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Administration of Estates

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Administration of Estates

Administration of Estates; temporary conservatorships

Penal Code §1370 (amended); Probate Code §2201.5 (new); §§1754, 2201 (amended); Welfare and Institutions Code §5353 (amended).
AB 1148 (Lanterman); STATS 1977, Ch 1237
Support: California Public Defender; California Rural Legal Assistance

Existing law provides for the establishment of a conservatorship for any adult who requests such assistance or is found to be unable to properly care for his or her personal needs for physical health, food, clothing or shelter [CAL. PROB. CODE §1751]. In addition, a conservatorship over an adult's property may be established if he or she is found to be substantially unable to manage his or her own financial resources or resist fraud or undue influence [CAL. PROB. CODE §1754]. The law further allows any person, other than a creditor of the proposed conservatee, to file a petition alleging the need for a conservatorship based upon any one of the above reasons [CAL. PROB. CODE §1754]. When a petition for the appointment of a conservator is filed by a person other than a creditor of the potential conservatee, the court, upon receipt of a verified petition establishing good cause, may appoint a temporary conservator pending its final determination of the need for a conservatorship [CAL. PROB.CODE §2201]. Consistent with the purpose of Section 2201 of the Probate Code, the powers and duties of a temporary conservator are limited to those actions that are needed to "provide for the temporary care, maintenance and support of the conservatee" or to protect the property of the conservatee from loss or injury [*Compare* CAL. PROB. CODE §2201 *with In re* Gray, 12 Cal. App. 3d 513, 534, 90 Cal. Rptr. 776, 782-83 (1970)]. Prior to the enactment of Chapter 1237, however, there were no specific limitations on the powers or duties of temporary conservators that prohibited them from removing a conservatee from his or her place of residence or relinquishing a conservatee's real or personal property [*See* CAL. STATS. 1957, c. 1902, §1, at 3319].

Chapter 1237 amends Section 2201 of the Probate Code to preclude a temporary conservator from changing the residence of a conservatee without prior court approval except in the event of an emergency [CAL. PROB. CODE §2201.5]. An emergency exists for the purpose of Chapter 1237 if the proposed conservatee's residence is uninhabitable or if the conservatee "has a medical condition that presents an immediate threat" to his or her physical survival [CAL. PROB. CODE §2201.5]. A temporary conservator, however, must file a written request seeking court approval of the change of residence within one judicial day following the emergency removal of a conservatee

[CAL. PROB. CODE §2201.5]. If the conservatee is moved to a health facility for treatment and has given his or her informed consent to this move, the temporary conservator need not seek court approval [CAL. PROB. CODE §2201.5].

Court authorization validating an emergency change of residence or approving a proposed nonemergency change of residence must be obtained by filing a written request with an application for conservatorship, or if a temporary conservatorship has already been established, then this request must be separately filed [CAL. PROB. CODE §2201]. Furthermore, this request must specify: (1) the location of the proposed residence; (2) the precise reasons why the conservatee "will suffer irreparable harm if such change of residence is not permitted"; and (3) why means less restrictive to the conservatee's liberty will not suffice to prevent such harm [CAL. PROB. CODE §2201]. Within seven days of a temporary conservator's request to change the residence of the conservatee, the court is required to conduct a hearing at which the conservatee must be present, unless attendance would jeopardize his or her physical health, be represented by counsel, and have the right to confront and cross-examine any witness [CAL. PROB. CODE §2201]. If the court by "a preponderance of the evidence" can demonstrate that a change of residence is necessary to "prevent irreparable harm to the conservatee," it may issue an order approving the move and specifying the exact location to which the conservatee may be moved [CAL. PROB. CODE §2201]. Further, Section 2201 makes it a felony for the conservator to remove the conservatee from the State of California unless he or she additionally shows that such removal is required to permit nonpsychiatric medical treatment, that the conservatee has consented to this treatment, and that such treatment is *essential* to the conservatee's physical survival [CAL. PROB. CODE §2201].

If the court gives the temporary conservator authorization to move the conservatee, it must also order the conservator to take all reasonable steps to preserve the conservatee's previous place of residence, and, under no circumstances, to sell or relinquish any lease or estate in real or personal property "used as or within the conservatee's place of residence" [CAL. PROB. CODE §2201]. Section 2201 also requires the court to prohibit the sale of any estate or interest in other real or personal property belonging to a conservatee without the specific approval of the court, which may be granted only upon a clear showing that a sale is necessary "to avert irreparable harm to the conservatee" [CAL. PROB. CODE §2201].

