate, notice

17. Prob. Code § 2701(a).

18. See, e.g., Prob. Code §§ 333(c), 584.3(d), 852, 1200(b), 1200.5(c), 1202.5.

19. These rules are drawn from guardianship and conservatorship law. See Prob. Code § 1468.

20. Prob. Code §§ 1200(b), 1200.5(c).

21. This codifies existing practice. See 1 California Decedent Estate Practice § 6.37 (Cal. Cont. Ed. Bar 1986).

22. This provision is drawn from Section 1-402 of the Uniform Probate Code (1982).

is given to the heirs named in the petition for letters of administration and to any additional heirs who become known to the person giving notice before notice is given. Where an estate is testate, notice is given to the devisees named in the petition for probate of the will and to any additional devisees who become known to the person giving notice before notice is given. However, if a person's interest in the estate has been satisfied pursuant to a court order or as evidenced by the person's written acceptance of satisfaction, no notice is required to be given under this general rule.

### **Notice to Trust Beneficiaries Where Personal Representative and Trustee are Same Person**

As a general rule, the person named as trustee of a testamentary trust is given notice of estate proceedings, rather than the beneficiaries of the trust.<sup>23</sup> However, in order to avoid a potential conflict of interest where the personal representative and the trustee are the same person, the proposed law provides for notice to be given to other persons. If the trust has a cotrustee who is not a personal representative, the conflict is avoided by giving notice to the cotrustee. In other cases, notice is to be given to either (1) the persons who, under the terms of the trust, would be presently entitled to payments if the trust were in effect or (2) if there are no such persons, to the persons who, under the terms of the trust, would be entitled to a distribution if the trust were terminated.

### **Miscellaneous General Provisions**

The proposed law restates several existing general notice provisions,<sup>24</sup> and develops several new rules from existing statutes, such as provisions (1) dispensing with the need to give notice to oneself or to a person joining in the petition<sup>25</sup>

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23. See Prob. Code § 34 (defining "devisee" in the case of a trust to mean the trustee and not the trust beneficiaries).

24. E.g., the provisions permitting the court to require further or additional notice (see Prob. Code § 1204), dispensing with the need to give further notice of a continued or postponed hearing (Prob. Code § 1205), and governing notice in cases involving the parent-child relationship (Prob. Code § 1201).

25. See, e.g., Prob. Code §§ 851, 980(d), 1000, 1020, 1200.5.

and (2) permitting the court to shorten the time for giving notice on a showing of good cause.<sup>26</sup>

### Conforming Revisions

This recommendation also contains general provisions relating to rules of procedure, orders, and appeals. For the most part, these provisions merely renumber existing Probate Code Sections 1230-1242 which need to be moved in order to make room for the new provisions relating to notice.<sup>27</sup>

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26. See, e.g., Prob. Code §§ 771, 860, 1004, 1462(a), 17106. This rule does not apply to a petition for probate, for letters of administration, or in proceedings relating to the transfer of property claimed to belong to the decedent or other person, or to notice that is required to be given by publication.

27. Some new rules are generalized from provisions found in other sections. For example, a provision requiring papers to be verified, except as otherwise provided, is generalized from Probate Code Sections 467, 511, 541(b), 550, 578, 578a, 584.3(a), 584.5, 604, 608, 609, 613, 615, 705, 707, 718.5, 721(b), 755, 831, 841, 842.1, 851, 851.5, 921, 922, 1025.5, 1064, 1068, 1190, and 1354. A provision requiring the clerk to set matters for hearing is generalized from Probate Code Sections 327, 441, 578, 578a, 584, 584.2, 584.3, 584.5, 591.1, 591.7, 605, 643, 653, 662, 718.5, 755, 758, 771, 771.3, 810, 831, 841, 851, 851.5, 854, 1000, 1004, 1041, 1068, 1102, 1172, 1191, 1200, and 1355.

# **OUTLINE OF PROPOSED LEGISLATION**

## **DIVISION 3. ADMINISTRATION OF ESTATES OF DECEDENTS**

### **CHAPTER 22. NOTICES**

#### **Article 1. General Notice Provisions**

- § 1200. Application of chapter
- § 1201. Notice not required to be given to oneself or persons joining in petition
- § 1202. Additional notice on court order
- § 1203. Order shortening time
- § 1204. Waiver of notice
- § 1205. Notice of continued or postponed hearing
- § 1206. Notice to known heirs or devisees
- § 1207. Exceptions to notice requirement involving parent-child relationship
- § 1208. Notice to trust beneficiaries where personal representative and trustee are same person
- § 1209. Notice to State of California

#### **Article 2. Mailing in General**

- § 1215. Manner of mailing; when mailing complete
- § 1216. Personal delivery instead of mailing
- § 1217. Mailed notice where no other manner of notice specified

#### **Article 3. Mailing Notice of Hearing**

- § 1220. Manner of mailing notice of hearing

#### **Article 4. Posting of Notice of Hearing**

- § 1230. Manner of posting notice of hearing

#### **Article 5. Citations**

- § 1240. Issuance of citation
- § 1241. Contents of citation
- § 1242. Service of citation

#### **Article 6. Request for Special Notice**

- § 1250. Request for special notice
- § 1251. Modification or withdrawal of request for special notice
- § 1252. Notice to be given to person requesting special notice

#### **Article 7. Proof of Giving of Notice**

- § 1260. Proof of giving notice of hearing required; conclusiveness of order on proof of giving notice
- § 1261. Proof of mailing
- § 1262. Proof of publication
- § 1263. Proof of posting
- § 1264. Proof of personal delivery
- § 1265. Proof by testimony at hearing

**CHAPTER 22.5. ORDERS AND PROCEDURE****Article 1. Rules of Procedure**

- § 1280. Trials
- § 1281. New trials
- § 1282. Costs
- § 1283. Rules of practice
- § 1284. Verification required
- § 1285. Clerk to set matter for hearing
- § 1286. Continuance or postponement
- § 1287. Hearing and order
- § 1288. United States as interested person
- § 1289. Guardian or conservator acting for ward or conservatee

**Article 2. Orders**

- § 1290. Recital of jurisdictional facts
- § 1291. Entry and filing
- § 1292. Recordation of order affecting real property
- § 1293. Delivery to county treasurer

**Article 3. Appeals**

- § 1297. Appealable orders
- § 1298. Reversal of order appointing personal representative
- § 1299. Judgment roll

## **DIVISION 3. ADMINISTRATION OF ESTATES OF DECEDENTS**

### **CHAPTER 22. NOTICES**

**Probate Code §§ 1200-1242 (repealed). Notices, orders and procedure**

**SEC. \_\_\_\_.** Chapter 22 (commencing with Section 1200) of Chapter 22 of Division 3 of the Probate Code is repealed.

**Comment.** For the disposition of the repealed sections, see the Appendix to this report.

**Probate Code §§ 1200-1265 (added). Notices**

**SEC. \_\_\_\_.** Chapter 22 (commencing with Section 1200) is added to Division 3 of the Probate Code, to read:

### **CHAPTER 22. NOTICES**

#### **Article 1. General Notice Provisions**

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

**1200.** (a) Except as provided in subdivisions (b) and (c), this chapter governs notice required or permitted under this code.

(b) This chapter does not apply to proceedings under Division 4 (commencing with Section 1400) (guardianship and conservatorship) or Division 9 (commencing with Section 15000) (Trust Law), except that Sections 1201, 1202, 1204, 1205, 1207, 1240, 1241, and 1242 apply to proceedings under any of the divisions of this code.

(c) This chapter does not apply to notice under a particular provision to the extent that the particular provision is inconsistent with this 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).

**§ 1201. Notice not required to be given to oneself or persons joining in petition**

1201. If a person is required to give notice, the person required to give the notice need not give the notice to himself or herself or to any other person who joins in the petition.

**Comment.** The part of Section 1201 relating to giving notice to oneself is drawn from other provisions in the Probate Code. See, e.g., Sections 851, 980(d), 1000, 1020, 6527(c). The part relating to giving notice to another person who joins in a petition is drawn from subdivision (b) of former Section 1200.5 (notice to coexecutor or coadministrator not petitioning). See also Section 1208 (notice where personal representative and trustee are same person).

**§ 1202. Additional notice on court order**

1202. Where the court determines that the notice otherwise required is insufficient in the particular circumstances, the court may require that further or additional notice, including a longer period of notice, be given.

**Comment.** Section 1202 restates former Section 1204 without substantive change, using language drawn from subdivision (b) of Section 1462 (guardianship and conservatorship). This section also generalizes a provision formerly found in Section 277(e).

**§ 1203. Order shortening time**

1203. (a) Subject to subdivisions (b) and (c), the court may, for good cause, shorten the time for giving a notice of hearing.

(b) The court may not shorten the time for giving the notice of hearing required by Section 328, 441, or 9861.

(c) Unless the particular provision governing the publication of notice of hearing otherwise provides, the court may not shorten the time for publication of notice of hearing.

**Comment.** Section 1203 is drawn from Sections 1462(a) (guardianship and conservatorship) and 17106 (trust law) and generalizes former provisions. See, e.g., former Sections 584.2, 771, 860, 1004.

Subdivision (b) excepts certain notices from the general authority of the court to shorten the notice period. See Sections 328 (petition for probate of will), 441 (petition for letters of administration), 9861 (transfer of property claimed to belong to decedent or other person).

Subdivision (c) makes clear that Section 1203 does not apply to publication of notice under this code. Where the court has authority to shorten the period of publication or to order fewer publications, the particular section providing the manner of publication will expressly so provide.

#### **§ 1204. Waiver of notice**

**1204.** A person, including a guardian ad litem, guardian, conservator, trustee, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

**Comment.** Section 1204 is drawn from Section 1-402 of the Uniform Probate Code (1982). As to the power of a guardian or conservator to waive any process, notice, or order to show cause on behalf of the ward or conservatee, see Section 1289.

#### **§ 1205. Notice of continued or postponed hearing**

**1205.** If a hearing is continued or postponed, no further notice of the continued or postponed hearing is required unless ordered by the court.

**Comment.** Section 1205 is drawn from part of former Section 1205. As to the court's authority to continue or postpone a hearing, see Section 1286.

#### **§ 1206. Notice to known heirs or devisees**

**1206.** (a) Subject to subdivision (b), where notice is required to be given to known heirs or devisees, notice shall be given to the following persons:

(1) If the estate is an intestate estate, to the heirs named in the petition for letters of administration and to any additional heirs who become known to the person giving the notice prior to the giving of the notice.

(2) If the estate is a testate estate, to the devisees named in the petition for probate of the will and to any additional devisees who become known to the person giving the notice prior to the giving of the notice.

(b) Notice need not be given to a person under subdivision (a) if the person's interest has been satisfied pursuant to court order or as evidenced by the person's written acceptance.

**Comment.** Section 1206 is new and is designed to make clear the meaning of "known heirs or devisees," or similar terms, used in various provisions of the Probate Code. This section codifies existing practice as to the giving of notice.

Section 1206 governs who must be given notice when the statute requires that notice be given to known heirs or devisees. The court may require additional notice. See Section 1202. The period and manner of notice are governed by the provision that incorporates this section or by the general provision that requires notice by mail under Section 1220 if no other method is specified in the provision requiring the hearing. See Section 1220(a).

#### **§ 1207. Exceptions to notice requirement involving parent-child relationship**

1207. (a) Subject to subdivision (b), where notice is required to be given to a decedent's beneficiaries, devisees, or heirs, notice need not be given to a person who, because of a possible parent-child relationship between a stepchild and a stepparent or between a foster child and a foster parent, may be (1) an heir of the decedent or (2) a member of a class to which a devise is made.

(b) Subdivision (a) does not apply where the person required to give the notice has actual knowledge of facts that a person would reasonably believe give rise under Section 6408 to the parent-child relationship between the stepchild and the stepparent or between the foster child and the foster parent.

**Comment.** Section 1207 restates former Section 1201 without substantive change. A stepchild or foster child who is not required to be given notice because of Section 1207 may request special notice under Article 6 (commencing with Section 1250).

**§ 1208. Notice to trust beneficiaries where personal representative and trustee are same person**

1208. (a) Except as provided in subdivision (b), if notice is required to be given to a trust or trustee, notice to trust beneficiaries is not required.

(b) Subject to subdivision (c), where the personal representative and the trustee, or the person named as trustee, are the same person, notice shall be given to (1) the persons who, under the terms of the trust, would be presently entitled to payments if the trust were in effect, or (2) if there are no such persons, to the persons who, under the terms of the trust, would be entitled to distributions if the trust were terminated at the time the notice is required to be given.

(c) Notice to trust beneficiaries is not required under subdivision (b) where the trust has more than one trustee and notice is given to a cotrustee who is not a personal representative.

**Comment.** Section 1208 is new. Subdivision (a) recognizes the general rule that notice is given to the trustee and not to the beneficiaries of the trust where notice is required to be given to devisees and a trust or trustee is a devisee. See Section 34 (trust beneficiaries are not devisees).

Subdivision (b) provides an exception to the general rule provided in subdivision (a). This exception recognizes that notice given by the personal representative to himself or herself as trustee would be meaningless and that, in some cases, the issue involved may present a conflict of interest between the interests of the personal representative and the interests of the trust beneficiaries.

Subdivision (c) makes clear that notice to trust beneficiaries under subdivision (b) is not required if there is a cotrustee who is independent of the estate administration.

**§ 1209. Notice to State of California**

1209. (a) Where notice is required to be given to the State of California, the notice shall be given to the Attorney General.

(b) Where notice is required to be given to the Attorney General, the notice shall be mailed to the Attorney General at the office of the Attorney General at Sacramento, California.

**Comment.** Subdivision (a) of Section 1209 is new. This section applies, for example, in a case where notice is required to be given to devisees under a will and the state is a devisee. In this case, the Attorney General is the proper recipient of the notice. This provision does not apply in a case where a specific provision requires notice to be given to some other officer. See, e.g., Section 700.1 (notice to Director of Health Services).

Subdivision (b) generalizes a provision of the second paragraph of Section 328.

## **Article 2. Mailing in General**

### **§ 1215. Manner of mailing; when mailing complete**

1215. Unless otherwise expressly provided:

(a) If a notice or other paper is required or permitted to be mailed to a person, notice shall be mailed as provided in this section or personally delivered as provided in Section 1216.

(b) The notice or other paper shall be sent by:

(1) First class mail if the person's address is within the United States. First class mail includes certified, registered, and express mail.

(2) Airmail if the person's address is not within the United States.

