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Administration of Estates

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Administration of Estates; combining testamentary trusts

Probate Code §1133 (new).
AB 3065 (Boatwright); STATS 1974, Ch 551
Support: State Bar of California

Section 1133 has been added to the Probate Code to allow a trustee who has been appointed by will or by the court to execute two trusts created by different wills, to petition the court for permission to combine the assets of the two trusts and administer them as a single trust if the provisions and terms of the decree establishing the two trusts are substantially identical. If administration of a single trust will be consistent with the intent of the trustor and will facilitate administration of the trust without prejudicing the interests of the beneficiaries, the court may, without notice, order the two trusts combined. By allowing the trustee to combine two substantially identical testamentary trusts, such as trusts created by a husband and wife, section 1133 would seem to simplify the procedure for, and reduce the cost of, administration of such trusts [STATE BAR OF CALIFORNIA, 1973 CONFERENCE RESOLUTION 11-15].

See Generally:

Administration of Estates; inheritance rights of nonresident aliens

Code of Civil Procedure §1336 (repealed); Probate Code Chapter 3 (commencing with §259), §1026 (repealed); §1027 (amended).
AB 3414 (Berman); STATS 1974, Ch 701
SB 1533 (Stevens); STATS 1974, Ch 425
Support: California Law Revision Commission; State Bar of California

Prior to the enactment of chapters 701 and 425, the rights of nonresident aliens to inherit property in California were more restricted than the rights of resident aliens and United States citizens. Under
sections 259, 259.1, and 259.2 of the Probate Code, before a nonresident alien could inherit property he was required to prove that United States citizens residing in his country had the same inheritance rights as did the citizens of his country. Even if reciprocity could be established, under section 1026 of the Probate Code a nonresident alien had five years from the date of the decedent's death to appear and claim property left to him by the decedent, while a resident alien or United States citizen had five years from the date of distribution to appear and claim such property. Chapter 425, by repealing sections 259, 259.1, and 259.2 of the Probate Code, and chapter 701, by repealing section 1336 of the Code of Civil Procedure and section 1026 of the Probate Code and amending section 1027 of the Probate Code, remove these restrictions on the rights of nonresident aliens to inherit property in California.

**COMMENT**

In *Estate of Kraemer* [276 Cal. App. 2d 715, 81 Cal. Rptr. 287 (1969)], the court, relying on *Zschernig v. Miller* [389 U.S. 429 (1968)], which declared a substantially identical Oregon statute unconstitutional, declared section 259 of the Probate Code unconstitutional in its application because it had led to in-depth inquiries into the actual administration of foreign law and therefore interfered with the foreign affairs power of the federal government. By repealing sections 259, 259.1, 259.2, and 1026 of the Probate Code the legislature has ended the confusion as to whether section 259 can be constitutionally applied, and has brought the rights of nonresident aliens to inherit property into parity with those of resident aliens and United States citizens with respect to California law.

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See Generally:


**Administration of Estates; community property, equal rights**

Probate Code §§202, 204 (repealed); §§202, 204, 205, 206 (new); §203 (amended).
SB 570 (Dymally); STATS 1974, Ch 11
Support: League of Women Voters; Business and Professional Women; American Association of University Women
Code of Civil Procedure §353.5 (new); Financial Code §§851,
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7601, 11200 (amended); Probate Code Article 3 (commencing with §650) (new); §§202, 203, 204, 205, 1240 (amended).
SB 1846 (Song); STATS 1974, Ch 752
Support: State Bar of California

Makes changes in the law related to administration of community property on the death of a spouse and its liability at that time for the payment of debts; establishes an optional procedure by which a surviving spouse can obtain a judicial decree confirming certain property is community property passing to a surviving spouse without administration.

Prior to the enactment of chapters 11 and 752, when community property passed from the control of the husband by testate or intestate succession, the entire community property was subject to the debts of the husband and to administration under division 3 of the Probate Code. When the wife predeceased her husband, however, the husband retained control over the community personal property and was required to transfer to the wife's personal representative only that property necessary to carry out her will. Because administration costs are predicated on the value of the estate administered, a surviving husband was able to avoid many, if not all, of the costs of administration while a wife in similar circumstances was not able to avoid such costs. The husband was also able to avoid costs of administration on the community real property under the procedures in former section 203, which provided that the husband had full power to sell, lease, mortgage, or otherwise deal with and dispose of the community real property after forty days from the death of the wife, if no claim on the deceased wife's community real property had been filed.