Similarly, under the Lanterman-Petris-Short Act [CAL. WELF. & INST. CODE §§5000-5368], a conservatorship may be recommended for an individual based upon a determination by specified professionals that the individual is gravely disabled as a result of a mental disorder or impaired by

chronic alcoholism [CAL. WELF. & INST. CODE §5352]. Based upon either this determination or other independent investigations, the court may establish a temporary conservatorship pending a determination of the need for more permanent supervision [CAL. WELF. & INST. CODE §5352.1]. The temporary conservator appointed in this manner is required to make all necessary arrangements for the conservatee's food, shelter and care, giving preference to those arrangements that will allow the conservatee to return to his or her home, family or friends [CAL. WELF. & INST. CODE §5353]. Previously, however, there were no restrictions under this act regulating the power of temporary conservators to sell or relinquish the residence or other real or personal property owned by a conservatee [CAL. STATS. 1972, c. 574, §3, at 982]. Section 5353 of the Welfare and Institutions Code, as amended by Chapter 1237, now requires a court to order a temporary conservator to preserve the conservatee's previous place of residence and to prohibit the temporary conservator from selling or relinquishing any lease or estate in real or personal property "used as or within the conservatee's place of residence." Furthermore, the sale of *any* estate or interest in *other* real or personal property of the conservatee is also prohibited unless the conservator is able to show the court by a preponderance of the evidence that such action is necessary to avert "irreparable harm to the conservatee" [CAL. WELF. & INST. CODE §5353]. Thus, Chapter 1237 appears to expand protection for a temporary conservatee by restricting the manner in which he or she may be removed from his or her residence by a temporary conservator and establishing procedures for protection of the conservatee's residence in his or her absence.

COMMENT

In 1976 the California Legislature amended the Probate Code in an apparent effort to ensure that the requirements of procedural due process were satisfied in all conservatorship and guardianship proceedings [*See* CAL. PROB. CODE §§1461, 1754, 1754.1]. This legislation, however, did not require the procedural safeguards of notice and hearing for proceedings involving the appointment of, or actions taken by, a temporary conservator [*See* CAL. STATS. 1976, c. 1357, at —]. Arguably, this was partially due to a California appellate court holding that an *ex parte* appointment of a temporary conservator does not violate due process [*In re* Gray, 12 Cal. App. 3d 513, 524, 90 Cal. Rptr. 776, 782-83 (1970)]. Nevertheless, actions by a temporary conservator to remove a conservatee from this state or dispose of his or her property have not been subjected to similar judicial scrutiny.

Historically, medieval lords created guardianships for the protection of incompetents in their jurisdiction by exercising their power under the doctrine of *parens patriae* [Comment, *Limitations on Individual Rights in California Incompetency Proceedings*, 7 U. CAL. D. L. REV. 457, 459-60 (1974)]. This power remains viable today and is used by states, in a parental rather than an adversary role, to assume responsibility for certain juveniles and mentally impaired citizens [*Id.; see* Kent v. United States, 383 U.S. 541, 555 (1966)]. While the doctrine of *parens patriae* has apparently been used in the past to justify reduced due process protections [Comment, *Limitations on Individual Rights in California Incompetency Proceedings*, 7 U. CAL. D. L. REV. 457, 477 (1974)], the United States Supreme Court has indicated, in cases involving the exercise of this power over juveniles and mentally disordered persons, that only emergency situations can justify a reduction of procedural due process safeguards [*See* O'Connor v. Donaldson, 422 U.S. 563, 582 (1975) (Burger, C.J., concurring); Goss v. Lopez, 419 U.S. 565, 582 (1975)]. Accordingly, to protect the person and property of a conservatee in emergency situations, a temporary conservator may be appointed without satisfying the notice and hearing requirements of due process [*See In re* Gray, 12 Cal. App. 3d 513, 524, 90 Cal. Rptr. 776, 782-83 (1970); CONTINUING EDUCATION OF THE BAR, CALIFORNIA CONSERVATORSHIPS §3.24 (emergency appointments) (1968)]. Once a temporary conservator is appointed and the immediate threat of loss to the conservatee has been eliminated, it is arguable that further nonemergency actions by the temporary conservator can only be taken after the notice and hearing requirements of due process have been satisfied [*See* Comment, *Probate Code Conservatorships: A Legislative Grant of New Procedural Protections*, 8 PAC. L.J. 73, 92 (1977)]. Consistent with this conclusion, Chapter 1237 has amended the Probate Code to require notice and a hearing in nonemergency situations in which a temporary conservator proposes to change a conservatee's residence or dispose of any of the conservatee's personal or real property [*See* CAL. PROB. CODE §§2201, 2201.5; CAL. WELF. & INST. CODE §5353]. Thus, Chapter 1237 appears to complete the work begun on the law governing conservatorships in 1976 by extending due process guarantees to temporary conservatees in nonemergency situations.