(c) The notice or other paper shall be deposited in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person to whom it is mailed.

(d) When the notice or other paper is deposited in the mail, mailing is complete and the period of notice is not extended.

**Comment.** Section 1215 is new and is drawn in part from Section 1465 (guardianship and conservatorship). This section also generalizes part of former Section 328.

Subdivision (d) makes clear that the applicable period of notice is not extended where a notice or other paper is mailed. A particular provision may provide a different rule. E.g., Section 10586 (notice of proposed action in independent administration).

**§ 1216. Personal delivery instead of mailing**

1216. (a) If a notice or other paper is required or permitted to be mailed to a person, it may be delivered personally to that person. Personal delivery as provided in this section satisfies a provision that requires or permits a notice or other paper to be mailed.

(b) Personal delivery pursuant to this section is complete when the notice or other paper is delivered personally to the person who is to receive it.

**Comment.** Section 1216 is new. Subdivision (a) is drawn from Section 1466 (guardianship and conservatorship). Subdivision (b) makes clear that personal delivery is complete when the notice or other paper is actually received.

**§ 1217. Mailed notice where no other manner of notice specified**

1217. If a notice or other paper is required to be served or otherwise given and no other manner of giving the notice or other paper is specified by statute, the notice or other paper shall be mailed or personally delivered as provided in this article.

**Comment.** Section 1217 is new. It provides a back-up manner of giving notice or serving other papers where no other manner is provided by statute.

**Article 3. Mailing Notice of Hearing****§ 1220. Manner of mailing notice of hearing**

1220. (a) Notice of a hearing shall be given as provided in this section in the following cases:

(1) Where another section so requires.

(2) Where notice of a hearing is required but no other period or manner of notice is prescribed by statute, unless the period or manner of notice is ordered by the court or judge.

(b) At least 15 days before the time set for the hearing, the petitioner or the person filing the report, account, or other paper shall cause notice of the time and place of the hearing to be mailed to the persons required to be given notice.

(c) Unless the section requiring notice specifies the persons to be given notice, notice shall be mailed to all of the following:

(1) The personal representative.

(2) All persons who have given notice of appearance in the estate proceeding, in person or by attorney. If the person appeared by attorney, the notice shall be mailed to the attorney.

(d) The notice shall be addressed to the person required to be given notice at his or her office or place of residence, if known, or, if neither address is known, to the person at the county seat where the proceedings are pending.

(e) Nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Article 6 (commencing with Section 1250).

(f) The court for good cause may dispense with the notice otherwise required to be given to a person under subdivision (b).

**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 specific provision that relates to the particular petition has been revised to include a specific requirement in that provision that notice of the 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. 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.

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.

#### **Article 4. Posting Notice of Hearing**

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

1230. Where notice of hearing is required to be posted as provided in this section:

(a) At least 15 days before the time set for the hearing, the clerk shall cause a notice of the time and place of the hearing to be posted at the courthouse of the county where the proceedings are pending. If court is held at a place other than the county seat, the notice may be posted either at the courthouse of the county where the proceedings are pending or at the building where the court is held.

(b) The posted notice of hearing shall state all of the following:

(1) The name of the estate.

(2) The name of the petitioner.

(3) The nature of the petition, referring to the petition for further particulars.

(4) The time and place of the hearing of the petition.

**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 203, 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).

## Article 5. Citations

### § 1240. Issuance of citation

1240. A citation may be issued by the clerk on the application of any party, without a court order, except in cases where an order is expressly required by law.

**Comment.** Section 1240 restates the first sentence of former Section 1207 without substantive change.

### § 1241. Contents of citation

1241. The citation shall be directed to the person to be cited, signed by the court clerk, and issued under the seal of the court. The citation shall contain the title of the proceeding, a brief statement of the nature of the proceeding, and a direction that the person cited appear at a time and place specified.

**Comment.** Section 1241 restates the second sentence of former Section 1206 without substantive change.

### § 1242. Service of citation

1242. The citation shall be served on the person cited in the same manner as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Except as otherwise provided by statute, the citation shall be served at least five days before its return day.

**Comment.** Section 1242 restates the second sentence of former Section 1207 without substantive change.

## Article 6. Request for Special Notice

### § 1250. Request for special notice

1250. (a) At any time after the issuance of letters, any person interested in the estate, whether as devisee, heir, creditor, beneficiary under a trust, or as otherwise interested, may, in person or by attorney, file with the court clerk, a written request for special notice.

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent.

(c) Special notice may be requested of any or all of the following matters:

(1) Petitions filed in the estate proceeding.

(2) Inventories and appraisements of the estate, including any supplemental inventories and appraisements.

(3) Objections to an appraisal made by the personal representative or probate referee.

(4) Accounts of a personal representative.

(5) Reports of status of administration.

(d) Special notice may be requested of any matter in subdivision (c) by describing it or of all the matters in subdivision (c) by referring generally to "the matters described in subdivision (c) of Section 1250 of the Probate Code" or by using words of similar meaning.

(e) A copy of the request shall be personally delivered or mailed to the personal representative or to the attorney for the personal representative. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received.

(f) When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service.

**Comment.** Section 1250 replaces parts of former Sections 1202 and 1202.5. If a request for special notice is made as provided in this section, notice is required to be given as provided in Section 1252.

Section 1250 abandons the approach of the former law which purported to list the petitions of which special notice might be requested. Instead, subdivision (c) of Section 1250 permits the person requesting special notice to request notice of the matters described in subdivision (c), which includes all petitions and specified additional matters. Subdivision (d) continues the option available under former Section 1202 which permitted the person requesting special notice to describe specifically those matters of which special notice is requested if the person did not wish to receive special notice of all matters.

Section 1250 corrects a serious defect in former Section 1202. Former Section 1202 provided for special notice of only those petitions mentioned in former Section 1200. But in 1980, provisions in former Section 1200 applying to notice by mail were split out of that section and added to the then

newly-enacted Section 1200.5. See 1980 Cal. Stat. ch. 955. Many sections containing cross-references to the mailed notice provisions of former Section 1200 were revised to refer to Section 1200.5, but not all cross-references were corrected. Former Section 1202 was not amended to reflect the fact that, after the 1980 revision, giving notice of most petitions by mail was made under Section 1200.5, rather than under Section 1200. As a result, former Section 1202 (which provided for special notice of only those petitions mentioned in Section 1200) did not on its face require special notice of the petitions mentioned in former Section 1200.5 but not mentioned in former Section 1200. Therefore, by its terms, former Section 1202 provided for special notice only by posting, and only for petitions that were still mentioned in former Section 1200.

Subdivision (a) omits as unnecessary the specific reference to the State Controller that was found in former Section 1202. Where the State Controller has an interest in the estate, the State Controller would be included within the persons who can request special notice as a person "otherwise interested." As to the right of a federal agency to request special notice, see Section 1288.

Section 1250 also makes clear that the request for special notice must be given to the personal representative or his or her attorney. As to the manner of giving notice, see Section 1220. As to proof of giving notice, see Section 1261.

### **§ 1251. Modification or withdrawal of request for special notice**

1251. A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request.

**Comment.** Section 1251 is new and is drawn from part of subdivision (a) of Section 2701 (guardianship and conservatorship law).

### **§ 1252. Notice to be given to person requesting special notice**

1252. (a) If a request has been made pursuant to Section 1250 for special notice of a hearing, the person filing the petition, report, or account, or other paper shall give written notice of the filing, together with a copy of the petition, report, or account, and the time and place set for the hearing, by mail to the person named in the request at

the address set forth in the request, at least 15 days before the time set for the hearing.

(b) If a request has been made pursuant to Section 1250 for special notice of the filing of an inventory and appraisal of the estate or of the filing of any other paper that does not require a hearing, the inventory and appraisal or other paper shall be mailed not later than 15 days after the inventory and appraisal or other paper is filed with the court.

**Comment.** Section 1252 is drawn from Section 2702 (guardianship and conservatorship) and replaces the last sentence of former Section 1202 and the second sentence of former Section 1202.5. The requirement that a copy of the appropriate papers be served is new. The 10-day notice period of former Section 1202.5(b) is replaced by a 15-day period. The 15-day period for special notice is consistent with the general period of notice provided in Section 1220 (notice of hearing by mail). The 15-day period may be reduced by an order shortening time. See Section 1203. See also Section 1204 (waiver of notice).

## Article 7. Proof of Giving Notice

### § 1260. Proof of giving notice of hearing required; conclusiveness of order on proof of giving notice

1260. (a) If notice of a hearing is required, proof of giving notice of the hearing shall be made to the satisfaction of the court at or before the hearing.

(b) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order.

(c) The finding described in subdivision (a), when the order becomes final, is conclusive on all persons.

**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., Sections 333(c), 584.3(d), 852, 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 1266 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 Sections 1200 and subdivision (c) of former Section 1200.5, without substantive change.

### § 1261. Proof of mailing

1261. Proof of mailing may be made in the manner prescribed in Section 1013a of the Code of Civil Procedure.

**Comment.** Section 1261 is drawn from subdivision (a) (2) of Section 1468 (guardianship and conservatorship). Section 1261 continues existing practice. See 1 California Decedent Estate Practice § 6.39 (Cal. Cont. Ed. Bar 1986).

### § 1262. Proof of publication

1262. Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

**Comment.** Section 1262 is drawn from subdivision (a) (4) of Section 1468 (guardianship and conservatorship). A declaration under penalty of perjury may be used instead of an affidavit. See Code Civ. Proc. § 2015.5; see also Code Civ. Proc. § 2015.6 (affirmation instead of oath).

### § 1263. Proof of posting

1263. Proof of posting may be made by the affidavit of the person who posted the notice.

**Comment.** Section 1263 is drawn from subdivision (a) (3) of Section 1468 (guardianship and conservatorship). Section 1263 is also drawn from existing practice. See 1 California Decedent Estate Practice § 6.46 (Cal. Cont. Ed. Bar 1986). A declaration under penalty of perjury may be used instead of an affidavit. See Code Civ. Proc. § 2015.5; see also Code Civ. Proc. § 2015.6 (affirmation instead of oath).

**§ 1264. Proof of personal delivery**

1264. Proof of notice by personal delivery may be made by the affidavit of the person making the delivery showing the time and place of delivery and the name of the person to whom delivery was made.

**Comment.** Section 1264 is drawn from subdivision (a) (1) of Section 1468 (guardianship and conservatorship). A declaration under penalty of perjury may be used instead of an affidavit. See Code Civ. Proc. § 2015.5; see also Code Civ. Proc. § 2015.6 (affirmation instead of oath).

**§ 1265. Proof by testimony at hearing**

1265. Proof of notice, however given, may be made by evidence presented at the hearing.

**Comment.** Section 1265 is drawn from subdivision (a) (5) of Section 1468 (guardianship and conservatorship).

**Probate Code §§ 1280-1299 (added). Orders and procedure**

SEC. \_\_\_\_ Chapter 22.5 (commencing with Section 1280) is added to Division 3 of the Probate Code, to read:

**CHAPTER 22.5. ORDERS AND PROCEDURE****Article 1. Rules of Procedure****§ 1280. Trials**

1280. All issues of fact joined in probate proceedings must be tried in conformity with the requirements of the rules of practice in civil actions. The party affirming is deemed plaintiff, and the one denying or avoiding is deemed defendant. When a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, must settle and frame the issues to be tried. If no jury is demanded, the court must try the issues joined, and sign and file its decision in writing, as provided in civil actions. Judgment on the issue joined, as well as for costs, may be entered and enforced as provided in Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

**Comment.** Section 1280 restates former Section 1230 without substantive change. The reference to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure is substituted for the former reference to the reference to “enforcement or otherwise . . . as in civil actions” in former Section 1230. This is a nonsubstantive change.

### § 1281. New trials

1281. A motion for a new trial in probate proceedings can be made only in cases of contests of wills, either before or after probate, in proceedings to determine heirship and interests in estates, and in those cases where the issues of fact, of which a new trial is sought, were of such character as to entitle the parties to have them tried by a jury, whether or not they were so tried.

**Comment.** Section 1281 continues former Section 1231 without change.

### § 1282. Costs

1282. When not otherwise prescribed by this code or by rules adopted by the Judicial Council, either the superior court or the court on appeal, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require.

**Comment.** Section 1282 continues former Section 1232 without change.

### § 1283. Rules of practice

1283. Except as otherwise provided by this code or by rules adopted by the Judicial Council, the provisions of Part 2 (commencing with Section 307) and of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this code with regard to discovery, trials, new trials, appeals, and all other matters of procedure.

An affidavit or verified petition must be received as evidence when offered in any uncontested probate proceedings, including proceedings relating to the administration of estates of decedents and proceedings relating to the administration of estates of persons for

whom a guardian or conservator has been appointed and in uncontested proceedings to establish a record of birth. The evidence of one or more of the subscribing witnesses may be received by an affidavit to which there is attached a photographic copy of the will, in any uncontested will proceedings.

**Comment.** Section 1283 continues former Section 1233 without change.

### **§ 1284. Verification required**

**1284.** (a) Except as otherwise provided by statute, all of the following shall be verified:

(1) A petition, report, or account.

(2) An objection or response to a petition, report, or account.

(b) The verification of a petition shall be made by the petitioner. The verification of a report or account shall be made by the person who has the duty to make the report or account. The verification of an objection or response shall be made by the objector or respondent.

**Comment.** Subdivision (a) of Section 1284 generalizes provisions found in Sections 467, 511, 541(b), 550, 604, 608, 609, 613, 615, 921, 922, 1025.5, 1064, 1068, 1190, and 1354, and in former Sections 578, 578a, 584.3(a), 584.5, 705, 707, 718.5, 721(b), 755, 831, 841, 842.1, 851, and 851.5. Subdivision (a) is comparable to Sections 1450 (guardianship and conservatorship law) and 17201(a) (trust law).

Subdivision (b) is new. It makes clear who is to make the verification.

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

**1285.** When a petition, report, account, or other matter that requires a hearing is filed with the clerk of the court, the clerk shall set the matter for hearing.

**Comment.** Section 1285 generalizes provisions found in Sections 203, 233, 327, 441, 605, 643, 653, 662, 718.5, 1000, 1004, 1041, 1068, 1102, 1172, 1191, 1200, 1355, 6501, 6511, and 6525 and in former Sections 578, 578a, 584, 584.2, 584.3, 584.5, 591.1, 591.7, 755, 758, 771, 771.3, 773, 810, 831, 841, 851, 851.5, and 854. It is comparable to Sections 1451 (guardianship and conservatorship law) and 17201(b) (trust law).