Chapter 11 has been enacted as part of a legislative program designed to place the rights and powers of the wife on a parity with those of the husband with respect to the community property [See 5 PAC. L.J., REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION 352 (1974)]. Additionally, chapter 752 has been enacted to revise some of the substantive provisions of chapter 11 and to provide an optional procedure whereby a surviving spouse may obtain a judicial decree confirming that specific property is community property passing to the surviving spouse and that no administration of such property is necessary.

Section 202 has been amended by chapters 11 and 752 to provide that when either a husband or wife dies intestate or testate, and by his or her will leaves all or part of his or her interest in the community property to the surviving spouse, such property passes to the surviving...
spouse subject only to the provisions of sections 203, 204, and 205 (discussed infra), and no administration is necessary. Under the provisions of section 203, the surviving spouse has full power to sell, lease, mortgage, or otherwise deal with and dispose of an interest in the community real property if the record title stands in the name of the surviving spouse or of the surviving spouse and a person other than the deceased spouse and if, after forty days, no notice has been filed claiming an interest under the will of the deceased spouse in such property.

The community property is, however, liable under section 205 for all valid and enforceable debts existing at the time of the death of the deceased spouse and chargeable against the community property under the provisions of title 8 (commencing with §5100) of the Civil Code. Unless an order allocating such debts has been made by the court pursuant to section 656, such debts are chargeable proportionately against (1) the interest of the surviving spouse in the community property; (2) the interest of the deceased spouse passing without administration; and (3) the interest of the deceased spouse in any separate property, community property, and quasi-community property which is subject to administration. In addition, the surviving spouse is personally liable for the unsecured debts of the deceased spouse to the extent of the value of the deceased spouse's interest in the community property passing to the surviving spouse. Such debts may be enforced against the surviving spouse in the same manner as they could have been enforced against the deceased spouse had he or she not died. Section 205 also has been amended to further provide that upon any sale or encumbrance by the surviving spouse pursuant to an order confirming such property is community property passing to the surviving spouse under the provisions of article 3 (commencing with §650), the community property is not subject to administration of the estate of the deceased spouse for any purpose.

Section 204 has been enacted to provide that any interest in the community property left to someone other than the surviving spouse, and any property disposed of in trust by the will of the deceased spouse, is subject to administration under the provisions of division 3 (commencing with §300) of the Probate Code. Section 206 re-enacts without change former section 204 (repealed by ch. 11) and provides that community property held in a revocable trust (as described in §5113.5 of the Civil Code) shall be governed by the provisions of the trust, if any, for disposition in the event of death.

Chapter 752 also adds section 353.5 to the Code of Civil Procedure to provide that the statute of limitations for enforcing the debts of the

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deceased spouse against the surviving spouse is either (1) the applicable statute of limitations if the deceased spouse had not died or (2) four months from the death of the deceased spouse, whichever occurs later.

Chapter 752 also adds a procedure by which a surviving spouse may obtain a judicial decree confirming title to property in the estate of the deceased spouse. To initiate the proceeding the surviving spouse must file a verified petition in the county where the deceased spouse's estate may be administered. Section 650 also specifies information the petition must contain, including a description of the property which the surviving spouse alleges is community property passing to the surviving spouse without administration, the name of any community property business which the deceased spouse was operating or managing at the time of death, and the facts on which the surviving spouse bases such allegations.

A similar petition may be filed by any person interested in the estate under the provisions of section 651, alleging that administration of all or part of the deceased spouse's estate is necessary because all or part of the estate is not community property passing to the surviving spouse. The petition must similarly include a description of the property which the petitioner alleges is not community property passing to the surviving spouse and the facts upon which the petitioner bases such allegations. If proceedings for administration of the deceased spouse's estate are pending, a petition may be filed in the proceedings pursuant to sections 650 or 651 without payment of an additional fee by the petitioner or personal representative. If administration is not pending then the petition must include a verified petition for probate of the will or administration of the estate (§652). Notice of the hearing or the petition must be given at least thirty days prior to the hearing (§§653, 654).

Upon the filing of such a petition the court must appoint an inheritance tax referee who must appraise the property described in the petition and file with the clerk of the court an inheritance tax determination or a certification that no inheritance tax is due. If the referee files a notice that the information he has been furnished is insufficient to make an inheritance tax determination or that he contests the characterization of the property as community property passing to the surviving spouse, the court may not issue an order pursuant to section 655 until a hearing on the matter has been held. After the hearing the court may issue any order it deems just and equitable. Any inheritance tax which becomes due by reason of a transfer of any property
described in a petition must also be paid before the court can issue any order pursuant to article 3.

