

Memorandum 91-21

Subject: Study L-812 - Independent Administration of Estates Act
(Court-Supervised Preliminary Distribution)

Attached is a staff draft of a *Tentative Recommendation relating to Court-Supervised Preliminary Distribution Under the Independent Administration of Estates Act*. The draft proposes to amend Probate Code Section 11623, which provides a special procedure for court-supervised preliminary distributions in estates being administered under the Independent Administration of Estates Act.

The introductory clause of Section 11623 now provides that the section applies "[n]otwithstanding any other provision of this chapter" (the chapter on distribution in estates not being administered under the Independent Administration of Estates Act). The proposed amendment would change this to read "[n]otwithstanding Section 11601" (the general notice provision for preliminary distributions).

The need for this amendment was brought to the staff's attention by attorney Kent Mitchell of Palo Alto. He said the present section is confusing because it is not clear whether the general procedural provisions for preliminary distributions are intended to be excluded.

Section 11623 was recodified in 1988 from former Section 1004 of the Probate Code which did not have a "notwithstanding" clause. The proposed amendment in the attached draft would make Section 11623 consistent with former Section 1004.

When Section 11623 was being proposed, the staff sought the views of practitioners on whether the section was needed. The State Bar Probate Section said the section is useful because it permits reduced notice. Accordingly, we decided to keep the section in the new Probate Code.

We ask again whether the section is needed, and whether the proposed amendment is sound.

Respectfully submitted,

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1/31/91

TENTATIVE RECOMMENDATION
relating to
COURT-SUPERVISED PRELIMINARY DISTRIBUTION
UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

A personal representative administering an estate under the Independent Administration of Estates Act¹ must obtain court authorization before making a preliminary distribution of estate property.² The personal representative may elect to proceed either under general provisions for preliminary distributions,³ or under Probate Code Section 11623, a special provision for estates administered under the Independent Administration of Estates Act. The advantage of Section 11623 is that it allows reduced notice of the petition for preliminary distribution. It only requires notice to persons who have given notice of appearance in the estate proceeding.⁴ The general notice provision for preliminary distributions requires notice to those persons, and to heirs and devisees whose interest in the estate would be affected by the petition.⁵ Reduced notice appears to have been the reason the special provision was originally enacted.⁶

A problem is caused by the introductory clause of Section 11623

1. Prob. Code §§ 10400-10592 (Independent Administration of Estates Act). See also Prob. Code §§ 10450-10452 (petition for authority to administer estate under Independent Administration of Estates Act, court order).

2. Prob. Code § 10501(a).

3. Prob. Code §§ 11600-11622, 11624.

4. Prob. Code §§ 11623, 1220.

5. Prob. Code § 11601.

6. See *Review of Selected 1974 California Legislation*, in 6 Pac. L.J. 125, 154 (1975). The special provision for preliminary distribution in estates administered under the Independent Administration of Estates Act was in Section 1004 of the Probate Code. See 1974 Cal. Stat. ch. 961.

which makes the section apply notwithstanding any of the general provisions for distribution of estates. The "notwithstanding" language was not in the provision as originally enacted in 1974,⁷ but was added when the section was recodified in 1988.⁸ This language may make important general procedural provisions inapplicable to proceedings under Section 11623, such as those relating to authority for an interested person to oppose the petition,⁹ the requirement that the court's order shall name the distributees and the share to which each is entitled,¹⁰ special requirements for distribution to a person who is not an estate beneficiary,¹¹ binding effect of the court's order,¹² the rule that a petition may not be filed unless at least two months have elapsed after letters are issued,¹³ the requirement of bond if distribution is ordered before four months have elapsed after letters are issued,¹⁴ and authority for the court to impose costs.¹⁵

The Commission recommends that the "notwithstanding" language in Section 11623 be narrowed to make clear that the provisions for reduced notice in the section govern over the broader notice required in the general provision,¹⁶ but that other general procedural provisions do apply to proceedings under Section 11623. This will make Section 11623 consistent with the form in which its predecessor section was enacted in 1974.¹⁷

7. See 1974 Cal. Stat. ch. 961.

8. See 1988 Cal. Stat. ch. 1199.

9. Prob. Code § 11602.

10. Prob. Code § 11603.

11. Prob. Code § 11604.

12. Prob. Code § 11605.

13. Prob. Code § 11620.

14. Prob. Code § 11622.

15. Prob. Code § 11624.

16. Prob. Code § 11601.

17. See 1974 Cal. Stat. ch. 961.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following amendment:

Prob. Code § 11623 (amended). Distribution under Independent Administration of Estates Act

11623. (a) ~~Notwithstanding any other provision of this chapter~~ Section 11601, if authority is granted to administer the estate without court supervision under the Independent Administration of Estates Act, Part 6 (commencing with Section 10400):

(1) The personal representative may petition the court for an order for preliminary distribution on notice as provided in Section 1220. Notwithstanding subdivision (c) of Section 1220, the court may not dispense with notice unless the time for filing creditor claims has expired.

(2) The aggregate of all property distributed under this section shall not exceed 50 percent of the net value of the estate. For the purpose of this subdivision, "net value of the estate" means the excess of the value of the property in the estate, as determined by all inventories and appraisals on file with the court, over the total amount of all creditor claims and of all liens and encumbrances recorded or known to the personal representative not included in a creditor claim, excluding any estate tax lien occasioned by the decedent's death.

(b) Nothing in this section limits the authority of the personal representative under other provisions of this chapter, whether or not authority is granted to administer the estate under the Independent Administration of Estates Act, Part 6 (commencing with Section 10400).

Comment. Section 11623 is amended to replace the former language "[n]otwithstanding any other provision of this chapter" with the language "[n]otwithstanding Section 11601". This makes clear that the provisions of Section 11623 allowing reduced notice (notice under Section 1220 instead of Section 11601) control over the notice provisions of Section 11601. Other provisions of this chapter do apply to proceedings under this section, including those relating to opposing the petition (Section 11602), contents of court order (Section 11603), requirements for distribution to a person other than an estate beneficiary (Section 11604), binding effect of order (Section 11605), time for petition (Section 11620), requirement of bond (Section 11622), and payment of costs (Section 11624).