**§ 1286. Continuance or postponement**

1286. The court may continue or postpone any hearing, from time to time, in the interest of justice.

**Comment.** Section 1286 continues the first portion of former Section 1205 without change.

**§ 1287. Hearing and order**

1287. At the hearing the court shall hear and determine the matter and any response or objection presented and shall make such orders as may be appropriate.

**Comment.** Section 1287 generalizes a number of former provisions. See, e.g., Sections 407, 440, 584.3, 852.

**§ 1288. United States as interested person**

1288. Where compensation, pension, insurance, or other allowance is made or awarded by a department or bureau of the United States government to a decedent's estate, the department or bureau has the same right as an interested person to request special notice, to commence and prosecute an action on the bond of a personal representative, and to file written exceptions to a personal representative's account or contest the account.

**Comment.** Section 1288 restates former Section 1203 without substantive change. See Section 58 ("personal representative" defined).

**§ 1289. Guardian or conservator acting for ward or conservatee**

1289. If an interested person has a guardian or conservator of the estate who resides in this state, personal service on the guardian or conservator of any process, notice, or court order concerning a decedent's estate is equivalent to service on the ward or conservatee, and it is the duty of the guardian or conservator to attend to the interests of the ward or conservatee in the matter. The guardian or conservator may appear for the ward or conservatee and waive any process, notice, or order to show cause that a person not under legal disability might waive.

**Comment.** Section 1289 restates former Section 1208 without substantive change. See Section 48 ("interested person" defined).

## Article 2. Orders

### § 1290. Recital of jurisdictional facts

1290. Orders and decrees made by the court or a judge thereof, in probate proceedings, need not recite the existence of facts, or the performance of acts, upon which the jurisdiction of the court or judge may depend, but it is only necessary that they contain the matters ordered or adjudged, except as otherwise provided in this code.

**Comment.** Section 1290 continues former Section 1220 without change.

### § 1291. Entry and filing

1291. All orders and decrees of the court or judge must be entered at length in the minute book of the court, or else signed by the judge and filed, provided that decrees of distribution shall be entered at length in a judgment book or other permanent record of the court.

**Comment.** Section 1291 continues former Section 1221 without change.

### § 1292. Recordation of order affecting real property

1292. When an order is made setting apart a homestead, confirming a sale or making distribution of real property, or determining any other matter affecting the title to real property, a certified copy thereof must be recorded in the office of the county recorder of each county in which the land, or any part thereof, lies; and from the time of filing the same for record, notice is imparted to all persons of the contents thereof.

**Comment.** Section 1292 continues former Section 1222 without change.

### § 1293. Delivery to county treasurer

1293. When a personal representative, public or otherwise, deposits money or other personal property in a county treasury during administration or after final distribution of the estate of a deceased person, the personal representative shall, within 30 days after the date on which the court makes the decree of distribution or any order

amending the decree, deliver to the county treasurer a certified copy of the decree or other court order.

**Comment.** Section 1293 restates the first paragraph of former Section 1224 without substantive change. See Section 58 (“personal representative” defined). Section 1293 omits the second paragraph, which was a transitional provision that is no longer necessary.

### Article 3. Appeals

#### § 1297. Appealable orders

1297. An appeal may be taken from an order or the refusal to make an order:

- (a) Granting or revoking letters.
- (b) Admitting a will to probate or revoking the probate thereof.
- (c) Setting aside a small estate under Section 6609.
- (d) Setting apart property as a homestead or claimed to be exempt from enforcement of a money judgment.
- (e) Granting or modifying a family allowance.
- (f) Directing or authorizing the sale or conveyance or confirming the sale of property.
- (g) Directing or authorizing the granting of an option to purchase real property.
- (h) Adjudicating the merits of a claim under Chapter 11 (commencing with Section 9860) of Part 5 of Division 7.
- (i) Allocating debts under Section 11440 to 11445, inclusive.
- (j) Settling an account of a personal representative.
- (k) Instructing or directing a personal representative.
- (l) Directing or allowing the payment of a debt, claim, devise, or attorney’s fee.
- (m) Determining heirship or the persons to whom distribution should be made.
- (n) Distributing property.
- (o) Determining that property passes to, or confirming that property belongs to, the surviving spouse under Section 13656.
- (p) Fixing an inheritance tax or determining that none is due.
- (q) Authorizing a personal representative to invest or reinvest any surplus money under Section 9732.

**Comment.** Section 1297 restates former Section 1240 without substantive change and revises cross-references. See Sections 52 (“letters” defined) and 58 (“personal representative” defined).

**§ 1298. Reversal of order appointing personal representative**

1298. If an order appointing a personal representative is reversed on appeal for error, all lawful acts in administration of the estate performed by the personal representative after qualification of the personal representative and before the reversal are as valid as though the order were affirmed.

**Comment.** Section 1298 restates former Section 1241 without substantive change. See Section 58 (“personal representative” defined).

**§ 1299. Judgment roll**

1299. The following papers, without being attached together, constitute the judgment roll in proceedings under this code:

(a) The petition, application, contest, report, or account that initiates a particular proceeding; any order directing notice to be given of the hearing; any notice of the hearing, or any order to show cause made, with the affidavits showing the publication, posting, or mailing of the notice or order as required by law or order of the court; the citation, in case no answer or written opposition is filed by a party entitled, by law or order of court, to notice of the proceeding by citation, with the affidavit or proof of service, and if service of the citation is made by publication, the affidavit for the publication and the order directing publication; any finding of the court or referee; the order or judgment made or rendered; and the letters, if any.

(b) If an answer, demurrer, written opposition, or counter petition is filed in the proceeding, all pleadings and papers in the nature of pleadings; all orders striking out any pleading in whole or in part; any order made on demurrer, or relating to a change of parties; the verdict of the jury, if any; and the papers described in subdivision (a).

(c) If the proceeding is for the probate of a will, the will; and if the proceeding is a contest of a will, or for the

revocation of the probate of a will, or a partial, ratable, or final distribution of the estate under a will, the will and the order admitting the will to probate; and the papers described in subdivisions (a) and (b).

(d) If the proceeding is for the settlement of the final account of the personal representative, or for the final distribution of the estate, the affidavit showing publication of notice to creditors, and the papers described in subdivisions (a), (b), and (c).

**Comment.** Section 1299 restates former Section 1242 without substantive change. See Section 58 (“personal representative” defined).

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**Comments to Conforming Revisions  
and Repeals**

**April 1987**

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

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## APPENDIX

### COMMENTS TO CONFORMING REVISIONS AND REPEALS

**Note.** This appendix sets out the comments to sections that are revised or repealed in connection with the recommendations included in this publication. Assembly Bill 708, introduced at the 1987 session of the Legislature to implement these recommendations, should be consulted for the text of the conforming revisions.

#### **Code of Civil Procedure § 353 (amended). Statute of limitations**

**Comment.** [For the comment to this section, see *Recommendation Relating to Creditor Claims Against Decedent's Estate, supra.*]

#### **Corporations Code § 15031 (amended). Causes of dissolution of partnerships**

**Comment.** Subdivision (4) of Section 15031 is amended to recognize the authority of the court under Probate Code Section 9762 to authorize a partner's personal representative to continue as a partner.

#### **Government Code § 21207 (technical amendment). Minors**

**Comment.** Section 21207 is amended to substitute the reference to Probate Code Section 23 for the former reference to Probate Code Section 1406. As used in Section 21207, "board" means the Board of Administration of the California Public Employees' Retirement System. See Section 20005.

#### **Probate Code § 20 (amended). Application of definitions**

**Comment.** Section 20 is amended to include references to Chapter 22 (commencing with Section 1200) (notices) and Chapter 22.5 (commencing with Section 1280) (orders and procedure) of Division 3, to Division 7 (commencing with Section 7000) (administration of decedents' estates), and to Division 11 (commencing with Section 21100) (construction of wills, trusts, and other instruments). The other change is nonsubstantive.

**Probate Code § 24 (amended). “Beneficiary” defined**

**Comment.** Section 24 is divided into subdivisions. The introductory clause is revised to expand the application of this definition to other donative transfers, in addition to wills and trusts. *Cf.* Section 21100(b) (“instrument” means will, trust, deed, or other writing that designates a beneficiary or makes a donative transfer of property). The introductory clause also generalizes the former provision in this section that related to successors in interest of a trust beneficiary. Successors in interest include assignees and other transferees of an interest in a donative transfer of property.

Subdivisions (a) and (b) define “beneficiary” for the purposes of estate administration. If a decedent’s estate is partly testate and partly intestate, “beneficiary” refers to a devisee as to property passing by will and to an heir as to property passing by intestate succession. Trust beneficiaries are not included within the term as used in subdivisions (a) and (b). See Section 34 (“devisee” in the case of a devise to a trust or trustee does not include trust beneficiaries). However, a particular section relating to estate administration may refer specifically to trust beneficiaries.

Subdivisions (c) and (d) define “beneficiary” for the purposes of the Trust Law. See Sections 15000-18201.

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

**Comment.** [For the comment to this section, see *Recommendation Relating to Creditor Claims Against Decedent’s Estate, supra.*]

**Probate Code § 141 (technical amendment). Rights that may be waived**

**Comment.** Section 141 is amended to revise the cross-reference in paragraph (6) of subdivision (a) and to substitute “personal representative” for “executor or administrator” in paragraph (9). See Section 58 (“personal representative” defined).

**Probate Code § 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.

**Probate Code § 215 (added). Reporting fact of death**

**Comment.** [For the comment to this section, see *Recommendation Relating to Creditor Claims Against Decedent's Estate, supra.*]

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

**Comment.** Section 233 is amended to conform to the new general notice and procedural provisions. See Section 1200 *et seq.*

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

The 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).

**Probate Code § 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).

**Probate Code § 282 (technical amendment). Effect of disclaimer**

**Comment.** Section 282 is amended to revise the cross-reference in subdivision (b) (1).

**Probate Code § 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 9000) (administration of estates of decedents).

**Probate Code § 303 (amended). Disqualification of judge**

**Comment.** [For the comment to this section, see *Recommendation Relating to Creditor Claims Against Decedent's Estate, supra.*]

**Probate Code § 327 (amended). Time of hearing on petition for probate**

**Comment.** The 10-day notice period in the first sentence of Section 327 is increased to 15 days to conform to the general notice period provided in Section 1220.

**Probate Code § 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 third paragraph, which defined “post office,” is deleted because it is unnecessary. See Section 1215(c).

**Probate Code § 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.

**Probate Code § 422 (technical amendment). Persons entitled to letters of administration**

**Comment.** Subdivision (a) of Section 422 is amended to revise cross-references.

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

**Comment.** The provision in the first sentence of Section 441 that required the clerk to set the petition for hearing is generalized in Section 1285. 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.

**Probate Code § 541.1 (amended). Exclusion of value of deposited property from amount of bond**

**Comment.** Section 541.1 is revised to conform to Sections 9700-9705 relating to deposits of money and personal property with financial institutions and trust companies. This section is also revised to supply subdivision designations.

**Probate Code § 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.

**Probate Code § 570 (repealed). Multiple executors or administrators**

**Comment.** Former Section 570 is replaced by Section 9630. See the Comment to Section 9630.

**Probate Code § 571 (repealed). Possession of decedent's estate**

**Comment.** Subdivision (a) of former Section 571 is restated in Section 9650(a) (1) without substantive change. See Section 58 ("personal representative" defined).

The duty of a surviving partner to wind up partnership affairs as provided in subdivision (b) of former Section 571 is omitted since this is a matter governed by the Uniform Partnership Act. See Corp. Code §§ 15024 (rights of partner), 15025(2)(d) (rights in specific property upon death of partner), 15037 (right to wind up partnership affairs), 15041 (creditor's rights against continued partnership), 15042 (rights of deceased partner where partnership continued). The provision in subdivision (b) of former Section 571 requiring the personal representative to include the partnership interest in the inventory and appraisal is unnecessary, because it is already covered by Section 600 (inventory shall include statement of decedent's interest in any partnership and be appraised as a single item).

The duties imposed on surviving partners by subdivision (b) of former Section 571 are omitted as unnecessary in light of the comprehensive rules in the Uniform Partnership Act. See, e.g., Corp. Code §§ 15018 (rights and duties of partners), 15020 (disclosure of information on demand), 15022 (right to formal accounting), 15025 (rights in partnership property), 15031(4) (dissolution on death of partner unless otherwise provided), 15033 (effect of dissolution on partner's authority), 15034 (liability of partner on dissolution), 15037 (right of surviving partner to wind up partnership affairs), 15040 (rules for settling accounts between partners after dissolution), 15042 (right of

personal representative of deceased partner against partners continuing business).

The first part of the last sentence of subdivision (b) is replaced by Section 9761. See the Comment to Section 9761. The last part of the last sentence is restated in Section 9763(a) without substantive change.

Subdivision (c) is restated in Section 9651 without substantive change.

**Probate Code § 572 (repealed). Operation of decedent's business**

**Comment.** The provisions in the first sentence of former Section 572 relating to a decedent's business other than a partnership are replaced by Section 9760(c)-(d). The remainder of former Section 572 relating to partnerships is replaced by Section 9762 and subdivision (b) of Section 9763. See the Comments to Sections 9762 and 9763(b).

**Probate Code § 573 (repealed). Effect of death on causes of action**

**Comment.** Former Section 573 is restated in Section 9821 without substantive change. See also Section 58 ("personal representative" defined).

**Probate Code § 575 (repealed). Action for partition**

**Comment.** Former Section 575 is restated in Section 9823 without substantive change. See also Section 58 ("personal representative" defined).

**Probate Code § 576 (repealed). Action on bond of former executor or administrator**

**Comment.** Former Section 576 is restated in Section 9822 without substantive change. See Sections 48 ("interested person" defined), 58 ("personal representative" defined).

**Probate Code § 577 (repealed). Dispensable parties**

**Comment.** Former Section 577 is omitted as unnecessary, because a person who has not qualified as executor is not an executor. See Section 400.

**Probate Code § 578 (repealed). Obligations due decedent; compromises; renewal or modification**

**Comment.** The first three sentences of former Section 578 are replaced by Section 9830. See the Comment to Section 9830. The fourth and fifth sentences of former Section 578 are replaced by Section 9837. The provision requiring the petition to be verified is generalized in Section 1284. The provision requiring the clerk to set the petition for hearing is generalized in Section 1285. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5.