If the court finds that all of the property passing to the surviving spouse is community property, the court must issue an order describing the property, confirming that the property is community property passing to the surviving spouse, and determining that no administration is necessary. The court must also dismiss the petition for probate of the will or administration of the estate if such petition was also filed with the petition to confirm the community property (§655(a)). If the court issues such an order it must also order any person filing a petition alleging some of the property is not community property passing to the surviving spouse pursuant to section 651 to reimburse the surviving spouse for all expenses incurred in the proceedings including reasonable attorney's fees.

If the court finds that all or a portion of the property is not community property passing to the surviving spouse, it must issue an order similar to that in section 655(a) describing such property, confirming such property is community passing to the surviving spouse, and determining that no administration of such property is necessary. The court also must issue an order directing the administration of the property which is not community property passing to the surviving spouse and issue letters testamentary or of administration (§655(b)). In order to give effect to the will of the deceased spouse, the court may also (1) allocate any debts and inheritance and estate taxes between the property which is community property passing to the surviving spouse and property which is not community passing to the surviving spouse, and (2) provide for the abatement or ademption of devises or legacies (§656(a)).

If all or part of the community property passing to the surviving spouse consists of a business or interest in a business which the deceased spouse was managing or operating at the time of his death, the court must require the surviving spouse to file a list of all known creditors of the business and the amount owing to each. The court may also issue any orders necessary to protect the interests of the creditors in the business including the filing of an undertaking (§656(b)).

The compensation of a personal representative under section 901 of the Probate Code (compensation based on a percentage of the value of the estate) must be based solely on the value of the estate which is not community property passing to the surviving spouse if a petition pursuant to sections 650 or 651 has been filed prior to the issuance of
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letters testamentary or of administration. In addition, an attorney may charge a reasonable fee in representing a person filing a petition under section 650 or 651. However, such fee is subject to approval by the court.

Section 659 provides that a surviving spouse may request, either in a petition under the provisions of section 650 or by a verified written request if a petition pursuant to section 651 has been filed, that the court confirm the interest of the surviving spouse in the property described in the petition. If the court finds that the surviving spouse has an interest in the property, then such interest must be confirmed in an order issued pursuant to section 655. Chapter 752 also amends section 1240 of the Probate Code to allow an appeal from an order issued pursuant to section 655, a refusal to make such an order, or an inheritance tax determination. Finally, chapters 11 and 752 apply to the estate of any person dying on or after January 1, 1975. [See REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION, this volume at 134 (Introduction)].

COMMENT

In addition to giving equal rights to women with respect to avoiding costs of administration of the community property, chapters 11 and 752 also eliminate some of the procedural difficulties of former section 202. Under the provisions of the former section, the husband had management and control of all the community property pending administration of the wife's estate, and when the wife's personal representative was ready to distribute the property the husband was required to transfer only so much of the community property as was necessary to carry the wife's will into effect. This frequently resulted in confusion because the powers of the husband with respect to the property to be distributed conflicted with those of the wife's personal representative [STATE BAR OF CALIFORNIA, 1972 CONFERENCE RESOLUTION 7-5c]. Chapter 11 deletes from former section 202 the specific provision empowering the husband to retain such control of the wife's interest in the community property which she had devised to someone other than the husband, and substitutes section 204 which requires that any interest in the deceased spouse's share of the community devised to someone other than the surviving spouse is "subject to administration" under the provisions of division 3 of the Probate Code. It would seem, therefore, that the surviving spouse must relinquish control of any such interest or property so devised by transferring it to the personal representative of the deceased spouse at the time of administration (as in the probate proceeding) and not at the time for distribution.
By providing a procedure whereby a spouse can obtain a judicial decree confirming specified property, chapter 752 would also seem to aid a surviving spouse in clearing title (which is normally one of the functions of administration) and securing title insurance and financing should the surviving spouse decide to sell part of the community property, especially that held in the name of the deceased spouse.

Chapter 752 would also seem to give greater protection to creditors by making the surviving spouse personally liable for any debts of the deceased spouse to the extent of the interest in the community property which he inherited. This should discourage the surviving spouse from seeking to avoid liability by divesting himself of the community property subject to the creditors' claims.