See Generally:

1) 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* (powers and duties of temporary conservator) (8th ed. 1974).
2) CONTINUING EDUCATION OF THE BAR, CALIFORNIA CONSERVATORSHIPS §§8.1-.63 (conservatorships under the Lanterman-Petris-Short Act) (Supp. 1976).

Administration of Estates; guardians—accounting of Veterans' Administration receipts

Probate Code §1657 (amended).
AB 279 (Bannai); STATS 1977, Ch 39
Support: State Bar of California; Veterans' Administration

Prior to the enactment of Chapter 39, guardians of wards receiving payments from the Veterans' Administration were required to file an annual account with the court and the appropriate office of the Veterans' Administration [CAL. STATS. 1955, c. 950, §1, at 1836]. Section 1657 still provides for an annual accounting, but now gives the court the alternative of requiring accountings at any interval it deems appropriate.

It is arguable that the justification for this amendment lies in the fact that outlays from the Veterans' Administration are small subsistence payments made at regular intervals in consistent amounts, thus minimizing the possibility of misusing these funds and making the cost of an annual report somewhat unjustified [Letter from Harold F. Bradford, Legislative Representative to the State Bar of California (copy on file at the *Pacific Law Journal*)]. Further, the reduced accounting requirement provided for by Chapter 39 does not appear to jeopardize a ward's funds since Section 1656 of the Probate Code still requires that guardians file a bond that is worth either the probable annual income of the ward if the bond is provided by an authorized surety, or twice the ward's probable annual income in all other cases [*See generally* CAL. PROB. CODE §1480]. In addition, a ward whose funds have been misused retains the right to sue the principal on the bond as often as necessary to recover any amount of damages [*See* CAL. PROB. CODE §554(b)].

Under federal law a guardian is also required to render an account to the Administrator of the Veterans' Administration, but he or she is required to make accountings only "from time to time" [38 U.S.C. §3202 (1970)]. The Veterans' Administration, however, has indicated that it would be willing to agree to biannual or triannual accountings in many cases [STATE BAR OF CALIFORNIA, 1975 CONFERENCE RESOLUTION 8-17]. Thus, it would appear that the provisions of Chapter 39 will not conflict with the guardian account requirements imposed by federal law or suggested by the Veterans' Administration and will apparently reduce the inconvenience and financial burden on guardians of wards receiving Veterans' Administration payments who must make these periodic accountings.

See Generally:
1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA CONSERVATORSHIP §3.2 (veteran's conservator) (1968).

Administration of Estates; bequests of community property to a surviving spouse

Probate Code §204 (amended).
AB 1716 (Chel); STATS 1977, Ch 334
Support: State Bar of California

Under existing law, if a husband or wife dies intestate, or if he or she dies testate and by will bequeaths all or part of his or her interest in community property to the surviving spouse, this property passes to the survivor without the necessity of being subjected to probate administration [CAL. PROB. CODE §202]. Prior to the enactment of Chapter 334, however, if the deceased spouse bequeathed community property in such a manner as to cause its ownership to be "qualified," such property was subjected to administration by the probate courts [CAL. STATS. 1975, c. 173, §4, at 319].

Pursuant to Section 680 of the Civil Code ownership of property is qualified when one or more of the following are present: (1) the ownership is shared with one or more persons; (2) the time of enjoyment is deferred or limited; or (3) the use of the property is restricted. Under this definition of "qualified ownership," the law prior to the enactment of Chapter 334 apparently included community property that passed under a will containing a survival clause that conditioned bequeathment upon survival of the living spouse for 30 days, 90 days or six months [*See* STATE BAR OF CALIFORNIA, COMM. ON PROBATE AND TRUST LAW, INTERIM REPORT No. 3 (Jan. 6, 1977)]. The use of such a clause, however, purportedly avoids the legal problems arising from simultaneous deaths and avoids probating the community property assets twice when a spouse survives the other by only a short period of time [CONTINUING EDUCATION OF THE BAR, CALIFORNIA WILL DRAFTING §9.41 (1965)]. Thus, under prior law, attempts to avoid possible probate problems by means of a survival clause in a decedent's will would arguably have caused his or her interest in community property to be characterized as being in a "qualified ownership" status and would have required the property to be probated a second time by the surviving spouse's estate even though he or she outlived the other spouse for only a short period of time [*See* CAL. STATS. 1975, c. 173, §4, at 319].

