

Memorandum 87-25

Subject: Study L-1037 - Amendments to AB 708 (Supervised Administration)

The following amendments to AB 708 (as amended on March 30) relate to the supervised administration portion of the bill. A copy of the bill as amended on March 30 is attached to Memorandum 87-22.

Some of the amendments set out below reflect decisions made at the March meeting. Other amendments are technical or clarifying. Some amendments require revision of the Comment to the section being amended. The revised Comment is set out below following the amendment.

AMENDMENTS TO ASSEMBLY BILL 708

AMENDMENT

SECTION 9730 - subdivision (a)

On page 95, line 22, after "States" insert:

, or of the State of California,

Note. The Commission decided at the March meeting to make this amendment.

Revised Comment. The first sentence of the second paragraph of the Comment to Section 9730 should be revised to read:

Subdivision (a) of Section 9730 continues a without substantive change the portion of former Section 584.1 without substantive change relating to investments in direct obligations of the United States and adds authority to invest in direct obligations of the State of California maturing not later than one year from the date of making the investment.

AMENDMENT

SECTION 9787 - subdivision (a)

On page 104, strike out lines 10 to 15, inclusive, and insert:

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

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

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

Note. This is a technical amendment designed to clarify the section.

AMENDMENT

SECTION 9837 - subdivision (b)

On page 112, strike out lines 19 to 21, inclusive, and insert:

(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

Note. This is a technical amendment.

AMENDMENT

SECTION 9981 - subdivision (b)

On page 126, strike out lines 5 to 8, inclusive, and insert:

(b) The personal representative or the person given the option to purchase the property may file a petition for an order pursuant to this chapter.

Note. The Commission decided at the March meeting to make this amendment.

Revised Comment. The first two sentences of the Comment to Section 9981 should be replaced by the following:

Subdivisions (a) and (b) of Section 9981 restate the first sentence of subdivision (b) of former Section 854 without substantive change. The requirement of former Section 854 that the petition be filed "within any time limits provided in the will" has been omitted as unnecessary in view of the requirement of subdivision (a) of Section 9981 that the person given the option must comply with the terms and conditions stated in the will.

AMENDMENT

SECTION 10150 - (c)

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

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

Note. This is a technical amendment.

AMENDMENT

SECTION 10161 - subdivision (b)

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

commission

Note. This is a technical amendment.

AMENDMENT

SECTION 10162

On page 132, line 2, strike out "Where" and insert:

Subject to subdivision (b), where

On page 132, line 6, after "broker" insert:

who procured the purchaser to whom the sale is confirmed

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

This section

Note. This is a technical amendment.

AMENDMENT

SECTION 10163 revise entire section

On page 133, strike out lines 27 and 28 and insert:

10163. Subject to Section 10162, the court shall allow the compensation determined under Section 10161 on the full amount for which the sale is confirmed to the agent or broker who procured the purchaser to whom the sale is confirmed if all of the following circumstances exist:

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

(a)

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

(b)

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

(c)

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

Note. This is a technical amendment.

AMENDMENT

SECTION 10165 -subdivision (b)

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

The

Note. The Commission approved this technical amendment at the March meeting.

AMENDMENT

SECTION 10206 - subdivision (b)

On page 139, lines 13 to 15, inclusive, strike out "title to the

decedent's interest in the property and under the contract does not pass to the purchaser" and insert:

the court shall not confirm the sale

Note. The Commission approved this amendment at the March meeting.

Revised Comment. The first paragraph of the Comment to Section 10206 should be revised to read:

Subdivision (a) of Section 10206 restates former Section 800 without substantive change. The remainder of Section 10206 restates former Section 801 without substantive change, ~~except Section 10206 substitutes a provision that title does not pass to the purchaser until the bond is furnished for the requirement of former Section 801 that the sale must not be confirmed by the court until the bond is given. This substitution avoids the need to furnish the bond until the sale has been confirmed and protects the estate against possible loss by retaining title in the estate until the bond is furnished.~~ See also Section 10314 (assignment of contract right to purchaser after furnishing of bond and confirmation of sale ~~and furnishing of bond if bond required~~).

AMENDMENT

SECTION 10261 - new subdivision

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

(e) The same procedure as is used to compel the attendance of a witness in a civil action may be used to compel the surviving partner to attend the hearing.

Note. The Commission approved the substance of this provision at the March meeting.

Revised Comment. The fourth paragraph of the Comment to Section 10261 should be revised to read:

Subdivision (c) restates the second sentence of former Section 754 ~~without substantive change~~ 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 (e) is a new provision that makes clear that the same procedure that may be used to compel the attendance of a witness in a civil action may be used to compel the surviving partner to attend the hearing.

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

AMENDMENT

SECTION 10308 - subdivision (a)

On page 149, line 29, strike out the comma

Note. This is a technical amendment.

Respectfully submitted,

John H. DeMouilly
Executive Secretary