Chapter 752 would, however, seem to create some uncertainty as to the power of a surviving spouse to deal with the community real property. Under the statutory scheme enacted by chapter 11, section 203 gave the surviving spouse the power to sell, lease, mortgage, or otherwise deal with all the community real property. Section 203, as amended by chapter 752, gives the surviving spouse the power to deal with only that portion of the community real property for which record title stands in the name of the surviving spouse or the surviving spouse and a person other than the deceased spouse and makes no mention of any power of the surviving spouse to deal with the remainder of the community real property. Presumably, therefore, the surviving spouse could have the power to deal with the balance of the community real property immediately under the general provisions of section 202. This would create the anomalous situation of allowing the surviving spouse to deal immediately with community real property in which record title is in the names of both spouses or the deceased spouse only and requiring the surviving spouse to wait forty days where record title is in the name of the surviving spouse. In the latter instance the presumption would be much stronger that such property is either community property or the separate property of the surviving spouse.

See Generally:

Administration of Estates; corporate guardians and conservators

Probate Code §§22.1, 1480.6, 1802.5 (new); §§1400, 1480, 1701,

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Chapter 1060 has been enacted to allow nonprofit charitable corporations to be appointed guardian or conservator of a minor or incompetent person and the estate of such person. In order to qualify for such appointment, a charitable nonprofit corporation must be incorporated within the State of California, must specifically include within its articles of incorporation a provision allowing it to accept such appointments, and must have been providing prior care, counseling, or financial assistance to the proposed ward or conservatee under the supervision of a registered social worker. The petition for guardianship or conservatorship must include the name of a responsible corporate officer. Chapter 1060 also allows a trust company, as defined in section 107 of the Financial Code, to be appointed guardian or conservator of the estate only. Sections 1480.6 and 1802.5 have also been added to the Probate Code to require a nonprofit charitable corporation which has been appointed guardian or conservator to post a bond.

Sections 1907 and 1908 of the Probate Code have been amended to allow to a nonprofit charitable corporation which has been appointed conservator the same compensation for the expenses and attorney's fees as is allowed to personal conservators, except that such compensation and attorney's fees are limited to the cost of services actually rendered and may not be predicated on the value of the estate. Section 22.1 has been added to the Probate Code to invalidate any bequest or devise made to a nonprofit charitable corporation if such bequest or devise is contained in a will executed within six months prior to the filing of the petition for guardianship or conservatorship.

COMMENT

Prior to the enactment of chapter 1060, sections 1400 and 1701 of the Probate Code defined guardians and conservators as "persons." Presumably, under this definition a person who was also a director or employee of a social service corporation could be appointed guardian or conservator but would have to be appointed in an individual and not in a corporate capacity. Thus if such person left the corporation or changed jobs within the corporation, judicial supervision would be required to terminate the old guardianship or conservatorship and a new guardian or conservator would have to be appointed. By allowing a corporation to be appointed guardian or conservator, this procedure...
would seem to be unnecessary should there be a change of employees within the corporation, and thus the time and expense of these proceedings would be saved.

The bonding requirements of sections 1480.6 and 1802.5 appear to have been enacted to give adequate protection to a ward or conservatee in case of breach of the fiduciary duty owed to him by a corporate guardian or conservator in light of the limited liability of corporations. Sections 1480.6 and 1802.5 may, however, conflict with the provisions of sections 480 and 481 of the Probate Code which allow trust companies to be appointed the guardian or conservator of an estate and provide that although a bond shall not be required of such corporations, they are required to deposit security with the State Treasurer according to the provisions of article 3 (commencing with §1540) and section 1587 of the Financial Code.

See Generally:
1) State Bar of California, 1974 Conference Resolution 7-10.

Administration of Estates; trust proceedings, notice

Probate Code Article 1.5 (commencing with §1215) (new).
AB 2190 (Maddy); Stats 1974, Ch 171
Support: State Bar of California

Limits notice required in trust proceedings where contingent class gifts, certain vested interests subject to complete or partial defeasance, or alternative contingent remainders exist; provides that where there is a conflict of interest between persons entitled to notice and persons not so entitled, notice shall also be given to those not otherwise entitled; allows a court to require and prescribe additional notice, and appoint a guardian ad litem in specified instances; gives statutory recognition to the principle of virtual representation and the court's authority to appoint guardians ad litem and require additional notice.