To avoid this additional cost and to remove any ambiguity surrounding the term "qualified ownership," Chapter 334 amends Section 204 of the Probate Code to specifically state that a bequest or devise of community property conditioned upon the survival of the other spouse for a specified period does not create a "qualified ownership" in such property. Thus, if the surviving spouse lives for the period specified in a survival clause, the property need not be probated at all while on the other hand, if he or she does not live through the survival period, the property need only be probated

by the estate of the spouse that died first [*See* CAL. PROB. CODE §202]. In any event, the surviving spouse or his or her representative may still elect to have the decedent's interest in the community property subjected to probate administration pursuant to Section 202(b) of the Probate Code [*See* 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Community Property* §109(d) (8th ed. 1975), (Supp. 1976)]. Thus, Chapter 334 would appear to allow attorneys to continue using foresight and initiative in drafting wills without simultaneously incurring additional costs for their client's estate.

See Generally:
1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA WILL DRAFTING §1150 (advisability of short survival periods) (Supp. 1976).

Administration of Estates; time limitations—foreign creditors' claims and will contests

Probate Code §§380, 707 (amended).
AB 658 (Chel); STATS 1977, Ch 217
Support: California Bankers Association; California Land Title Association; State Bar of California

Prior to the enactment of Chapter 217, foreign creditors who could show by affidavit that they had not received a creditor's notice from a decedent's estate because of their absence from the state, were allowed to file claims against the estate based upon contracts, funeral expenses, or damages for injury to person or property *any time* prior to the entry of a final decree of distribution [CAL. STATS. 1971, c. 1226, §3, at 2374]. Furthermore, under the prior law, the claims made by these foreign creditors were allowed to reach property distributed *before* the claims were filed [*See* CAL. STATS. 1971, c. 1226, §3, at 2374]. This indefinite limitation on the filing of foreign creditor claims has apparently hindered probate administration and often delayed the closing of estates [*See* STATE BAR OF CALIFORNIA, COMMITTEE ON PROBATE AND TRUST LAW INTERIM REPORT Item 1 (March 18, 1976)].

Chapter 217 amends Section 707 of the Probate Code to require out of state creditors to file their claims within *one year after* the expiration of the filing deadline for instate creditors' claims and *prior* to the filing of a petition for final distribution [CAL. PROB. CODE §707(a)]. Section 707 has been further amended to exempt all property distributed pursuant to a court order and payments properly made prior to the filing of these claims [CAL. PROB. CODE §707(a)]. These amendments to Section 707 would appear to facilitate the administration of decedents' estates by providing a definite cut-off date after which an administrator or executor may expeditiously determine the extent of the obligations against an estate and the available assets

with which to satisfy these obligations [*See* STATE BAR OF CALIFORNIA, COMMITTEE ON PROBATE AND TRUST LAW INTERIM REPORT Item 1 (March 18, 1976)]. The imposition of a time limit on out of state claims would also appear to aid in estate tax planning by enabling executors to more rapidly determine an estate's gross income and estate and income tax liabilities [*See* Comment, *Claims Against the Estate and Events Subsequent to Date of Death,* 22 U.C.L.A. L. REV. 654, 655-58 (1975)].

Prior to the enactment of Chapter 217, the law provided that interested parties could commence will contests "at any time within four months after such probate" [CAL. STATS. 1969, c. 124, §1, at 270]. When a will is admitted to probate by the court, such action "must be recorded in the minutes by the clerk, with the notation: 'Admitted to probate . . .' " [CAL. PROB. CODE §322], and the fact of admission of a will to probate may subsequently be set forth in a formal order that becomes part of the court's file [*See* CAL. PROB. CODE §1221]. Since the formal order and the recorded action in the minutes of the court may have different dates, there apparently existed some ambiguity under the prior law as to which date controlled in determining the limits of the four month period within which to commence a past probate will contest [*See* Wolfson v. Los Angeles Superior Court, 60 Cal. App. 3d 153, 158-59, 131 Cal. Rptr. 265, 268-69 (1976)]. In *Wolfson v. Los Angeles Superior Court* [60 Cal. App. 3d 153, 131 Cal. Rptr. 265 (1976)], however, one appellate court decided that this will contest period begins running on the date the clerk enters the notation of admission to probate in the minute order since that is the date on which the judicial decision took place [*Id.* at 159, 131 Cal. Rptr. at 269].

