

## RESOLUTION 05-10-05

### DIGEST

Probate: Order Confirming Sale of Real Property

Amends Judicial Council Form DE-265/GC-065 (Order Confirming Sale of Real Property) to clarify the term "personal representative."

### RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Judicial Council Form DE-265/GC-065 (Order Confirming Sale of Real Property) to clarify the term "personal representative." This resolution should be disapproved because the Judicial Council, in response to suggestions by the proponent, is in the process of amending the form to include guardians and conservators of estates as well as personal representatives.

The resolution should also be disapproved because it attempts to include conservators and guardians of estates within the definition of "personal representative," which is a term specifically defined in the probate code as relating only to executors and administrators of probate estates.

### TRUSTS & ESTATES COMMITTEE RECOMMENDATION

DISAPPROVE

The Judicial Council has circulated for comment proposed revisions to form DE-265/GC-065, see Invitation to Comment, SPR-05-44. Those revisions include the terms conservator and guardian without attempting to redefine the term personal representative. The Section believes that the revision of the form to include additional parties as currently proposed by the Judicial Council is preferable and that the proposed resolution would create confusion.

*This position is only that of the Trusts and Estates Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the Trusts and Estates Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.*

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends the Judicial Council amend Judicial Council Form DE-265/GC-065 (Order Confirming Sale of Real Property) to read as follows:

- 1 Form DE-265/GC-065
- 2 [Paragraphs (1) through (7) of Form DE-265/GC-065 remain unchanged.]
- 3 8. The personal representative has made reasonable efforts to obtain the highest and best price
- 4 reasonably attainable for the property. [For purposes of this Order, personal representative
- 5 includes administrators, executors, guardians and conservators (general, special or temporary).
- 6 [Paragraphs (9) through (15) remain unchanged.]

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS:

Existing Law. The present form is confusing because it does not specify that a Conservator or Guardian may act pursuant to an Order Confirming Sale of Real Property even though they are not considered “personal representatives” under the law.

This Resolution: Would allow conservators and guardians to transfer property as a “personal representative” as mandated by the form.

The Problem: Some title companies may require that a conservator or guardian sign a transfer deed as “personal representative”, when in fact they should sign as conservator or guardian. This does not comport with the definition of “personal representative” in Probate Code section 58.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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