Prior to the enactment of chapter 171, a trustee was required to give notice of all trust proceedings to all beneficiaries or possible beneficiaries. Chapter 171 enacts article 1.5 (commencing with §1215) to simplify this task by reducing the number of beneficiaries to whom notice must be given and by restating and clarifying the specified notice requirements in trust proceedings set forth in sections 1120, 1123.5, 1125, 1125.1, 1126, 1138.6, and 1139.7 of the Probate Code. Section
1215.1 provides that whenever notice is required by these sections to be given to the beneficiaries of a trust, it is sufficient that notice be given in the following manner: (1) When an interest has been limited on any future contingency to persons who shall compose a certain class upon the happening of a certain event (a contingent class gift), notice shall be given to the persons in being who would constitute the class if such event happened immediately before the commencement of proceedings; (2) when an interest has been limited to a living person, and the same interest or a share therein has been further limited, upon the happening of a further event, to the surviving spouse or to persons who are or may be the distributees, heirs, issue, or other kindred of the living person, notice shall be given to the living person; and (3) in cases not provided for in subdivision two, when an interest has been limited, upon the happening of any future event, to a person, or a certain class, or both, and the same interest or a share therein has been further limited, upon the happening of an additional future contingency, to another person, or class of persons, or both (alternative contingent remainders), notice shall be given to the person or persons in being, if any, who would take the interest upon the happening of the first such event. If, however, there is a conflict of interest with regard to the subject matter of the trust proceeding between persons entitled to notice and those not otherwise entitled to notice under the provisions of section 1215.1, notice must also be given to those not otherwise entitled.

At any stage of the trust proceeding, the court may deem the notice given inadequate and require that additional notice be given pursuant to section 1204. It may also appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, unidentified or unascertained person, or a designated class of persons who are either unascertained or not in being.

Section 1215.1 does not affect existing requirements for the following: (1) notice to a person who has requested special notice or has filed notice of appearance; (2) notice to a particular person or entity; (3) appointment of a guardian ad litem; and (4) delivery or mailing of a copy of the petition. The petitioner or any other person required to give notice may also, without court order, cause notice to be given to any person interested in the trust. In addition, section 1215.4 gives statutory recognition to the doctrine of virtual representation and recognizes and restates the court’s authority to appoint guardians ad litem and to require additional notice, or both, where either or both of those acts are required or appropriate.
COMMENT

Prior to the enactment of chapter 171, notice of all trust proceedings was required to be mailed to all persons who may participate in the corpus or income of the trust no matter how remotely contingent their interest might be. In a typical trust situation the giving of such notice presented a difficult, if not impossible, task [STATE BAR OF CALIFORNIA, 1971 CONFERENCE RESOLUTION 7-15]. Failure to give such notice resulted in the voiding of any order made as a result of the proceeding [Estate of Reed, 259 Cal. App. 2d 14, 22, 66 Cal. Rptr. 193, 198-99 (1968)]. Chapter 171 attempts to remedy this situation by eliminating notice requirements as to the more remote grantees, at least where the interest of the person entitled to notice is so similar to that of the person not entitled to notice that in protecting his own interest the person entitled to notice will also effectively represent and protect the interest of the person not entitled to notice. This is known as the principle of virtual representation [See County of Los Angeles v. Winans, 13 Cal. App. 234, 244-49, 109 P. 640, 645-48 (1910)]. However, when the person entitled to notice claims an interest adverse to the person not entitled to notice, or “acts in collusion with another party to such judicial proceeding, in a manner making it unlikely that he would honestly and fully present the facts and contentions best calculated to protect his own interest and the interest of the person claimed to have been represented” [RESTATEMENT OF PROPERTY §185(d) (1936)], a conflict of interest exists, and section 1215.2 requires notice to be given to those persons not otherwise entitled to notice under section 1215.1.

See Generally:

Administration of Estates; Uniform Management of Institutional Funds Act

Civil Code §§2290.1, 2290.7 (amended).
SB 1544 (Biddle); STATS 1974, Ch 278
Support: Attorney General

Chapter 278 has been enacted as follow-up legislation to the Uniform Management of Institutional Funds Act, which was enacted in 1973
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[Cal. CIV. CODE §2290.1 et seq.] to give colleges and universities a greater degree of flexibility in dealing with funds held by such educational institutions, thereby enabling them to better deal with the problems of increased costs, inflationary pressures, and diminished donations. Under the provisions of the original Act, educational institutions are allowed to spend the net appreciation of charitable trust funds which are subject to certain trust restrictions. The net appreciation is the difference between the present "fair dollar value of the assets" and their "historic dollar value," which is computed at the time of the donation. Under the terms of Civil Code Section 2290.1, the "historic dollar value" is defined as the aggregate fair value in dollars of (1) an endowment fund at the time it became an endowment fund, (2) each subsequent donation at the time the donation is made, and (3) each accumulation made pursuant to a direction in the gift instrument at the time the accumulation is added to the fund. Prior to amendment section 2290.1 provided that a good faith determination of the "historic dollar value" made by an educational institution was conclusive.