Chapter 217 codifies the position taken by the court in *Wolfson* by providing that the will contest period commences on "the date the court admits the will to probate as recorded in the minutes by the clerk pursuant to the provisions of Section 322" of the Probate Code [*Compare* CAL. PROB. CODE §380 *with* Wolfson v. Los Angeles Superior Court, 60 Cal. App. 3d 153, 157, 131 Cal. Rptr. 265, 267 (1976)]. To further eliminate any ambiguity in the application of Section 380, Chapter 217 also provides that this will contest period extends for *120 days* instead of four months from the date of entry in the minutes [CAL. PROB. CODE §380]. Thus, Chapter 217 would appear to facilitate the administration of estates in California by establishing certainty in the time period within which foreign creditors may file claims against an estate and within which individuals may commence post probate will contests [*See* CAL. PROB. CODE §§380, 707].

See Generally:
1) Estate of Emilel Bankhead, 60 T.C. 535 (1973) (affect on federal estate tax when claim is filed late).
2) 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §410 (type of notice required) (8th ed. 1974).

Administration of Estates; public administration of decedent's estate

Probate Code §1141 (amended).
AB 786 (Chel); STATS 1977, Ch 150
Support: California Bankers Association; California State Public Administrators; Public Guardian Association

Section 1141 of the Probate Code requires the public administrator of each county to take immediate charge of any decedent's property in his or her county when no executor or administrator has been appointed and, as a consequence, the property is being wasted, lost or uncared for. Under prior law, when an administrator took charge of such an estate, without letters of administration being issued, or under order of a court, he or she was required to procure letters of administration before conducting any search for a will or burial instructions or proceeding further with the administration of the estate [*See* CAL. STATS. 1970, c. 61, §1, at 77]. Chapter 150 amends Section 1141 of the Probate Code to authorize the administrator to begin an immediate search for a will and burial instructions upon taking charge of an estate without first obtaining any letters of administration. Section 1141 also allows the administrator to extend this search to any safe deposit box held in the sole name of the decedent by a financial institution if the administrator can furnish written certification showing reasonable grounds to believe that he or she is entitled to administer the estate. At the same time, financial institutions are absolved from any liability for granting access to the box, even if they do not inquire into the truth of any of the facts stated in the certification [CAL. PROB. CODE §1141].

In addition to precluding any cause of action for granting unauthorized access, Section 1141 requires the estate of the decedent to bear any costs incurred for drilling or forcing open the safe deposit box. If the administrator finds a will, he or she is required to deliver it to the clerk of the superior court having jurisdiction over the estate, or to the "executor named therein in like manner as a custodian is required to do by Section 320" of the Probate Code [CAL. PROB. CODE §1141]. Section 1141 also requires the administrator to deliver any located burial instructions to the persons authorized by Section 7100 of the Health and Safety Code to control the decedent's remains. If no will is found designating a proper administrator and the estate is uncared for, or if a will is found, but there are no heirs qualified to be administrators, Section 1141 requires the public administrator to procure letters of administration with all convenient dispatch [*See* 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §287 (8th ed. 1974)].

In the past, the requirement that a public administrator had to obtain

letters of administration before conducting a search for a decedent's will or burial instructions was apparently a cause of delay in finding these documents. This conclusion logically follows from the fact that a financial institution usually required proof of death of the safety deposit box owner before granting access [CONTINUING EDUCATION OF THE BAR, CALIFORNIA DECEDENT ESTATE ADMINISTRATION §6.5 (1971)]. Any delay in obtaining the will or burial instructions apparently postponed the preparations of the decedent's remains for burial since funeral directors were first required to complete a death certificate [CAL. HEALTH & SAFETY CODE §10201], which called for information found in these documents [CAL. HEALTH & SAFETY CODE §10202]. Thus, the delay inherent in these procedures not only slowed the administration of the estate, but also created the possibility of burying a decedent in a manner contrary to his or her wishes because of the public administrator's inability to find burial instructions in time.