**Probate Code § 578a (repealed). Wrongful death or personal injury of decedent**

**Comment.** The first paragraph of former Section 578a is restated in Sections 9835 and 9836 without substantive change. The second paragraph of former Section 578a is replaced by Section 9837. The provision requiring the petition to be verified is generalized in Section 1284. The provision requiring the clerk to set the petition for hearing is generalized in Section 1285. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. See also Section 58 ("personal representative" defined).

**Probate Code § 579 (repealed). Duty to recover property transferred in fraud of creditors**

**Comment.** Former Section 579 is restated in Section 9653(a) without substantive change, except that the provision that the personal representative must prosecute the action to final judgment is omitted as unnecessary. See also Section 58 ("personal representative" defined).

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

**Comment.** Former Section 580 is restated in Section 9653(b)-(d), with the addition of authority for the court to require the creditor to pay the personal representative's attorney's fees, and for the court to order that property recovered be assigned to the creditor. See also Section 58 ("personal representative" defined).

**Probate Code § 581 (repealed). Possession of decedent's estate**

**Comment.** The first, second, and third sentences of former Section 581 are replaced by Section 9650. See the Comment to Section 9650. The last sentence is restated in Section 9654 and is broadened to apply to both real and personal property. The phrase in the last sentence reading "but they are not required to do so" has been omitted as redundant, since it is clear from Section 9654 that the section is permissive, not mandatory. See also Section 58 ("personal representative" defined).

**Probate Code § 582 (repealed). Delivery of real property to heirs or devisees**

**Comment.** Former Section 582 is replaced by Section 9650(c). See the Comment to Section 9650(c). See also Section 58 ("personal representative" defined).

**Probate Code § 583 (repealed). Purchase of estate property by executor or administrator**

**Comment.** The second half of the first paragraph of former Section 583 is restated in Section 9839 without substantive change. The remainder of former Section 583 is replaced by Sections 9880-9885. See the Comments to Sections 9880-9885.

**Probate Code § 584 (repealed). Investment in federal or state securities; purchase of annuity**

**Comment.** Former Section 584 is replaced by Sections 9731 and 9733. See the Comments to Sections 9731 and 9733. The provision requiring the clerk to set the petition for hearing is generalized in Section 1285. Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. See also Section 58 ("personal representative" defined).

**Probate Code § 584.1 (repealed). Investment in direct obligations of the United States**

**Comment.** Former Section 584.1 is replaced by Section 9730(a)-(b). See the Comment to Section 9730.

**Probate Code § 584.2 (repealed). Exercise of restricted stock options**

**Comment.** Former Section 584.2 is restated in Section 9734 without substantive change, except that (1) the requirement that the option right be one that is nontransferable save only by testate or intestate succession from the decedent is omitted, (2) it must be shown that exercise of the option would be to the advantage of the estate, rather than in the best interest of the estate, and (3) 15 days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The former provision requiring the petition to be filed "with the clerk" is omitted as unnecessary. The provision requiring the clerk to set the petition for hearing is generalized in Section 1285. The provision for shortening the period of notice is generalized in Section 1203. The provision permitting the court to dispense with notice is generalized in Section 1220(e). See also Section 58 ("personal representative" defined).

**Probate Code § 584.3 (repealed). Granting option to purchase real property**

**Comment.** The first paragraph of former Section 584.3 is restated in Section 9960 without substantive change.

Subdivision (a) is restated in Section 9961 without substantive change. The provision requiring the petition to be verified is generalized in Section 1284.

Subdivision (b) is restated in Section 9962, except that the appraisal is required to be made within one year before the hearing on the petition, rather than 90 days before the filing of the petition.

Subdivision (c) is replaced by Section 9963. The provision requiring the clerk to set the petition for hearing is generalized in Section 1285. The 10-day notice period is increased to 15 days to conform to the general notice period provided in Section 1220.

The proof of notice requirement in the first sentence of subdivision (d) is generalized in Section 1260(a). The requirement that the court is to hear the petition and any objection thereto is generalized in Section 1287. The requirement that the court is to examine into the advantage to the estate in granting the option is replaced by Section 9964(a)(1).

The second, third, and fourth sentences of subdivision (d) are restated in Section 9964 without substantive change.

The first sentence of subdivision (e) is restated in Section 1021.5 without substantive change. The last sentence of subdivision (e) is restated in Section 9965 without substantive change.

See also Section 58 (“personal representative” defined).

**Probate Code § 584.5 (repealed). Investment of surplus money as provided in will**

**Comment.** Former Section 584.5 is replaced by Section 9732. See the Comment to Section 9732. Fifteen days’ notice is required under Section 1220, instead of ten days’ notice as required under former Section 1200.5. The provision requiring the petition to be verified is generalized in Section 1284. The provision requiring the clerk to set the petition for hearing is generalized in Section 1285.

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

**Comment.** The first sentence and part of the second sentence of former Section 584.6 are restated in Section 9732(d) without substantive change. The provision in the second sentence of former Section 584.6 that the order may be renewed, modified, or terminated is generalized in Section 9614. 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.

**Probate Code § 585 (repealed). Bank and savings and loan accounts**

**Comment.** Former Section 585 is replaced by Section 9700. See the Comment to Section 9700. See also Section 58 (“personal representative” defined).

**Probate Code § 585.1 (repealed). Common trust funds**

**Comment.** Former Section 585.1 is restated in Section 9730(c) without substantive change. The provision that prior court authorization is not required is generalized in Section 9610. See also Section 58 (“personal representative” defined).

**Probate Code § 586 (repealed). Deposit of personal property with trust company**

**Comment.** Former Section 586 is replaced by Section 9701. See the Comment to Section 9701.

**Probate Code § 586.1 (repealed). Deposit of securities in securities depository by trust company**

**Comment.** Former Section 586.1 is restated in Section 9702(b) without substantive change. The references to the Financial Code licensing provisions are omitted because they are unnecessary in light of Financial Code Section 775, which is incorporated by Probate Code Section 9702.

**Probate Code § 586.5 (repealed). Direct distribution by depository**

**Comment.** Former Section 586.5 is restated in Section 9704 without substantive change and is expanded to apply to all types of financial institutions where money or property may be deposited.

**Probate Code § 587 (repealed). Dedication or conveyance of real property or easement with or without consideration**

**Comment.** Former Section 587 is restated in Sections 9900-9901 without substantive change, except that (1) it must be shown that exercise of the power would be to the advantage of the estate and in the best interest of the interested persons and (2) 15 days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. See also Section 58 ("personal representative" defined).

**Probate Code § 588 (repealed). Petition for instructions**

**Comment.** Former Section 588 is restated in Section 9611 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. See also Section 58 ("personal representative" defined).

**Probate Code § 589 (repealed). Voting rights with respect to corporate shares or memberships or property**

**Comment.** Former Section 589 is restated in Section 9655 without substantive change, except that the former requirement that authorization by a personal representative of any action that could be taken by shareholders be "in writing" is omitted. Whether a writing is required in such cases is governed by the Corporations Code. See the Comment to Section 9655. See also Section 58 ("personal representative" defined).

**Probate Code § 590 (repealed). Deposit of securities in securities depository**

**Comment.** Former Section 590 is restated in subdivisions (a) and (c) of Section 9702 without substantive change. The references to the Financial Code licensing provisions are omitted because they are unnecessary in light of Financial Code Section 775, which is incorporated by Probate Code Section 9702.

**Probate Code § 591 (repealed). Short title**

**Comment.** Former Section 591 is restated in Section 10400 without substantive change.

**Probate Code § 591.1 (repealed). Petition for independent administration authority**

**Comment.** The first sentence of subdivision (a) of former Section 591.1 is restated in Section 10450(a) without substantive change. The second sentence is restated in Section 10404 without substantive change. The last sentence is replaced by Section 10405. See the Comment to Section 10405.

Subdivision (b) is replaced by Section 10450(b). See the Comment to Section 10450.

Subdivision (c) is restated in Section 10451(a) without substantive change.

Subdivision (d) is replaced by Section 10451(b). See the Comment to Section 10451. The provision in subdivision (d) requiring the clerk to set the petition for hearing is generalized in Section 1285.

Subdivision (e) is replaced by Section 10451(c). See the Comment to Section 10451.

Subdivision (f) is replaced by Section 10452(a).

The first part of subdivision (g) is restated in the first sentence of subdivision (b) of Section 10452 without substantive change. The last part of subdivision (g) is replaced by Section 10452(c). See the Comment to Section 10452.

See also Section 58 (“personal representative” defined).

**Probate Code § 591.2 (repealed). Manner of administration; court supervision**

**Comment.** The first sentence and the first part of the second sentence of subdivision (a) of former Section 591.2 are restated in Section 10500(a) without substantive change. The part of the second sentence defining “court supervision” is restated in Section 10401 without substantive change. The part of

subdivision (a) stating the matters that require court supervision is replaced by Section 10501. See the Comment to Section 10501.

The first sentence of subdivision (b) is restated in Section 10500(b) without substantive change. The second sentence of subdivision (b) is omitted as unnecessary. If the personal representative does not take the proposed action under independent administration authority, the action is taken under the procedures that apply where the personal representative does not have independent administration authority, and, except as provided in Sections 10301-10303, the requirement that notice of sale be published must be satisfied. See the Comment to Section 10500.

See also Section 58 (“personal representative” defined).

### **Probate Code § 591.3 (repealed). Advice of proposed action**

**Comment.** Paragraph (1) of subdivision (a) of former Section 591.3 is restated in the first sentence of Section 10580(a) without substantive change. See the Comment to Section 10580. The part of paragraph (2) of subdivision (a) defining “advice of proposed action” is omitted as unnecessary since the term “notice of proposed action” is uniformly used in the new statutory provisions. The remainder of paragraph (2) and the introductory clause of subdivision (a) are replaced by Section 10581. See the Comment to Section 10581.

The introductory clause of subdivision (b) is replaced by Sections 10510 and 10530. Paragraph (1) of subdivision (b) is restated in Section 10511 without substantive change. Paragraph (2) is restated in Section 10515 without substantive change. Paragraph (3) is replaced by Section 10537. See the Comment to Section 10537. Paragraph (4) is replaced by Section 10536(a)-(b). See the Comment to Section 10536. Paragraph (5) is replaced by Section 10532(a)-(b). See the Comment to Section 10532. The part of paragraph (6) relating to operation of a business is replaced by Section 10534. See the Comment to Section 10534. See also Section 9760(a) and the Comment thereto. The part of paragraph (6) relating to sale or incorporation is restated in Section 10512 without substantive change. See the Comment to Section 10512. Paragraph (7) is restated in Section 10535 without substantive change. Paragraph (8) is replaced by Section 10533. See the Comment to Section 10533. Paragraph (9) is restated in Section 10517 without substantive change. Paragraph (10) is replaced by Section 10514. See the Comment to Section 10514.

Paragraph (11) is restated in Section 10518 without substantive change.

Subdivision (c) is restated in Section 10582 without substantive change. Subdivision (d) is restated in Section 10583(a) without substantive change.

See also Section 58 (“personal representative” defined).

### **Probate Code § 591.4 (repealed). Notice of proposed action**

**Comment.** The first and fourth sentences of subdivision (a) of former Section 591.4 are replaced by Section 10586. See the Comment to Section 10586. The second, third, and last sentences are replaced by Section 10585. See the Comment to Section 10585.

Subdivision (b) is restated in Section 10591 without substantive change.

See also Section 58 (“personal representative” defined).

### **Probate Code § 591.5 (repealed). Objection to proposed action**

**Comment.** Subdivision (a)(1) of former Section 591.5 is restated in Section 10588 without substantive change. See the Comment to Section 10588. Subdivision (a)(2) is restated in Section 10587 without substantive change, but the former provision is made applicable to any case where notice of proposed action is given, whether or not the proposed action is one for which notice is required. See the Comment to Section 10587.

The first sentence of subdivision (b) is restated in Section 10589(a) without substantive change. The last sentence of subdivision (b) is replaced by Section 10592. See the Comment to Section 10592.

Subdivision (c) is restated in Section 10591 without substantive change.

The substantive effect of the first sentence of subdivision (d) is continued in Section 10590(d). The remainder of subdivision (d) is replaced by Section 10590(a)-(c). See the Comment to Section 10590.

Subdivision (e) is restated in Section 10589(c) without substantive change.

See also Section 58 (“personal representative” defined).

**Probate Code § 591.6 (repealed). Independent administration powers**

**Comment.** The introductory clause of former Section 591.6 is replaced by Sections 10502 and 10551. See the Comments to Sections 10502 and 10551. See also Sections 10510, 10530, and 10550.

The part of subdivision (a) granting the power to manage and control property is restated in Section 10531 without substantive change. The part of subdivision (a) granting the power to “exchange” is replaced by Sections 10511 and 10537. The part of subdivision (a) granting the power to “convey” property is replaced by Section 10555. See the Comment to Section 10555; see also the Comments to Sections 10516 and 10531. The part of subdivision (a) granting the power to “divide” and “partition” is omitted. But see Section 10553 (power to commence, maintain, and defend actions and proceedings). See also the Comment to Section 10531. The phrase “for cash or credit” is continued in Section 10503. The part of subdivision (a) granting the power to lease is replaced by Section 10536. See the Comment to Section 10536. The part of subdivision (a) granting the power to grant options to purchase real property is restated in Section 10515 without substantive change.

Subdivision (b) is replaced by Section 10533. See the Comment to Section 10533.

Subdivision (c) is restated in Section 10514 without substantive change.

Subdivision (d) is replaced by Section 10513. See the Comment to Section 10513.

Subdivision (e) is restated in Section 10562 without substantive change.

Subdivision (f) has been omitted as unnecessary in view of Section 10551. See the Comment to Section 10551.

The substantive effect of subdivision (g) is continued in Sections 10537 and 10561, with the expansion of the scope of the provision to cover “securities” instead of “stock.” See the Comments to Sections 10537 and 10561.

Subdivision (h) is restated without substantive change in Section 10560, except for the provision relating to liability. See the Comment to Section 10560.

Subdivision (i) has been omitted as unnecessary in view of Section 10551. See the Comment to Section 10551.

The part of subdivision (j) relating to claims against the estate is restated in Section 10552 without substantive change. See the

Comment to Section 10552. The part relating to instituting and defending actions and proceedings is restated in Section 10553 without substantive change. See the Comment to Section 10553. The part relating to compromises and releases is replaced by Section 10552. See the Comment to Section 10552.

Subdivision (k) is restated in Section 10556 without substantive change.

Subdivision (l) is replaced by Section 10534. See the Comment to Section 10534.