Lastly, section 2290.7 of the Act allows the educational institution to secure a release from the restrictions imposed on a trust fund by (1) a written release from the donor or (2) a court order based on a determination that the restriction is obsolete or impracticable, if written consent cannot be secured because the donor is dead, disabled, unavailable, or unidentifiable. In order to secure such an order the educational institution must notify the Attorney General, and he must be given an opportunity to be heard.

The technical changes made to the Uniform Act by chapter 278 would appear to tighten the procedural safeguards on the power of educational institutions by deleting from section 2290.1 the provision making a determination of the "historic dollar value" made by an educational institution conclusive and by amending section 2290.7 to require that the Attorney General be made a party to a judicial proceeding to remove trust restrictions. The net effect of chapter 278 would seem to be that an "historic dollar value" determination made by an educational institution would now be subject to judicial review, and the Attorney General must be made a party to any judicial proceeding under the Act to remove trust restrictions, thereby giving greater protection against possible abuses of power granted to educational institutions under the Act.

See Generally:
Administration of Estates; sale of estate property

Probate Code §760 (amended).
SB 2201 (Robbins); STATS 1974, Ch 1422
Support: California Real Estate Association

Section 760 of the Probate Code allows the executor or administrator of a decedent's estate to enter into a written contract with any bona fide agent or broker, or a group of agents or brokers for the sale of real or personal property of the estate. Chapter 1422 amends section 760 to allow an executor or administrator to enter into an "exclusive right to sell" agreement with agents or brokers, provided that the period for such agreement is not more than ninety days, and the executor or administrator has received prior judicial authorization to enter into such agreement based upon a showing of necessity or advantage to the estate. The provisions of section 760 requiring court confirmation of a sale and limiting liability of the estate and executor or administrator until the sale is confirmed by the court also apply to any "exclusive right to sell" agreement.

COMMENT

In Charles V. Webster Real Estate v. Rickard [21 Cal. App. 3d 612, 98 Cal. Rptr. 559 (1971)] the court held that an "exclusive right to sell" agreement, in the sense of a covenant to pay a commission irrespective of whether the agent actually secured the ultimate purchaser, was contrary to the provisions of former Probate Code Section 760. Chapter 1422 expressly supersedes Webster and allows an executor or administrator to enter into such agreements. However, in the situation in which the executor or administrator enters into an "exclusive right to sell" agreement and the agent or broker finds a suitable buyer, but the sale is confirmed to an increased bidder who is also dealing through an agent, the practical effect of chapter 1422 is unclear. Under an "exclusive right to sell" agreement in the usual sense, the seller contracts to pay the agent or broker the specified commission when the property is sold. Regardless of whether the broker or agent procured the buyer, the broker would be entitled to his full commission. However, because the amount of the commission allowed to an agent or broker in a realty sale for the benefit of an estate does not depend on the commission specified in the contract and must be fixed by the court, and because section 761 of the Probate Code specifically provides that in such situations the agent or broker who procured the original bidder is entitled to one-half the commission on the original sale price and the
agent for the increased bidder is entitled to one-half the commission on
the increased price, it would seem that the agent would only be entitled
to one-half the commission allowed by the court, regardless of the com-
mission specified in the "exclusive right to sell" agreement. It would
also seem that because section 760 expressly provides that an executor
or administrator is not made personally liable by the execution of such
contracts, the agent who procured the original bidder would not be able
to secure the balance from the executor or administrator. Thus in the
situation discussed above the terms of "exclusive right to sell" agree-
ment would seem to be supplanted by Probate Code Section 761.

See Generally:
1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA DECEDENT ESTATE ADMINIS-

Administration of Estates; appointment of administrators

Probate Code §§409, 422 (amended).
SB 2067 (Bradley); STATS 1974, Ch 511
Support: State Bar of California

Section 422 of the Probate Code establishes the order of priority of
persons entitled to be appointed administrator of the estate of an intestate
decedent. In order for a relative to be entitled to such priority, he
must be entitled to succeed to all or part of the estate of the decedent.
Chapter 511 amends section 422 to provide that a relative may also
be entitled to such priority if he is a parent, grandparent, child, or
grandchild of the decedent and takes under the will of, or is entitled
to succeed to all or part of the estate of, another decedent who is en-
titled to succeed to all or part of the estate of the decedent.