By authorizing public administrators to gain immediate access to safe deposit boxes held solely in the name of the decedent, Chapter 150 enables these administrators to avoid the delay inherent in the requirement of first obtaining letters of administration. Thus, Chapter 150 would seem not only to expedite the entire administration of the decedent's estate, but also would appear to ensure that any existing burial instructions are located in a timely fashion by providing a more efficient method of establishing the existence or nonexistence of these documents [*See* CAL. PROB. CODE §1141].

See Generally:
1) 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §287 (duties of public administrator) (8th ed. 1974).

Administration of Estates; option sales of estate property and credit sales of guardianship property

Probate Code §584.3 (new); §§591.2, 591.6, 1200, 1240, 1532 (amended).
AB 673 (Chel); STATS 1977, Ch 243
Support: California Bankers Association; State Bar of California

Prior to the enactment of Chapter 243, the law authorized administrators and executors to sell real or personal property belonging to an estate, but did not provide such persons with the authority to grant options to purchase estate property [*See* CAL. STATS. 1949, c. 390, §1, at 732].

Chapter 243 adds Section 584.3 to the Probate Code to allow an executor or administrator, with court approval, to grant an option to purchase *real* property, which may remain in effect for a period within or beyond the administration of the estate. To obtain court approval, Section 584.3 re-

quires the personal representative to: (1) file a verified petition with the clerk describing the property; (2) state the terms and conditions of the option; (3) mail notice of the hearing to all known heirs, devisees, and legatees at least ten days before the hearing; (4) show the advantage to the estate in giving the option; and (5) show the purchase price to be at least 90 percent of the appraised value of the land, as determined by a referee within 90 days prior to the filing of the petition. Section 584.3 also requires the clerk to set the petition for hearing and to give notice pursuant to Section 1200 of the Probate Code, which requires the clerk to post notice of the hearing at the courthouse at least ten days before the day of the hearing. The court may then approve the petition if it appears that "good reason exists . . . that [the granting of an option to purchase] will be to the advantage of the estate," and that there does not appear to be an offer exceeding the purchase price of the real property subject to the option or a better offer with respect to the terms of the option [CAL. PROB. CODE §584.3]. If a higher offer appears to exist relative to the purchase price, Section 584.3 indicates that the provisions of Section 785 of the Probate Code, which authorize the court to direct the estate to accept any written offer that is at least ten percent more than the first $10,000 of the previous bid and five percent more than the amount of the previous bid exceeding $10,000, shall apply. A better offer with respect to the terms of the option "shall be one deemed to be materially more advantageous to the estate" [CAL. PROB. CODE §584.3(d)] and apparently must be chosen over the lesser offer. This conclusion appears correct since Section 584.3(d) directs the court to approve an option to purchase only when it can be shown that it will be "to the advantage of the estate for the option to be granted, and it does not appear that . . . a better offer with respect to terms of the option, may be obtained."

If an option is granted pursuant to Section 584.3 that extends beyond the administration of the estate, the decree of final distribution must provide that the property involved in the option will be distributed subject to the terms and conditions of the option [CAL. PROB. CODE §584.3(e)]. Further, the recording of granted purchase options, regardless of whether they are within or beyond the administration of an estate, will now serve as notice to subsequent purchasers for only one year following the expiration of the option [*See* CAL. PROB. CODE §584.3(e). *See generally* CAL. CIV. CODE §1213.5].

In addition, Chapter 243 makes other conforming changes in the Probate Code that reflect an administrator's or executor's new power to grant options to purchase estate property [*See* CAL. PROB. CODE §§591.2, 591.6, 1200, 1240, 1532]. This power is now granted to executors and administrators who have been given the authority to administer an estate both with

and without court supervision [CAL. PROB. CODE §§591.2, .6]. Further, once an order granting an option to purchase real property has been given, Section 1240 now provides for the right to seek an appeal from such an order.