Subdivision (m) is restated in Section 10535(a) without substantive change.

Subdivision (n) is restated in Section 10519 without substantive change, except that notice of proposed action is required to make a disclaimer. See the Comment to Section 10519.

Subdivision (o) is restated in Section 10538(a)(1) without substantive change, except that the standard for exercising the power is omitted as unnecessary. See the Comment to Section 10538.

See also Section 58 (“personal representative” defined).

### **Probate Code § 591.7 (repealed). Revocation of independent administration authority**

**Comment.** Former Section 591.7 is replaced by Section 10454. See the Comment to Section 10454. The provision requiring the clerk to set the petition for hearing is generalized in Section 1285. See also Section 58 (“personal representative” defined).

### **Probate Code § 591.8 (repealed). Form of advice of proposed action**

**Comment.** Former Section 591.8 is replaced by Section 10585 and by the last sentence of subdivision (b) of Section 10587. See the Comment to Section 10585. See also Section 58 (“personal representative” defined).

### **Probate Code § 591.9 (repealed). Sales of property**

**Comment.** Subdivision (a) of former Section 591.9 is restated in Section 10503 without substantive change. The reference to “applicable fiduciary duties” is generalized in Section 10502. See also the Comment to Section 10502.

Subdivision (b) is replaced by Section 10453. See the Comment to Section 10453.

See also Section 58 (“personal representative” defined).

**Probate Code § 608.5 (technical amendment). Notice of objection to appraisalment**

**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.

**Probate Code § 700 (repealed). Notice to creditors**

**Comment.** Subdivision (a) of former Section 700 is replaced by Sections 9001 (notice to creditors), 9100 (claim period), 9150 (how claim is filed). See also Section 58 ("personal representative" defined). Subdivision (b) is restated in Section 9101 (time not extended by vacancy in office) without substantive change. Subdivision (c) is replaced by Section 9100 (claim period). See the Comment to Section 9100.

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

**Comment.** Part of 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).

Part of the first sentence of subdivision (a), 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).

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

**Comment.** Former Section 703 is 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, and in Section 9257(d) (action on rejected claim). See also Section 58 ("personal representative" defined).

**Probate Code § 704 (repealed). Claim of judge**

**Comment.** Former Section 704 is omitted. A judge who is a creditor is disqualified. See Section 303 (disqualification of judge).

**Probate Code § 794.2 (repealed). Debts of deceased spouse**

**Comment.** Part of the first sentence of former Section 704.2 is generalized in Section 9150(a) (how claim is filed). The remainder of this section is replaced by Sections 11440, 11441, and 11442 (allocation of debts between estate and surviving spouse). See the Comments to Sections 11440-11442.

**Probate Code § 704.4 (repealed). Debts of surviving spouse for which community property is liable**

**Comment.** Former Section 704.4 is replaced by Sections 11440, 11441, and 11442 (allocation of debts between estate and surviving spouse). See the Comments to Sections 11440-11442.

**Probate Code § 705 (repealed). Contents of claim**

**Comment.** Former Section 705 is restated in Section 9151 (documentary support of claim) without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 706 (repealed). Claim based on written instrument**

**Comment.** Former Section 706 is restated in Section 9152 (claim based on written instrument) without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 707 (repealed). Time to file certain claims**

**Comment.** The first sentence of subdivision (a) of former Section 707 is restated in Sections 9000 (“claim” defined) and 9002 (claim requirement) without substantive change. See also Section 9100 (claim period). The former reference to the various offenses against property that may result in liability is omitted as unnecessary. See the Comment to Section 9000.

The first part of the second sentence of subdivision (a) is restated without substantive change in Sections 9002(b) (claim requirement) and 9103(a)(1) (late claim permitted where creditor out of state during claim period). The last part of the second sentence is omitted as unnecessary. See the Comment to Section 9150.

The third and fourth sentences of subdivision (a) are replaced by Section 9103 (late claims). See the Comment to Section 9103. The last sentence is omitted as unnecessary. See Gov't Code §§ 69845-69846 (register of actions, preservation of records).

Subdivision (b) is reenacted as Section 707 with changes to conform to the creditor claims procedure in Part 4 (commencing with Section 9000) of Division 7.

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

**Probate Code § 707 (added). Action against decedent for damages covered by liability insurance**

**Comment.** Section 707 reenacts subdivision (b) of former Section 707 with changes to conform to the creditor claims procedure, Part 4 (commencing with Section 9000) of Division 7.

**Probate Code § 707.5 (repealed). Claim by public entity**

**Comment.** Subdivision (a) of former Section 707.5 is restated in Section 9200 (claim by public entity required) without substantive change. Subdivision (b) is restated in Section 9201 (claims governed by other statutes) without substantive change. Subdivision (c) is restated in Section 9000(a)(2) ("claim" defined) with clarifying changes. See the Comment to Section 9000. Subdivision (d) is restated in Section 9204 (priority of claims not affected by chapter) without substantive change. Subdivision (e) is restated in Section 9205 (limitation on application of chapter) without substantive change.

**Probate Code § 708 (repealed). Claim barred by statute of limitations**

**Comment.** The first sentence of former Section 708 is restated in Section 9253(b) (effect of statute of limitations) without substantive change. The second sentence is restated in Section 9251(b) (procedure by court) without substantive change. The last sentence is restated in Section 9253(c) (effect of statute of limitations) without substantive change. See also Section 58 ("personal representative" defined).

**Probate Code § 709 (repealed). Claim pending against decedent**

**Comment.** Former Section 709 is reenacted as Section 709 with changes to conform to the creditor claims procedure, Part 4 (commencing with Section 9000) of Division 7.

**Probate Code § 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.

**Probate Code § 709.1 (repealed). Continuance of pending action against estate**

**Comment.** Former Section 709.1 is reenacted as Section 709.1 without change.

**Probate Code § 709.1 (added). Continuation of action on claim covered by insurance**

**Comment.** Section 709.1 reenacts former Section 709.1 without change.

**Probate Code § 710 (repealed). Claims filed with clerk**

**Comment.** The first two sentences of former Section 710 are omitted. The third sentence is replaced by Section 9250 (procedure by personal representative). The last two sentences are replaced by Section 9251 (procedure by court). See also Section 58 ("personal representative" defined).

**Probate Code § 711 (repealed). Claims filed with personal representative**

**Comment.** The first sentence of former Section 711 is replaced by Section 9250 (procedure by personal representative). The last sentence is replaced by Section 9251 (procedure by court).

**Probate Code § 712 (repealed). Failure to act on claim**

**Comment.** The first sentence of former Section 712 is replaced by Section 9256 (failure of personal representative or court to act). See the Comment to Section 9256. The second sentence is omitted since the procedure was not used. The last sentence is restated in Section 9102 (where personal representative acts on claim after expiration of time) without substantive change.

**Probate Code § 713 (repealed). Allowed claims**

**Comment.** The first sentence of former Section 713 is restated without substantive change in Sections 9003 (payment of claims) and 9254 (contest of allowed and approved claims). The last sentence is omitted as unnecessary. See Gov't Code §§ 69845-69846 (register of actions, preservation of records). See also Section 58 ("personal representative" defined).

**Probate Code § 713.5 (repealed). Allowance of claim of surviving spouse**

**Comment.** Former Section 713.5 is replaced by Sections 11444 and 11445 (allocation of debts between estate and surviving spouse).

**Probate Code § 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 persons address is unknown). See also Section 58 ("personal representative" defined).

**Probate Code § 715 (repealed). Tolling during vacancy**

**Comment.** Former Section 715 is restated in Section 9257(a) (action on rejected claim) without substantive change.

**Probate Code § 716 (repealed). Claim as prerequisite to action; enforcement of lien**

**Comment.** The part of subdivision (a) of former Section 716 requiring a claim to be filed is restated in Section 9002 (claim requirement). The part of subdivision (a) relating to the manner of filing a claim is superseded by Section 9150 (how claim is filed). Subdivisions (b) and (c) are reenacted as Section 716 with changes to conform to the creditor claims procedure, Part 4 (commencing with Section 9000) of Division 7.

**Probate Code § 716 (added). Enforcement of security interest**

**Comment.** Section 716 reenacts subdivisions (b) and (c) of former Section 716 with changes to conform to the creditor claims procedure, Part 4 (commencing with Section 9000) of Division 7.

**Probate Code § 717 (repealed). Partial allowance**

**Comment.** Former Section 717 is restated in Section 9255 (partial allowance) without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 718 (repealed). Voluntary reference of disputed claim**

**Comment.** The introductory paragraph and paragraph (2) of former Section 718 are restated and generalized in Section 9620 (submission of dispute to temporary judge). See the Comment to Section 9620. Paragraph (1) is omitted as unnecessary, since the general provisions relating to reference are applicable to probate matters. See Code Civ. Proc. §§ 638-645.1.

**Probate Code § 718.5 (repealed). Compromise of claims and actions**

**Comment.** The first sentence of former Section 718.5, as it related to compromises or settlements after the time for filing creditor’s claims has expired, is replaced by Section 9830. See the Comment to Section 9830. Insofar as the first sentence related to compromises or settlements before the expiration of the time for filing creditor’s claims, it is replaced by Section 9831. See the Comment to Section 9831.

The second and third sentences are restated in Section 9837 without substantive change, except that (1) Section 9837 expands the class of petitioners to include any interested person who has obtained the written approval of the personal representative to file the petition and (2) 15 days’ notice is required under Section 1220, instead of ten days’ notice as required under former Section 1200.5. The provision requiring the petition to be verified is generalized in Section 1284. The provision requiring the clerk to set the petition for hearing is generalized in Section 1285.

The fourth sentence is restated in Section 9838 without substantive change. The part of the fourth sentence relating to

recording court orders that authorize transfers of real property is generalized in Section 1292.

The last sentence is replaced by Section 9612. See the Comment to Section 9612.

See also Section 58 (“personal representative” defined).

**Probate Code § 718.6 (repealed). Acceptance of deed in lieu of foreclosure or trustee’s sale**

**Comment.** Former Section 718.6 is restated in Section 9850 without substantive change, except that (1) Section 9850 requires the petitioner to show the advantage to the estate by clear and convincing evidence and (2) 15 days’ notice is required under Section 1220, instead of ten days’ notice as required under former Section 1200.5. See also Section 58 (“personal representative” defined).

**Probate Code § 718.7 (repealed). Partial satisfaction or reconveyance**

**Comment.** Former Section 718.7 is restated in Section 9851 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.

**Probate Code § 719 (repealed). Costs in action against personal representative**

**Comment.** Former Section 719 is reenacted as Section 719 without substantive change.

**Probate Code § 719 (added). Costs in action against personal representative**

**Comment.** Section 719 reenacts former Section 719 without substantive change.

**Probate Code § 720 (repealed). Claims for damages for injury or death where no action pending**

**Comment.** Former Section 720 is reenacted as Section 720 without substantive change.

**Probate Code § 720 (added). Late claim where no action pending against decedent**

**Comment.** Section 720 reenacts former Section 720 without substantive change.

**Probate Code § 721 (repealed). Claim for liability covered by liability insurance**

**Comment.** Former Section 721 is reenacted as Section 721 with changes to conform to the creditor claims procedure, Part 4 (commencing with Section 9000) of Division 7.

**Probate Code § 721 (added). Claim covered by insurance**

**Comment.** Section 721 reenacts former Section 721 with changes to conform to the creditor claims procedure, Part 4 (commencing with Section 9000) of Division 7.

**Probate Code § 730 (repealed). Enforcement of judgments after death**

**Comment.** Subdivisions (a) and (b) of former Section 730 are restated without substantive change in Section 9300 (money judgment against decedent), which extends them to all money judgments. Subdivision (c) is restated in Section 9303 (property under levy of execution) without substantive change.

Subdivision (d) is restated in Section 9302 (enforcement of nonmoney judgment) without substantive change. The reference to unsatisfied demands for money under a judgment for possession is omitted as unnecessary. Amounts due under a judgment for possession are enforced in the same manner as a money judgment and thus are governed by the general rule applicable to money judgments under Section 9300. See Code Civ. Proc. §§ 680.270, 712.040, 714.020.

See also Section 58 (“personal representative” defined).

**Probate Code § 731 (repealed). Conclusiveness of judgment**

**Comment.** Former Section 731 is restated in Section 9301 (money judgment against personal representative) without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 732 (repealed). Conversion of attachment lien into judgment lien**

**Comment.** Former Section 732 is restated in Section 9304 (converting attachment lien to judgment lien) without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 733 (repealed). Interest on claim**

**Comment.** Former Section 733 is replaced by Section 11423 (interest). See the Comment to Section 11423.

**Probate Code § 736 (repealed). Exonerating encumbered property**

**Comment.** Former Section 736 is reenacted as Section 736 without change.

**Probate Code § 736 (added). Exonerating encumbered property**

**Comment.** Section 736 reenacts former Section 736 without change.

**Probate Code § 737 (repealed). Statute of Frauds; special promise to answer in damages or pay debts**

**Comment.** Former Section 737 is restated in Section 9604 without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 738 (repealed). Claimant not found**

**Comment.** Former Section 738 is restated in Section 11428 (deposit for missing creditor) without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 750 (repealed). Order of resort to estate property to pay debts, expenses, or family allowance**

**Comment.** Former Section 750 is continued in new Section 750 without change.

**Probate Code § 750 (added). Order of resort to estate property to pay debts, expenses, or family allowance**

**Comment.** New Sections 750-753 reenact former Sections 750-753 without change. Former Sections 750-753 were repealed along with the rest of Chapter 13 (estate sales). As reenacted, Chapter 13 is entitled “Abatement” to reflect the subject matter of Sections 750-753. The provisions on estate sales are now found in Sections 10000-10382.

**Probate Code § 751 (repealed). Order of resort to estate property to pay legacies**

**Comment.** Former Section 751 is continued in new Section 751 without change.

**Probate Code § 751 (added). Order of resort to estate property to pay legacies**

**Comment.** See the Comment to Section 750.

**Probate Code § 752 (repealed). Abatement among legacies**

**Comment.** Former Section 752 is continued in new Section 752 without change.

**Probate Code § 752 (added). Abatement among legacies**

**Comment.** See the Comment to Section 750.

**Probate Code § 753 (repealed). Contribution of devisees and legatees after sale**

**Comment.** Former Section 753 is continued in new Section 753 without change.

**Probate Code § 753 (added). Contribution of devisees and legatees after sale**

**Comment.** See the Comment to Section 750.

**Probate Code § 754 (repealed). Discretion of personal representative to sell**

**Comment.** The first sentence of former Section 754 is restated in Section 10003(a) without substantive change. See the Comment to Section 10003. The second sentence is restated in Section 10000(a)-(b) and in Section 10003(a) and (c) without substantive change. See the Comment to Section 10000. The last sentence is restated in Section 10003(b) without substantive change.

**Probate Code § 754.5 (repealed). Sale of real and personal property as a unit**

**Comment.** Former Section 754.5 is restated in Section 10004 without substantive change, except that the property may be sold if it is to the advantage, rather than in the best interests, of the estate as provided in Section 10004(b). See also Section 58 (“personal representative” defined).

**Probate Code § 754.6 (repealed). Sale of leasehold interest**

**Comment.** Former Section 754.6 is restated in Section 10203 without substantive change.

**Probate Code § 755 (repealed). Court confirmation**

**Comment.** Former Section 755 is restated in Sections 10260 (personal property) and 10308 (real property) without substantive change, except that (1) the new sections give the purchaser the right to file the report of sale and petition for confirmation, if the personal representative fails to do so within 30 days after the sale, and (2) 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 provision requiring the petition to be verified is generalized in Section 1284. The provision requiring the clerk to set the petition for hearing is generalized in Section 1285.

**Probate Code § 756 (repealed). Objections to confirmation; proof of notice**

**Comment.** The first sentence of former Section 756 is restated in Sections 10261 (b) (personal property) and 10310 (c) (real property) without substantive change. The last sentence is restated in Sections 10263 (personal property) and 10312 (real property) without substantive change.

**Probate Code § 756.5 (repealed). Overbid**

**Comment.** Former Section 756.5 is restated in Section 10262 without substantive change, except that Section 10262 permits an overbid where the original bid is less than \$100 and the overbid is not less than \$100 more than the original bid.

**Probate Code § 757 (repealed). Sales pursuant to direction in will**

**Comment.** The first sentence of former Section 757 is restated without substantive change in Sections 10000 (c)-(d) and 10003 (c), in Section 10303 (real property), and in the introductory clause and subdivisions (a) and (b) of Section 10252 (personal property).

The second sentence is restated without substantive change in Section 10260 (a) and the second sentence of subdivision (a) of Section 10261 (personal property) and in Section 10308 (a), the

second sentence of subdivision (a) of Section 10310, and Section 10313(a)(1) (real property).

The last sentence is restated in Section 10002(a) without substantive change. See also Section 58 (“personal representative” defined).

### **Probate Code § 758 (repealed). Order requiring sales**

**Comment.** Former Section 758 is replaced by Section 10001. See the Comment to Section 10001. The provision in the last sentence requiring the clerk to set the petition for hearing is generalized in Section 1285. See also Section 58 (“personal representative” defined).

### **Probate Code § 759 (repealed). Neglect or misconduct of personal representative**

**Comment.** Former Section 759 is restated in Section 10380 without substantive change. See the Comment to Section 10380. See also Section 58 (“personal representative” defined).

### **Probate Code § 760 (repealed). Contract with agent or broker**

**Comment.** The first, third, fourth, and last sentences of former Section 760 are restated in Sections 10150 and 10161(a) without substantive change, except that the reference in former Section 760 to a “multiple group of agents or brokers” is replaced by the last sentence of subdivision (a)(1) of Section 10150 (multiple listing service).

The second sentence is replaced by Section 10164(c). See the Comment to Section 10164.

See also Section 58 (“personal representative” defined).

### **Probate Code § 760.5 (repealed). Contract with auctioneer**

**Comment.** The first sentence of former Section 760.5 is replaced by Section 10151(a). See the Comment to Section 10151. The second and third sentences are restated in Section 10151(c) without substantive change. The fourth, fifth, sixth, and last sentences are restated in Section 10151(d), but the reference to “tangible” personal property is omitted. See the Comment to Section 10151. See also Section 58 (“personal representative” defined).

**Probate Code § 761 (repealed). Allocation of commissions among competing agents**

**Comment.** The first part of the first sentence of former Section 761 (commission on full amount for which sale is confirmed) is restated in Section 10165(b) without substantive change. The last part of the first sentence (allocation of commission) is restated by Section 10165(b)-(c) without substantive change. The last sentence is restated in Section 10164(a)-(b) without substantive change.

**Probate Code § 761.5 (repealed). Compensation of agent who procures increased bid**

**Comment.** Former Section 761.5 is restated in Sections 10161(a) and 10163 without substantive change.

**Probate Code § 762 (repealed). Application of sale proceeds of encumbered property**

**Comment.** Former Section 762 is restated in Section 10361 without substantive change, except as noted in the Comment to Section 10361.

**Probate Code § 763 (repealed). Payment of sale proceeds to clerk and discharge of encumbrance**

**Comment.** Former Section 763 is restated in Section 10362 without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 764 (repealed). Sale to lienholder**

**Comment.** Former Section 764 is restated in Section 10363 without substantive change, except as noted in the Comment to Section 10363. See also Section 58 (“personal representative” defined).

**Probate Code § 770 (repealed). Sale of depreciating property and property needed to provide family allowance**

**Comment.** Former Section 770 is restated in the introductory clause and subdivisions (c) and (d) of Section 10252 and in Section 10259 without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 771 (repealed). Sale of securities; savings and loan transactions**

**Comment.** Subdivisions (a) and (b) of former Section 771 are restated in Section 10200 without substantive change, except that 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 provision in the third sentence of subdivision (a) permitting the court to shorten the period of notice is generalized in Section 1203 and the provision permitting the court to dispense with notice is generalized in Section 1220(e). Subdivision (c) is restated in Section 10201 without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 771.3 (repealed). Purchase of securities or commodities sold short**

**Comment.** The first, third, and last sentences of former Section 771.3 are restated in Section 9735 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 provision in the second sentence requiring the clerk to set the petition for hearing is generalized in Section 1285. The provision in the third sentence of subdivision (a) permitting the court to shorten the period of notice is generalized in Section 1203 and the provision permitting the court to dispense with notice is generalized in Section 1220(e). See also Section 58 (“personal representative” defined).

**Probate Code § 771.5 (repealed). Sale of subscription rights**

**Comment.** Former Section 771.5 is restated in Section 10202 without substantive change, except that language is added in Section 10202 to make clear that notice of sale is not required and that confirmation of sale is not required. See also Sections 58 (“personal representative” defined), 70 (“security” defined).

**Probate Code § 772 (repealed). Notice of sale; public sales**

**Comment.** The first sentence of former Section 772 is restated in Section 10250 without substantive change, except that the 10 day notice period is increased to 15 days. The second sentence is restated in Section 10251 without substantive change. The third sentence is restated in Section 10253(a) without substantive change. The fourth sentence is restated without

substantive change in Sections 10253(a)(2) and 10255(a). The fifth, sixth, and seventh sentences are restated in Section 10254(c) without substantive change, except as noted in the Comment to Section 10254. The last sentence is restated in Section 10259 without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 773 (repealed). Terms of sale**

**Comment.** The first four sentences of former Section 773 are restated in Section 10257(a)-(c) without substantive change. See the Comment to Section 10257.

The fifth through the last sentences are restated in Section 10258 without substantive change, except that 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 provision requiring the clerk to set the petition for hearing is generalized in Section 1285.

See also Section 58 (“personal representative” defined).

**Probate Code § 774 (repealed). Sale of partnership interests**

**Comment.** The first sentence of former Section 774 is restated in Sections 10204 and 10205 without substantive change. The last sentence is restated in Section 10261(c) without substantive change, except as noted in the Comment to Section 10261(c).

**Probate Code § 775 (repealed). Order vacating sale and directing resale**

**Comment.** The first sentence of former Section 775 is restated in Section 10350(a)-(b) without substantive change. The second and third sentences are replaced by Section 10350(c)-(d). The last sentence is replaced by Section 10350(e). See the Comment to Section 10350. See also Section 58 (“personal representative” defined).

**Probate Code § 776 (repealed). Order vacating sale and confirming sale to new high bidder**

**Comment.** Former Section 776 is restated in Section 10351 without substantive change. See also Section 10350(b).

**Probate Code § 780 (repealed). Notice of sale**

**Comment.** The first sentence of former Section 780 is restated in Section 10300 without substantive change, except that the requirement that the notice state the “time and place of sale” is restated in Section 10304(a)(2) without substantive change. The second sentence is restated in Section 10301 without substantive change, except that (1) the maximum value of real property that may be sold without publication is increased from \$1,000 to \$5,000 and (2) the notice period is increased from 10 to 15 days. The third and last sentences are replaced by Section 10304(a)(3). See also Section 58 (“personal representative” defined).

**Probate Code § 781 (repealed). Sales at public auction**

**Comment.** The first sentence of former Section 781 is restated in Section 10305(a) without substantive change. The last sentence is restated in Section 10305(b) without substantive change, except that the closing time of the sale is changed from sunset to 9:00 p.m.

**Probate Code § 782 (repealed). Private sales**

**Comment.** The first sentence of former Section 782 is restated in Sections 10302, 10304(a)(2), and 10306(a) without substantive change, except that the one-week period is changed to five days. The provision that notice should also be given “otherwise in accordance with Section 780 of this code” is omitted as unnecessary. The last sentence is restated in Section 10306(b) without substantive change, except that the authority for filing bids with the court clerk is omitted. See also Section 58 (“personal representative” defined).

**Probate Code § 783 (repealed). Postponement of public auction sales**

**Comment.** Former Section 783 is restated in Section 10305(c) without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 784 (repealed). Minimum price for private sales of real property**

**Comment.** Former Section 784 is restated in Section 10309 without substantive change, except that Section 10309 (1) requires the appraisal and valuation to be made within one year

of the confirmation hearing rather than the date of sale and (2) permits appointment of a new probate referee if “there is other reason to appoint another probate referee” in place of the former language permitting appointment of a new probate referee “for just cause.”

**Probate Code § 785 (repealed). Court confirmation; overbid; order confirming or vacating sale**

**Comment.** The first sentence of former Section 785 is replaced by Sections 10310(a)-(b) and 10313(a) and (c)-(d). See the Comments to Sections 10310 and 10313. The second and third sentences are restated without substantive change in Sections 10161, 10311(a)-(c), and 10313(a)-(b). The fourth sentence is replaced by Section 10162. See the Comment to Section 10162. The fifth sentence is restated in Section 10311(e) without substantive change. The sixth sentence is restated in Section 10166 and 10311(e) without substantive change. The last sentence is restated without substantive change in the introductory clause of subdivision (a) and subdivision (d) of Section 10311. See also Section 58 (“personal representative” defined).

**Probate Code § 785.1 (repealed). Discretion of personal representative in case of credit sales**

**Comment.** Former Section 785.1 is restated in Section 10311(d) without substantive change.

**Probate Code § 786 (repealed). Conveyance after confirmation**

**Comment.** The first sentence of former Section 786 is restated in Section 10314(a) without substantive change. The last sentence is restated in Section 10314(c) without substantive change. See the Comment to Section 10314(c). See also Section 58 (“personal representative” defined).

**Probate Code § 787 (repealed). Sales on credit**

**Comment.** The first sentence of former Section 787 is restated in subdivision (a) of Section 10315 (real property) without substantive change. The second and last sentences are restated in subdivision (d) of Section 10257 (personal property) and in subdivision (b) of Section 10315 (real property). See also Section 58 (“personal representative” defined).

**Probate Code § 788 (repealed). Order vacating sale and directing resale**

**Comment.** The first and second sentences of former Section 788 are restated in Section 10350(a)-(d) without substantive change, except that notice need not be given to a defaulting purchaser who has filed a written consent to vacation of the order confirming sale under Section 10350(b). The last sentence is replaced by Section 10350(e). See the Comment to Section 10350. See also Section 58 (“personal representative” defined).

**Probate Code § 789 (repealed). Order vacating sale and confirming sale to new high bidder**

**Comment.** Former Section 789 is restated in Section 10351 without substantive change. See also Section 10350(b).

**Probate Code § 792 (repealed). Fraudulent sale**

**Comment.** Former Section 792 is restated in Section 10381 without substantive change, except (1) damages are double the value of the “real property” sold rather than double the value of the “land” sold, (2) language is added to make clear that damages are computed using the value of the property on the date it was sold, and (3) the new section makes clear that the liquidated damages provided for in the section are in addition to any other recoverable damages. See also Section 58 (“personal representative” defined).

**Probate Code § 793 (repealed). Limitation of actions for recovery of property**

**Comment.** The first sentence of former Section 793 is restated in Section 10382(a) without substantive change. The last sentence providing for tolling for minors and others under legal disability is replaced by Section 10382(b) which provides that the limitations period is not tolled. See also Section 58 (“personal representative” defined).

**Probate Code § 794 (repealed). Land suitable for grazing or pasture**

**Comment.** Subdivision (a) of former Section 794 (finding and declaration of legislative purpose) is omitted as a codified provision, but may be found in 1978 Cal. Stat. ch. 40. Subdivision (b) is restated in Section 10207 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. See also Section 58 ("personal representative" defined).

**Probate Code § 800 (repealed). Method of sale of decedent's contract right to purchase real property**

**Comment.** Former Section 800 is restated in Section 10206(a) without substantive change. See also Section 58 ("personal representative" defined).

**Probate Code § 801 (repealed). Conditions of sale of decedent's contract right to purchase real property; bond**

**Comment.** Former Section 801 is restated in Section 10206(b)-(d) without substantive change. See also Section 58 ("personal representative" defined).

**Probate Code § 802 (repealed). Assignment of contract after confirmation**

**Comment.** Former Section 802 is restated in Section 10314(b) and (d) without substantive change. See also Section 58 ("personal representative" defined).

**Probate Code § 810 (repealed). Petition for sale of mining property**

**Comment.** Former Sections 810 to 814 are omitted. The sale of mining property is conducted under the provisions for sale of real property generally. See Sections 10300-10316.

Under former Sections 810-814, two court proceedings were required: one on the petition for a court order authorizing the sale, and another on the petition for court confirmation of sale. This procedure was cumbersome, unnecessary, and wasteful. Moreover, the procedure for sale of mining property was rarely used. Hudner, *Sales of Estate Property*, in 1 California Decedent Estate Administration § 14.71, at 554 (Cal. Cont. Ed. Bar 1971).

Former Section 810 also permitted the court to authorize the personal representative to give an option to purchase a mining claim. Concerning options generally, see Sections 9960-9966 (granting option to purchase real property), 9980-9983 (option to purchase given in will).