Section 409 establishes the same order of priority for appointment
of an administrator with the will annexed as for intestate decedents, ex-
cept that one who takes under the will has priority over one who does
not, and he need not be entitled to succeed to all or part of the estate
under the law of intestate succession. Chapter 511 amends section
409 to provide that a resident of the United States who takes more than
fifty percent of the value of the estate under the will may request that
the court appoint as administrator a person not otherwise entitled to be
appointed as a matter of priority.

COMMENT

Prior to the enactment of chapter 511, if a husband died intestate
and his wife died before administration of his estate had closed, the
public administrator had priority over a surviving child, grandchild, parent, or grandparent of the deceased husband because such relative did not succeed directly to the husband's estate [Estate of Stephens, 70 Cal. 2d 820, 452 P.2d 684, 76 Cal. Rptr. 468 (1969)]. Chapter 511 eliminates this problem by allowing family administration in situations where a close relative of the decedent succeeds to, or takes under the will of, a second decedent who would have qualified as an administrator.

Under California law, an out-of-state resident is not entitled to be appointed administrator of a decedent's estate [CAL. PROB. CODE §420]. If there are no qualified private administrators, then as a matter of priority, a public administrator will be appointed. The disadvantages of public administration are that frequently decisions are made to dispose of personal property which the beneficiary would rather have kept in kind, and decisions concerning tax consequences which could be advantageous to the beneficiary are made without consulting the beneficiary. In such situations the beneficiary is usually required to retain counsel to protect his interests [STATE BAR OF CALIFORNIA, 1973 CONFERENCE RESOLUTION 11-5b]. Chapter 511 would seem to alleviate these problems in most instances by allowing a beneficiary who is a United States resident and who takes over fifty percent of the value of the estate under the will of the decedent to nominate his own administrator.

See Generally:

Administration of Estates; Independent Administration of Estates Act

Probate Code Article 2 (commencing with §591), §1004 (new);
§785 (amended).
AB 517 (Bagley); STATS 1974, Ch 961
(Effective July 1, 1975)
Support: State Bar of California; California Bankers Association;
California Land Title Associations

Creates an optional procedure for administration of a decedent's estate with a minimum of court supervision; provides that court supervision is required only for specified actions by the executor or administrator; provides for notice to affected persons of spec-
Administration of Estates

ified actions not requiring court supervision; establishes procedure by which persons interested in the estate may object to actions to be taken by the executor or administrator or to continued administration of the estate under independent administration; empowers the court to allow distribution of a portion of the estate before the estate is ready for final distribution.

Article 2 (commencing with §591) has been added to the Probate Code to provide an optional procedure for administration of a decedent's estate with a minimum of court supervision. To initiate the procedure the executor or administrator requests that the court authorize him to administer the estate under the Independent Administration of Estates Act. He may request such authority in his petition for appointment and specify that he is requesting such authority in the notice of the appointment hearing; or, he may request such authority in a separate petition, provided that notice is given ten days prior to the hearing to all known heirs, devisees, legatees, or any person who has requested special notice, that he is requesting such authority. Unless a person interested in the estate shows good cause why such authority should not be granted, the court must grant the executor or administrator such authority unless such administration is prohibited by the decedent's will or a special administration is necessary (§591.1).

Section 591.2 provides that if such authority is granted, the executor or administrator may seek court supervision for any action taken by him during administration of the estate but is only required to seek court supervision for (1) sale or exchange of real property, whether sold individually or as a unit with personal property; (2) allowance of executor's and administrator's commissions and attorney's fees; (3) settlement of accountings; (4) continued payment of a family allowance for a period in excess of twelve months; (5) preliminary and final distributions and discharge; (6) borrowing money or executing a mortgage, deed of trust, or other security; (7) leasing real property if the will does not authorize or direct the executor or administrator to lease real property, and the rental exceeds $250 per month and the term exceeds one year; (8) completing a contract entered into by the decedent to convey real or personal property; or (9) determining third party claims to real and personal property if the decedent died having title or possession of such property, or determining decedent's claim to real or personal property whose title or possession is held by another.