One potential problem with the addition of Section 584.3 to the Probate Code, however, may exist in the provision of the new law that states that an option to purchase will be granted only if "good reason exists and . . . it will be to the advantage of the estate" [CAL. PROB. CODE §584.3(d)]. Existing law authorizes the representative to sell estate property when it is *necessary* "to pay debts, legacies, family allowance or expenses" or when "it is for the *advantage,* benefit and best interests of the estate" [CAL. PROB. CODE §754 (emphasis added)]. Section 584.3, however, dealing with option sales of estate property, appears to make no distinction between a necessary sale and an advantageous sale, and this omission may be indicative of the legislature's intent to preclude option sales for the purpose of paying debts [*Cf.* 1 CONTINUING EDUCATION OF THE BAR, CALIFORNIA DECEDENT ESTATE ADMINISTRATION §14.3 (1971) (discussion of language necessary to provide mandatory and discretionary power of sale to an estate representative)]. These changes in the Probate Code involving option sales appear to be a response to difficulties faced by potential purchasers who did not want to complete a purchase until certain problems were resolved such as tests to determine the possible uses of vacant land that the administrator or executor desired to sell [*See* STATE BAR OF CALIFORNIA, COMMITTEE ON PROBATE AND TRUST LAW, INTERIM REPORT at 1 (Jan. 6, 1977)]. This problem was particularly applicable to large land developers who apparently need time to get administrative approval of environmental impact reports before construction may begin [*See generally* CAL. PUB. RES. CODE §21100].

Prior to the enactment of Chapter 243, Section 1532 of the Probate Code provided that the terms of any credit extended for the purchase of real or personal property held by a guardian of a ward could not exceed ten years [CAL. STATS. 1959, c. 1257, §1, at 3395]. Apparently, this ten year limitation on such credit sales was inconsistent with common real estate financing practices and resulted in the loss of valuable sales revenue to estates [STATE BAR OF CALIFORNIA, 1974 CONFERENCE RESOLUTION 7-12]. Chapter 243 amends Section 1532 to extend to 20 years the maximum term allowable for credit sales of any real or personal property held by guardians. Thus, Chapter 243 would appear to greatly aid administrators of estates by enabling them to offer purchase options on estate property to buyers who desire an extended holding period before concluding a sale [*See* CAL. PROB. CODE §584.3] and to allow guardians of estate property to offer financing arrangements that are competitive with present bank lending practices [*See*

CAL. PROB. CODE §1532; STATE BAR OF CALIFORNIA, 1974 CONFERENCE RESOLUTION 7-12].

See Generally:
1) Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972) (applying environmental impact report requirements to private developers).
2) 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§460, 461 (when estate property may be sold) (8th ed. 1974).
3) 1 CONTINUING EDICATION OF THE BAR, CALIFORNIA DECEDENT ESTATE ADMINISTRATION §14.3 (sales advantageous to the estate) (1971).

Administration of Estates; notice requirements for filling vacancies in the office of trustee

Probate Code §1125 (amended).
AB 373 (McVittie); STATS 1977, Ch 88
Support: State Bar of California

Section 1125 of the Probate Code has been modified to clarify the type of notice that is required before a court may fill a vacancy in the office of trustee under a will. Prior to the enactment of Chapter 88, the law provided that a vacancy in the office of trustee could be filled only after all interested parties had been given notice as required upon a petition for the probate of a will [CAL. STATS. 1933, c. 969, §15, at 2496]. Upon filing a petition for probate of a will, the Probate Code currently requires the clerk of the court to give notice of the hearing by newspaper publication or, if there is none, posting notices at least ten days before the hearing [CAL. PROB. CODE §327] and requires the petitioner to give notice to designated interested parties by personal service or service by mail no less than ten days before the hearing [CAL. PROB. CODE §328].

In applying these notice requirements to proceedings to fill trustee vacancies, it appears that it may have been the practice in some courts to only require personal service or service by mail, while others required notification by both publication and personal service [*See* STATE BAR OF CALIFORNIA, 1975 CONFERENCE RESOLUTION 8-7]. Chapter 88 has been enacted to eliminate this potential confusion by specifying that notice by personal service or service by mail, pursuant to Section 328 of the Probate Code, is the only method of notification that need be followed in these proceedings [*See* CAL. PROB. CODE §1125]. This simplification of the notice requirements under Section 1125 does not appear to reduce the effectiveness of the notice given, since all of the parties who are interested in the trust will have been personally served or served by mail pursuant to Section 328 [STATE BAR OF CALIFORNIA, 1975 CONFERENCE RESOLUTION 8-7]. Rather, Chapter 88 seems to clarify these notice requirements by clearly indicating that in proceedings to fill trustee vacancies, the provisions of Section 327, which require notice by publication or posting, are superfluous.