**Probate Code § 811 (repealed). Hearing and order**

**Comment.** Former Section 811 is omitted. See the Comment to former Section 810.

**Probate Code § 812 (repealed). Bond; execution of agreement**

**Comment.** Former Section 812 is omitted. See the Comment to former Section 810.

**Probate Code § 813 (repealed). Cancellation for default**

**Comment.** Former Section 813 is omitted. See the Comment to former Section 810.

**Probate Code § 814 (repealed). Confirmation of sale**

**Comment.** Former Section 814 is omitted. See the Comment to former Section 810.

**Probate Code § 830 (repealed). Borrowing money; court order**

**Comment.** The first sentence of former Section 830 is restated in Sections 9800(a) and 9804(a). The provision that the court may make an order “as often as occasion therefor shall arise in the administration of the estate” is omitted as unnecessary. There is no limit on the number of times that the court may be petitioned.

The second sentence is restated in Section 9801 without substantive change. The last sentence is restated in Section 9800(a) without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 831 (repealed). Petition; notice**

**Comment.** The first sentence of former Section 831 is restated in Section 9802 without substantive change. The provision requiring the petition to be verified is generalized in Section 1284. The first part of the last sentence requiring the clerk to set the petition for hearing is generalized in Section 1285. The last part of the last sentence is restated in Section 9803 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. See also Section 58 (“personal representative” defined).

**Probate Code § 832 (repealed). Hearing; order**

**Comment.** The first and second sentences of former Section 832 are restated in Section 9804 without substantive change, except that the former provision that the court “may direct in what coin or currency” the loan shall be paid has been omitted as obsolete. This omission is consistent with the 1982 amendment to Section 667 of the Code of Civil Procedure. See 1982 Cal. Stat. ch. 497, § 7. See also Code Civ. Proc. § 577.5 (judgment stated in dollars and cents). The provision in the first sentence relating to proof of notice is generalized in Section 1260. See also Section 58 (“personal representative” defined).

The last sentence of former Section 832 (recording required of certified copy of order) is restated in Section 1292 without substantive change.

**Probate Code § 833 (repealed). Execution of notes and instruments of security**

**Comment.** Former Section 833 is restated in Section 9805 without substantive change, except that Section 9805 is broadened to apply to an instrument creating a security interest in personal property as well as to a mortgage or deed of trust of real property. See also Section 58 (“personal representative” defined).

**Probate Code § 834 (repealed). Effectiveness of encumbrance; deficiencies on foreclosure sale**

**Comment.** The first and second sentences and the first part of the last sentence of former Section 834 are restated in Section 9806 without substantive change. The last part of the last sentence is restated in Section 9807 without substantive change.

**Probate Code § 840 (repealed). Court authorization**

**Comment.** Former Section 840 is restated in Section 9942(a) without substantive change. The provision that the court may make an order “as often as occasion therefor shall arise in the administration of the estate” is omitted as unnecessary. There is no limit on the number of times that the court may be petitioned. See also Section 58 (“personal representative” defined).

**Probate Code § 841 (repealed). Petition; notice**

**Comment.** The first sentence of former Section 841 is restated in Section 9943(a) without substantive change. The provision in the first sentence requiring the petition to be verified is generalized in Section 1284. The first part of the second sentence requiring the clerk to set the petition for hearing is generalized in Section 1285. The last part of the second sentence and all of the last sentence are replaced by Section 9944(a)-(b). See the Comment to Section 9944. Fifteen days' notice is required under Sections 1220 and 1230, instead of ten days' notice as required under former Sections 1200 and 1200.5. See also Section 58 ("personal representative" defined).

**Probate Code § 842 (repealed). Hearing and order**

**Comment.** The first sentence of former Section 842 is restated in Section 9945 without substantive change. The second sentence is restated in Sections 9946(a) and 9947(b) without substantive change, except that the former provision permitting the court to authorize a lease longer than 10 years for the growing of asparagus is replaced by Section 9946(a) (no lease longer than 10 years if heir or devisee having interest in property objects). The third sentence is restated in Section 9946(b) without substantive change. The fourth sentence is restated in Section 9946(c) without substantive change. The fifth sentence is restated in Section 9947(c) without substantive change. The last sentence is restated in Section 1292 without substantive change. See also Section 58 ("personal representative" defined).

**Probate Code § 842.1 (repealed). Leases longer than 10 years**

**Comment.** The first sentence of former Section 842.1 is restated in Sections 9943(b) and 9945(b) without substantive change. The provision in the first sentence requiring the petition to be verified is generalized in Section 1284.

The second sentence is restated in Section 9944(c) without substantive change. The 20-day notice period in the second sentence is changed to 15 days to conform to the general notice period provided in Section 1220. The authority in the second sentence for the court to require additional notice is continued in the general authority for the court to require additional notice in Section 1202.

The last sentence is restated in Section 9947(b) without substantive change. See also Section 34 ("devisee" defined).

**Probate Code § 843 (repealed). Execution of lease; jurisdiction of court; error in proceedings**

**Comment.** Former Section 843 is restated in Section 9948 without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 844 (repealed). Leases without court order**

**Comment.** Former Section 844 is replaced by Section 9941. See the Comment to Section 9941.

**Probate Code § 845 (repealed). Lease with option to purchase**

**Comment.** The first part of former Section 845 is restated in Section 9940(a) without substantive change. The last part is restated in Section 9942(b) without substantive change.

**Probate Code § 850 (repealed). When court order authorized**

**Comment.** Former Section 850 is restated in Section 9860(a) (1) and (2) and in Section 9867 without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 851 (repealed). Petition; notice**

**Comment.** The first sentence of former Section 851 is restated in the introductory paragraph of subdivision (a) and in subdivision (b) of Section 9860 without substantive change. The provision in the first sentence requiring the petition to be verified is generalized in Section 1284. See also Section 9883 (purchase of estate property by personal representative). The provision in the last sentence requiring the clerk to set the petition for hearing is generalized in Section 1285. The last part of the last sentence relating to notice is replaced by Section 9861 (a). See also Section 58 (“personal representative” defined).

**Probate Code § 851.5 (repealed). Conveyance or transfer of property claimed to belong to decedent or other person**

**Comment.** The first sentence of former Section 851.5 is restated without substantive change in Section 9860(a) (3)-(4) and (b). The provision in the first sentence requiring the petition to be verified is generalized in Section 1284.

The second sentence requiring the clerk to set the petition for hearing is generalized in Section 1285.

The third sentence is replaced by Section 9861(b). Fifteen days' notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5.

The fourth sentence is restated in Section 9861(a) without substantive change. The fifth sentence is continued in Section 9862 without change. The sixth sentence is restated in Section 9863 without substantive change. The seventh sentence is restated in Section 9864 without substantive change. The last sentence is restated in Section 9865(a) without substantive change.

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

### **Probate Code § 852 (repealed). Hearing and order**

**Comment.** The first part of the first sentence of former Section 852 requiring proof of notice is restated in Section 1260 without substantive change. The last part of the first sentence is restated in Sections 9866 and 9867 without substantive change. See also Section 9883 (purchase of estate property by personal representative). The last sentence is restated in Section 1292 without substantive change. See also Section 58 ("personal representative" defined).

### **Probate Code § 853 (repealed). Effect of order; execution and effect of conveyance or transfer**

**Comment.** Former Section 853 is restated in Section 9868 without substantive change, except that the provision in the second sentence relating to enforcement of the order is omitted as unnecessary. See Section 1280 (enforcement of judgments). See also Sections 58 ("personal representative" defined), 9612 (effect of court authorization or approval), 9883 (purchase of estate property by personal representative).

### **Probate Code § 854 (repealed). Option to purchase given in will**

**Comment.** Subdivision (a) of former Section 854 is restated in Section 9980(a) without substantive change.

The first sentence of subdivision (b) is replaced by Section 9981(a) and (b). See the Comment to Section 9981. The second sentence of subdivision (b) requiring the clerk to set the petition for hearing is generalized in Section 1285. The third sentence of subdivision (b) is restated in Section 9981(c), except that 15 days'

notice is required under Section 1220, instead of ten days' notice as required under former Section 1200.5. The last sentence of subdivision (b) is restated in Section 9982 without substantive change.

Subdivision (c) is continued in Section 9980(c) without change.

Subdivision (d) is continued in Section 9980(b) without change.

### **Probate Code § 860 (repealed). Exchange of property**

**Comment.** The first part of the first sentence of former Section 860 is restated in Sections 9920 and 9921 without substantive change, except that the alternative standard for issuance of the order based on the best interests of the estate is omitted. The last part of the first sentence (notice by posting) and all of the second sentence (notice by mail) of former Section 860 are replaced by Section 9922(a). 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 last sentence of former Section 860 is restated in Section 9922(b) without substantive change. See also Section 58 ("personal representative" defined).

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

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

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

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

### **Probate Code § 920 (amended). Liability of joint personal representative**

**Comment.** Section 920 is amended by removing the provisions relating to powers and duties of personal representatives. These provisions are relocated in Part 5 (estate management) of Division 7 (administration of estates).

The former provision in the first sentence that the personal representative is not accountable for any debts uncollected without fault is restated in the second sentence Section 9650(a) (1) without substantive change. The former provision in the first sentence relating to liability for the act or negligence of a joint personal representative is replaced by Section 9631. See the Comment to Section 9631.

The former second sentence is restated in Section 9657 without substantive change.

The former last sentence is restated in Section 10005 without substantive change. The provision requiring that the sale be “justly made” is replaced by the requirement in Section 10005 that the sale be made “in accordance with law.” See the Comment to Section 10005.

See also Section 58 (“personal representative” defined).

**Probate Code § 920.3 (amended). Duty to keep cash invested**

**Comment.** Section 920.3 is amended by removing the provisions relating to powers and duties of personal representatives. These provisions are relocated in new Part 5 (estate management) of Division 7 (administration of estates). The former provision relating to the duty of the personal representative to keep cash invested is restated in Section 9652 without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 920.5 (repealed). Interest on deposits by trust company**

**Comment.** Former Section 920.5 is restated in Section 9705 without substantive change. See also Section 58 (“personal representative” defined).

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

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

**Probate Code § 950 (repealed). Priority of debts**

**Comment.** Former Section 950 is replaced by Sections 11401 (“debt” defined), 11402 (“wage claim” defined), and 11420 (priority for payment). See the Comments to these sections.

**Probate Code § 951 (repealed). Time for payment of certain debts**

**Comment.** Former Section 951 is restated without substantive change in Sections 11402 (“wage claim” defined), 11421 (immediate payment of priority debts), and 11422(a) (payment of debts on court order). See also Section 58 (“personal representative” defined).

**Probate Code § 951.1 (repealed). Funeral and last illness expenses**

**Comment.** Former Section 951.1 is restated without substantive change in Section 11446 (funeral expenses and last illness expenses), which also recognizes state and federal priorities.

**Probate Code § 952 (repealed). Order of payment; discharge**

**Comment.** The first, second, and fourth sentences of former Section 952 are restated in Section 11422(b)-(c) (payment of debts on court order) without substantive change. The third sentence is restated in Section 11420(b) (priority for payment) without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 953 (repealed). Future, contingent, or disputed claims**

**Comment.** The first sentence of former Section 953 is restated in Section 11427 (disputed and contingent claims) without substantive change. The second sentence is restated in Section 11425 (payment of debt not due) without substantive change. The last sentence is replaced by Section 11420(b) (priority for payment).

**Probate Code § 953.1 (repealed). Contingent claims**

**Comment.** The first paragraph of former Section 953.1 is restated in Section 11426 (trust for installment or contingent debt) without substantive change. The transitional provision in the second paragraph is omitted as no longer necessary.

**Probate Code § 954 (repealed). Liability on allowed claims**

**Comment.** Former Section 954 is restated in Section 11424 (enforcement of order for payment) without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 955 (repealed). Omitted claims; remedy of creditor**

**Comment.** Former Section 955 is replaced by Section 11429 (unpaid creditor). See also Section 58 (“personal representative” defined).

**Probate Code § 956 (repealed). Administration after first order for payment**

**Comment.** Former Section 956 is reenacted as Section 956 without change.

**Probate Code § 956 (added). Administration after first order for payment**

**Comment.** Section 956 reenacts former Section 956 without change.

**Probate Code § 980 (repealed). Notice of petition for apportionment of debts**

**Comment.** Subdivision (a) of former Section 980 is combined with portions of former Sections 704.2 and 704.4 in Section 11440 (when allocation may be made), which allows petition at any time before the order for final distribution is made.

Subdivision (b) is combined with portions of former Sections 704.2 and 704.4 in Section 11441 (petition for allocation).

Subdivision (c) is restated in Section 11442 (inventory of property of surviving spouse) without substantive change.

Subdivision (d) is replaced by Section 11443 (notice of hearing), which incorporates general service of notice procedures. Fifteen days’ notice is required under Section 1220, instead of ten days’ notice as required under former law.

Subdivision (e) is combined with a part of former Section 713.5 in Section 11444 (allocation), making clear that allocation of liability is to be based on rules applicable to liability of marital property for debts during marriage.

Subdivision (f) is combined with a part of former Section 713.5 in Section 11445 (order implementing allocation).

See also Section 58 (“personal representative” defined).

**Probate Code § 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 Section 1200 *et seq.* If a person has requested special notice, notice must be given as provided in Section 1252.

**Probate Code § 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 former provision 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.

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

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

**Probate Code § 1020.1 (technical amendment). Notice of petition for distribution to assignee or transferee**

**Comment.** The 10-day notice period in the second sentence of Section 1020.1 is increased to 15 days to conform to the general notice period provided in Section 1220.

**Probate Code § 1021.5 (added). Distribution of property subject to option**

**Comment.** Section 1021.5 restates the first sentence of subdivision (e) of former Section 584.3 without substantive change.

**Probate Code § 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.

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

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

**Probate Code § 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.

**Probate Code § 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.

**Probate Code § 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 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.

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

**Comment.** The first sentence of Section 1191 requiring the clerk to set the petition for hearing is generalized in Section 1285. The second sentence 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.

**Probate Code § 1200 (repealed). Posting notice**

**Comment.** Subdivision (a) of former Section 1200 is replaced by Section 1230 (manner of posting notice of hearing). The provision requiring the clerk to set the petition for hearing is generalized in Section 1285. The list of petitions to which the posting requirement applied under former law is omitted.

Subdivision (b) is restated in Section 1260 (proof of giving notice) without substantive change, except that Section 1260 permits proof of posting to be made before the hearing, as well as at the hearing.

Subdivisions (c) and (d) are replaced by Section 1200(b) (application of general notice provisions).

Subdivision (e) is omitted. Under the new scheme, a reference to the general posting provision in Section 1230 is included in each section that provides for notice hearing by posting.

**Probate Code § 1200.1 (repealed). Form of notice**

**Comment.** Former Section 1200.1 is omitted. The statutory form has been replaced by Judicial Council forms.

**Probate Code § 1200.5 (repealed). Mailed notice**

**Comment.** Subdivisions (a) and (b) of former Section 1200.5 are replaced by Sections 1201 (notice not required to be given to oneself or persons joining in petition), 1216 (personal delivery instead of mailing), and 1220 (manner of mailing notice of hearing). The reference to legatee is unneeded because of the

definition of “devisee” in Section 32. See also Section 58 (“personal representative” defined).

Subdivision (c) is restated in Section 1260 (proof of giving notice) without substantive change, except that Section 1260 permits proof of giving notice by mail to be made before the hearing, as well as at the hearing.

Subdivisions (d) and (e) are replaced by Section 1200(b) (application of general notice provisions).

Subdivision (f) is omitted. Under the new scheme, a reference to the general mailing provision in Section 1220 is included in each section that provides for notice of hearing by mail.

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

**Comment.** Former Section 1201 is restated in Section 1207 without substantive change.

**Probate Code § 1202 (repealed). Persons entitled to request special notice**

**Comment.** Former Section 1202 is replaced by Sections 1250 (request for special notice) and 1252 (notice to be given to person requesting special notice). The reference to the State Controller in former Section 1202 is omitted. See the Comment to Section 1250. The reference to legatee is unneeded because of the definition of “devisee” in Section 32. See also Sections 52 (“letters” defined), 58 (“personal representative” defined).

**Probate Code § 1202.5 (repealed). Request for special notice of inventory and appraisement**

**Comment.** Former Section 1202.5 is replaced by Sections 1250 (request for special notice), 1252 (notice to be given to person requesting special notice), and 1260 (proof of notice required). The reference to legatee is unneeded because of the definition of “devisee” in Section 32. See also Sections 52 (“letters” defined), 58 (“personal representative” defined).

**Probate Code § 1203 (repealed). Request for special notice by U.S. agencies**

**Comment.** Former Section 1203 is restated in Section 1288 without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 1204 (repealed). Additional notice**

**Comment.** Former Section 1204 is restated in Section 1202 without substantive change.

**Probate Code § 1205 (repealed). Continuance or postponement of hearing**

**Comment.** Former Section 1205 is restated in Sections 1205 (notice of continued or postponed hearing) and 1286 (continuance or postponement) without substantive change.

**Probate Code § 1206 (repealed). Personal notice by citation**

**Comment.** The first sentence of former Section 1206 is omitted. Under the new scheme, where notice is required to be given by citation, the relevant section so provides. If a section is silent on the manner of notice of a hearing, notice is given by mail as provided by Section 1220. The last sentence is restated in Section 1241 without substantive change.

**Probate Code § 1207 (repealed). Issuance and service of citation**

**Comment.** The first sentence of former Section 1207 is restated in Section 1240 without substantive change. The last sentence is restated in Section 1242 without substantive change.

**Probate Code § 1208 (repealed). Service on guardian or conservator**

**Comment.** Former Section 1208 is restated in Section 1289 without substantive change.

**Probate Code § 1209 (repealed). Frequency of publication**

**Comment.** Section 1209 is omitted. Where a particular section requires notice by publication, the section provides for the frequency and period of publication. Daily publication is never required.

**Probate Code § 1210 (repealed). Posting other than at county seat**

**Comment.** Former Section 1210 is restated in subdivision (a) of Section 1230 without substantive change.

**Probate Code § 1220 (repealed). Recital of jurisdictional facts**

**Comment.** Former Section 1220 is continued in Section 1290 without change.

**Probate Code § 1221 (repealed). Entry and filing of orders**

**Comment.** Former Section 1221 is continued in Section 1291 without change.

**Probate Code § 1222 (repealed). Recording orders affecting real property**

**Comment.** Former Section 1222 is continued in Section 1292 without change.

**Probate Code § 1224 (repealed). Delivery of papers to county treasurer after deposit**

**Comment.** The first paragraph of former Section 1224 is restated in Section 1293 without substantive change. See also Section 58 (“personal representative” defined). The second paragraph is omitted; it was a transitional provision that is no longer necessary.

**Probate Code § 1230 (repealed). Application of general rules of procedure**

**Comment.** Former Section 1230 is restated in Section 1280 without substantive change.

**Probate Code § 1231 (repealed). Motion for new trial**

**Comment.** Former Section 1231 is continued in Section 1281 without change.

**Probate Code § 1232 (repealed). Costs**

**Comment.** Former Section 1232 is continued in Section 1282 without change.

**Probate Code § 1233 (repealed). Application of Code of Civil Procedure**

**Comment.** Former Section 1233 is continued in Section 1283 without change.

**Probate Code § 1240 (repealed). Appealable orders**

**Comment.** Former Section 1240 is restated in Section 1297 without substantive change. The new section revises many cross-references. See also Sections 32 (“devise” defined), 52 (“letters” defined), 58 (“personal representative” defined).

**Probate Code § 1241 (repealed). Effect of reversal of order appointing personal representative**

**Comment.** Former Section 1241 is restated in Section 1298 without substantive change. See also Section 58 (“personal representative” defined).

**Probate Code § 1242 (repealed). Judgment roll**

**Comment.** Former Section 1242 is restated in Section 1299 without substantive change.

**Probate Code § 1464 (technical amendment). Form of notice in guardianship and conservatorship proceedings**

**Comment.** Section 1464 is amended to delete the reference to the statutory form that was set out in former Section 1200.1.

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

**Comment.** Former 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. See also Section 58 (“personal representative” defined).

**Probate Code § 2100 (technical amendment). Law governing guardianships and conservatorships**

**Comment.** Section 2100 is amended to reflect the removal of many provisions governing administration of decedents’ estates to Division 7 (commencing with Section 7000). This is a nonsubstantive revision.

**Probate Code § 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 (e) of Section 2105 is redesignated as subdivision (d) and amended to conform the language to subdivision (c) of Section 9630 (decedents' estates). Under subdivision (e) as amended, 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.

**Probate Code § 2105.5 (added). Liability of joint guardian or conservator of estate for breach by other guardian or conservator**

**Comment.** Section 2105.5 is new and is comparable to the joint liability provision for personal representatives. See Section 9631.

**Probate Code § 2405 (amended). Submitting disputed claim for summary determination**

**Comment.** Section 2405 is amended to broaden the section to apply to any dispute relating to the estate between the guardian or conservator and a third person. Formerly, Section 2405 permitted the voluntary referral for summary determination of "a claim against the ward or conservatee or the estate." As thus broadened, Section 2405 has the same scope as the rule applicable to decedents' estates. See Section 9620 and the Comment thereto.

The former reference in subdivision (a) to "a commissioner or referee who is regularly attached to the court and designated in the agreement or to a judge pro tempore designated in the agreement" is replaced by a reference to "a temporary judge designated in the agreement." This makes no substantive change, but conforms the language to Section 21 of Article 6 of the California Constitution ("On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause"). Accordingly,

under Section 2405, any member of the State Bar (including a court commissioner or referee) may be appointed as a temporary judge. See also Code Civ. Proc. § 259(5) (power of court commissioner to act as temporary judge). Section 2405 does not require that the temporary judge try the matter in a regular courtroom; the temporary judge may try the matter at his or her office or other place. Nothing in Section 2405 limits the alternative of a reference and trial by a referee under Code of Civil Procedure Sections 638-645.1, and those provisions remain applicable to guardianship and conservatorship proceedings.

Language is added to subdivision (b) to make clear that the agreement must be filed with the clerk within the time specified in Section 9257 (action on rejected claim) for bringing an independent suit on the matter in dispute. This makes Section 2405 consistent with Section 9620(b) (decedents' estates). Subdivision (b) is also amended to revise a cross-reference. The other revisions of subdivision (b) are nonsubstantive and are made to conform the language to Section 9620(b).

#### **Probate Code § 2406 (amended). Submitting dispute to arbitration**

**Comment.** Section 2406 is amended to broaden the section to apply to any dispute relating to the estate between the guardian or conservator and a third person. Formerly, Section 2406 permitted voluntary arbitration of "a disputed claim against the ward or conservatee or the estate." As thus broadened, Section 2406 has the same scope as the rule applicable to decedents' estates. See Section 9621 and the Comment thereto.

#### **Probate Code § 2453 (amended). Bank and savings accounts**

**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).

**Probate Code § 2453.5 (added). Interest on deposits by trust company**

**Comment.** Section 2453.5 is new and is comparable to authority provided in administration of decedents' estates. See Section 9705. See also Sections 2401 (duty of guardian or conservator to manage estate using ordinary care and diligence).

**Probate Code § 2455 (amended). Deposit of securities in securities depository**

**Comment.** Section 2455 is amended to delete language that duplicated Section 775 of the Financial Code and to substitute a cross-reference to that section. This revision makes Section 2455 consistent with Section 9702 (decedents' estates).

**Probate Code § 2456 (amended). Accounts and deposits withdrawable only on court order**

**Comment.** Section 2456 is amended to delete language that duplicated Sections 2453 and 2454 and to substitute a cross-reference to those two sections, to add new language to subdivision (b), and to add subdivision (c). These revisions make Section 2456 consistent with Section 9703 (decedents' estates).

**Probate Code § 2525 (amended). Abatement of petition if civil action pending**

**Comment.** Section 2525 is amended to require that jurisdiction be obtained in the civil action before a petition is filed under this article in order to invoke the abatement provisions of this section. Section 2525 is also amended to add subdivision (b) which codifies case law. See *Richer v. Superior Court*, 63 Cal. App. 3d 748, 755-57, 134 Cal. Rptr. 52 (1976). These revisions make Section 2525 consistent with Section 9865 (decedents' estates).

**Probate Code § 2543 (amended). Sales under guardianship and conservatorship law**

**Comment.** Subdivision (b) of Section 2543 is amended to revise a cross-reference to the Independent Administration of Estates Act. Subdivision (c)(2) is amended to revise a cross-reference to the provision governing sales of personal property.

**Probate Code § 2546 (repealed). Mining claims under guardianship and conservatorship law**

**Comment.** Former Section 2546 is omitted for consistency with the sale provisions applicable to decedents' estates which no longer provide special rules governing sales of mines or mining claims. See Sections 2543 (sales under guardianship and conservatorship law governed by law concerning sales by administrators), 10000 *et seq.* (sales in decedents' estates).

**Probate Code § 2555 (amended). Leases permitted without court authorization**

**Comment.** Section 2555 is amended to increase the maximum rental for a lease not requiring court authorization from \$750 to \$1500 per month to make Section 2555 consistent with Section 9941 (decedents' estates).

**Probate Code § 2574 (amended). United States and California obligations and other securities**

**Comment.** Subdivision (a) of Section 2574 is revised by adding paragraphs (5) and (6). Paragraph (5) replaces the reference to mutual funds comprised of direct obligations of the United States or of this state, or comprised of repurchase agreements with respect to any obligation, regardless of maturity, which formerly appeared in paragraph (1). Under paragraph (5), a mutual fund which invests in repurchase agreements must limit its portfolio to those fully collateralized by United States government obligations. Paragraph (6) relating to common trust funds confers new investment authority not found in prior guardianship and conservatorship law. These provisions are consistent with Section 9730(b)-(c) (decedents' estates).

Subdivision (b) is amended to delete the reference to the standard of care applicable to investments by trustees. Section 2401 provides the standard governing management of an estate under the guardianship and conservatorship law.

**Probate Code § 2580 (technical amendment). Petition concerning substituted judgment**

**Comment.** Paragraph (11) of subdivision (b) of Section 2580 is amended to revise the cross-reference to former Section 649.1.

**Probate Code § 2631 (technical amendment). Disposition of assets on death of ward or conservatee**

**Comment.** Subdivision (c) of Section 2631 is amended to revise cross-references to former Section 630.

**Probate Code § 6327 (technical amendment). Appealable orders**

**Comment.** Section 6327 is amended to revise the cross-reference to former Section 1240.

**Probate Code § 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 in Section 6501 requiring the clerk to set the petition for hearing is generalized in Section 1285.

**Probate Code § 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 in Section 6511 requiring the clerk to set the petition for hearing is generalized in Section 1285.

**Probate Code § 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 in Section 6521 requiring the clerk to set the petition for hearing is generalized in Section 1285.

**Probate Code § 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 in subdivision (c) excusing giving notice to oneself is generalized in Section 1201.

**Probate Code § 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. 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.

**Probate Code § 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 periods provided in subdivisions (a) and (c) are increased to 15 days to conform to the general notice period provided in Section 1220.

**Probate Code § 6611 (technical amendment). Liability for unsecured debts of decedent**

**Comment.** Subdivision (e) of Section 6611 is revised to reflect the repeal of former Section 700. The reference in subdivision (e)(1) to "presenting" claims is deleted to conform to the revised procedure for making creditor claims. These are nonsubstantive revisions.

**Probate Code § 13101 (amended). Furnishing of affidavit**

**Comment.** Section 13101 is amended to require that a copy of the decedent's will be attached to the affidavit or declaration if the persons executing the affidavit or declaration claim under the decedent's will. This addition makes Section 13101 consistent with Sections 13152(c) (contents of petition for court order determining succession to real property) and 13200(d) (affidavit procedure for real property of small value).

**Probate Code § 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 generalized in Section 1285. 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 other provisions relating to the manner of mailing notice are generalized in Sections 1215 (manner of mailing) and 1220 (manner of mailing notice of hearing).

**Probate Code § 13501 (technical amendment). Property subject to administration**

**Comment.** Section 13501 is amended to revise a cross-reference.

**Probate Code § 13552 (technical amendment). Limitations on actions against surviving spouse**

**Comment.** The reference in Section 13552 to "presenting" claims is deleted to conform to the revised procedure for making creditor claims. This section is also amended to revise the cross-reference to the procedure for making creditor claims. These are nonsubstantive revisions.

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

**Comment.** The first 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.

**Revenue & Taxation Code § 19265 (amended). Fiduciary's liability for taxes**

**Comment.** [For the comment to this section, see *Recommendation Relating to Creditor Claims Against Decedent's Estate, supra.*]

(453-500 Blank)