"Advice of proposed action" must be given before the executor or administrator may (1) sell or exchange personal property, with spe-
specified exceptions; (2) lease real property for a term in excess of one year if authorized or directed in the decedent's will to lease property; (3) enter into any contract, other than a lease of real property, not to be performed within two years; (4) continue, for a period of more than six months from the date of his appointment, 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 his death, or the sale or incorporation of such business; (5) make the first payment, or any increase in the payments, of a family allowance; or (6) invest funds of the estate, with specified exceptions. The advice must be in the form of notice, given at least fifteen days prior to the taking of any such action, to any person affected by such action and must specify the action to be taken and the date on or after which the action will be taken (§§591.3, 591.4).

A person affected by the proposed action who objects to it may obtain an ex parte restraining order without showing cause from the court having jurisdiction. After such order is served the executor or administrator may still consummate the proposed action by submitting it to the court in accordance with normal probate administration procedures. If the executor or administrator fails to comply with either the notice requirements of sections 591.3 and 591.4 or a restraining order, the action taken by him in violation of such requirement or order is still valid as to any bona fide purchaser or person dealing in good faith who has changed his position in reliance on the action without actual notice of failure to comply with the notice requirements or restraining order. No person dealing with the executor or administrator has a duty to inquire or investigate whether such order has been issued (§§591.4, 591.5).

Section 591.7 provides that at any time during the administration a person interested in the estate may file a petition setting forth the basis for revocation of the executor's or administrator's authority to continue administration under the independent administration procedure. Notice must be given to the executor or administrator, and if the court determines good cause has been shown at the hearing, the executor's or administrator's authority is revoked, new letters testamentary or of administration are issued, and the estate is administered in accordance with normal probate administration proceedings.

If the period for filing or presenting claims has expired and all uncontested claims have been paid or are sufficiently secured, the executor or administrator may petition the court for authority to distribute a
portion of the estate, providing such portion does not exceed fifty per-
cent of the net value of the estate. Notice of the hearing may be given
pursuant to section 1200 of the Probate Code (mode of giving no-
tice), may be required to be given for a shorter period of time by the
court, or may be dispensed with by the court. If the court determines
that the allegations in the petition are true, that the estate is not heavily
in debt, that all tax liabilities have been discharged, that the property
to be distributed does not exceed fifty percent of the net value of the
estate, and that distribution may be made without loss or injury to the
estate or any person interested in the estate, the court must then author-
ize the executor or administrator to distribute such property (§1004).

Chapter 961 also amends section 785 of the Probate Code to require
the court to consider the efforts of the executor or administrator to ex-
pose the property to the market, in addition to the other factors enum-
erated in section 785, before the court can confirm the sale of estate
property.

Chapter 961 applies to the estate of any person dying on or after
July 1, 1975, and to the estate of any person dying before July 1, 1975,
if no executor or administrator of the estate has been appointed prior
to July 1, 1975. As to estates of persons dying before July 1, 1975,
however, the court may refuse to apply the provisions of article 2 (com-
mencing with §591) or section 1004 if it determines that administra-
tion under such procedure would not be in the best interests of the
estate or the beneficiaries of the estate.

COMMENT

The Independent Administration of Estates Act is similar to the
Uniform Probate Code except that judicial scrutiny and supervision are
required to initiate and conclude probate administration proceedings
under the new Act. The requirements of such supervision and related
notice requirements would seem to be necessary to satisfy constitutional
requirements of due process in determining title to real and personal
property and to give greater protection to the rights of beneficiaries and
creditors [State Bar of California, Ad Hoc Committee on the Uniform
Probate Code, California and the Uniform Probate Code, 46 Cal.
S.B.J. 290 (1971)]. As enacted, the Independent Administration of
Estates Act would seem to have the advantage of lightening the work-
load on the courts, expediting settlement and distribution of the estate,
and reducing costs by simplifying the steps to be taken in administering
the estate [State Bar of California, 1969 Conference Resolu-
tion 2-11].

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Administration of Estates; summary probate procedures


SB 1715 (Marler); STATS 1974, Ch 602
Support: State Bar of California

Sections 630, 640, 645, and 646 of the Probate Code establish summary procedures for the administration of small estates. Chapter 602 amends these sections to increase from $5,000 to $10,000 the maximum net value of an estate which may be administered using these procedures. By increasing the maximum value of an estate which can be administered using these procedures and thereby increasing the number of estates so administered, the burden on the courts formerly caused by the proliferation of the probate of such small estates through ordinary procedures should be lessened. Also, it should be more economically feasible for an estate attorney to administer small estates [STATE BAR OF CALIFORNIA, 1973 CONFERENCE RESOLUTION 11-8]. The primary advantage of using summary administration is that the expense and time required to transfer a decedent's property to the persons entitled to it are substantially reduced.

See Generally: