

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee  
Hon. Don Edward Green, Chair  
Douglas C. Miller, Committee Counsel, 415-865-7535,  
douglas.miller@jud.ca.gov

DATE: September 15, 2005

SUBJECT: Probate Forms: *Report of Sale and Petition for Confirmation of Sale of Real Property* and *Order Confirming Sale of Real Property*  
(revise forms DE-260/GC-060 and DE-265/GC-065)  
(Action Required)

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Issue Statement

Judicial Council form DE-265/GC-065, *Order Confirming Sale of Real Property*, used by court-supervised fiduciaries to confirm sales of real property from the estates of decedents, conservatees, and wards, refers only to fiduciaries appointed to administer decedent's estates. This omission may be interfering with the ability or willingness of title companies to insure the titles of purchasers of real property from guardians and conservators.

Form DE-260/GC-060, *Report of Sale and Petition for Order Confirming Sale*, has not been amended since 1998. The form is crowded and difficult to use, read, and understand.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2006, revise forms DE-260/GC-060 and DE-265/GC-065 to provide for the confirmation of sales of estate property by conservators and guardians and to improve the forms' appearance and ease of use.

Copies of the proposed revised forms DE-260/GC-060 and DE-265/GC-065 are attached at pages 5–8. Copies of the existing forms are attached at pages 9-12.

### Rationale for Recommendation

The *Order Confirming Sale of Real Property*, used by fiduciaries or certain purchasers<sup>1</sup> in all probate proceedings in which court confirmation of the sale of real property is required, directs only a personal representative to execute and deliver a conveyance. (See existing order, items 8, 10, and 11.) A “personal representative” is defined in Probate Code section 58 only with reference to a decedent’s estate.<sup>2</sup> Ms. Jean McEvoy, an attorney practicing in Sacramento, advised the committee that at least one title company has expressed concern about insuring title for a purchaser of real property from a conservatorship estate because of the form order. This proposal is in response to Ms. McEvoy’s concern.

The revised order would identify a personal representative or a conservator or guardian of the estate in items 8 and 10 of the order. Item 11 would be revised to delete any reference to a specific fiduciary. The case caption box at the top of the form would be changed to permit identification of the type of proceeding involved.

More space would also be provided for the street address of the property sold and terms of sale (items 3 and 9). The space for these changes would be created by moving items 11 through 15 and the judicial officer’s signature to the second page, at the expense of space in item 15 for the legal description and additional sale terms.<sup>3</sup>

The existing *Report of Sale and Petition for Order Confirming Sale of Real Property*, form DE-260/GC-060, does identify guardians or conservators as possible petitioners, in addition to personal representatives (see item 1). Nevertheless, the advisory committee recommends that this form also be revised.

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<sup>1</sup> A purchaser may report the sale and petition for its confirmation if the fiduciary fails to do so within 30 days of the sale (Prob. Code, § 10308(b)).

<sup>2</sup> Probate Code section 58 reads, in material part, as follows:

“(a) ‘Personal representative’ means executor, administrator, administrator with the will annexed, special administrator, successor personal representative, public administrator acting pursuant to Section 7660, or a person who performs substantially the same function under the law of another jurisdiction governing the person’s status. . . .”

Probate Code section 39 defines “fiduciary” as the appropriate general term for personal representatives, guardians, conservators, and trustees.

<sup>3</sup> Item 16 in the existing form would be renumbered 15 because existing item 15 at the bottom of page 1 of the form would be deleted as unnecessary.

The revised report and petition would feature a modified case caption box to permit specification of the type of proceeding, to be consistent with the revised order, and the existing very busy and crowded form would be generally improved. The text boxes for the hearing date, time, and department below the case-number box would also be changed to a one-line format that the advisory committee will propose for all form probate petitions and supporting documents where there is room to so do.

#### Alternative Actions Considered

The advisory committee considered revising only the order, form DE-265/GC-065, but elected to take the opportunity afforded by the need to revise the order to review and generally improve the related report and petition, form DE-260/GC-065, a form that has not been revised in many years and is difficult to read and use. In response to a public comment, the committee also considered revising both forms to make them applicable to the trustees of certain trusts. For the reasons stated below, however, the committee decided against taking this step at this time. The committee is going to take a global look at all existing decedent estate forms to determine which ones could be revised to include trusts and trust proceedings. These forms will be reviewed again during the course of that review.

#### Comments From Interested Parties

This proposal was circulated to a standard list of court executives, judicial officers, and organizations, and also to an augmented list of probate practitioners, probate department staff, and probate-related legal organizations, including the State Bar Trusts and Estates Section and probate-interest sections of many local or regional bar associations. Attached at pages 13–16 is a chart showing the comments received from the public on this proposal and the advisory committee's responses.

Six comments were received. Five were entirely favorable without additional comment. The comment from the Superior Court, Los Angeles County was favorable, but included several suggested changes.

The superior court first recommended that the report and petition and the order be modified to include trusts funded by court order under rule 7.903 of the California Rules of Court. This rule governs certain trusts created or funded by court orders that are subject to court supervision, including in some cases the requirement of court confirmation of sales of trust property. The advisory committee considered accepting this recommendation and actually drafted, reviewed, and discussed revised versions of the forms that expressly referred to trusts and trustees.

The committee decided against taking this action at this time. First, the committee believes that revision of these forms to include trusts would require recirculation of this proposal for public comment. Second, it is unclear under current law which

trusts should be included and uncertain whether the requirements for appraisals and reappraisals of real property sold in decedents' estates, conservatorships, or guardianships would apply to those trusts.<sup>4</sup>

The committee will address these issues more thoroughly in the next year during its planned review of all forms used in decedents' estates to determine which should be modified for use in trust proceedings, but believes that the potential title difficulties described by Ms. McEvoy should be resolved now, without waiting until all questions have been answered about extending these forms to trusts and trustees.

The superior court in Los Angeles also recommended that the confirmation forms should be revised to include references to Probate Code section 2540(b), concerning the sale of a conservatee's principal residence. The advisory committee disagrees with this recommendation. In many, if not most, cases, court approval of the sale of a conservatee's residence is obtained before the property is sold, and the detailed findings required by the statute are contained in an order separate from the order confirming sale.

#### Implementation Requirements and Costs

No implementation costs are anticipated other than the normal costs associated with the revision and distribution of any Judicial Council form.

#### Attachments

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<sup>4</sup> See, e.g., item 3 of the report and petition, form DE-260/GC-065, which shows application of the statutory requirements for appraisals and reappraisals by probate referees in connection with sales of real property in decedents' estates, conservatorships, and guardianships. See also Probate Code sections 2543(b) and 10309.



<input type="checkbox"/> ESTATE <input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF	CASE NUMBER:
(Name):	

**5. Commission**

- a.  Sale without broker
- b.  A written  exclusive  nonexclusive contract for commission was entered into with (name):
- c.  Purchaser was procured by (name):  
a licensed real estate broker who is not buying for his or her account.
- d.  Commission is to be divided as follows:

**6. Bond**

- a. Amount before sale: \$  none.
- b. Additional amount needed: \$  none.
- c.  Proceeds are to be deposited in a blocked account. Receipts will be filed. (Specify institution and location):

**7. Notice of sale**

- a.  Published  Posted as permitted by Probate Code section 10301 (\$5,000 or less)
- b.  Will authorizes sale of the property
- c.  Will directs sale of the property

**8. Notice of hearing**

- a. Special devisee:
  - (1)  None.
  - (2)  Consent to be filed.
  - (3)  Written notice will be given.
- b. Special notice:
  - (1)  None requested.
  - (2)  Has been or will be waived.
  - (3)  Required written notice will be given.
- c. Personal representative, conservator of the estate, or guardian of the estate:
  - (1)  Petitioner (consent or notice not required).
  - (2)  Consent to be filed.
  - (3)  Written notice will be given.

**9. Reason for sale (need not complete if item 7b or 7c checked)**

- a.  Necessary to pay
  - (1)  debts
  - (2)  devise
  - (3)  family allowance
  - (4)  expenses of administration
  - (5)  taxes

**10. Formula for overbids**

- a. Original bid: \$ \_\_\_\_\_
- b. 10% of first \$10,000 of original bid: \$ \_\_\_\_\_
- c. 5% of (original bid minus \$10,000): \$ \_\_\_\_\_
- d. Minimum overbid (a + b + c): \$ \_\_\_\_\_

- b.  The sale is to the advantage of the estate and in the best interest of the interested persons.

**11. Overbid.** Required amount of first overbid (see item 10): \$

**12. Petitioner's efforts** to obtain the highest and best price reasonably attainable for the property were as follows (specify activities taken to expose the property to the market, e.g., multiple listings, advertising, open houses, etc.):

13. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME OF ATTORNEY)

▶

\_\_\_\_\_  
 (SIGNATURE OF ATTORNEY\*)  
 \* (Signature of all petitioners also required (Prob. Code, § 1020).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME OF PETITIONER)

▶

\_\_\_\_\_  
 (SIGNATURE OF PETITIONER)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
After recording return to:
TELEPHONE NO.:
FAX NO. (Optional):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

FOR RECORDER'S USE

- ESTATE OF
CONSERVATORSHIP OF (Name):
GUARDIANSHIP OF
DECEDENT
CONSERVATEE
MINOR

ORDER CONFIRMING SALE OF REAL PROPERTY
and Confirming Sale of Other Property as a Unit

CASE NUMBER:

1. Hearing date: Time: Dept.: Rm.:

FOR COURT USE ONLY

THE COURT FINDS

- 2. All notices required by law were given and, if required, proof of notice of sale was made.
3. a. Sale was authorized or directed by the will
b. Good reason existed for the sale of the property commonly described as (street address or location):
4. The sale was legally made and fairly conducted.
5. The confirmed sale price is not disproportionate to the value of the property.
6. Private sale: The amount bid is 90% or more of the appraised value of the property as appraised within one year of the date of the hearing.
7. An offer exceeding the amount bid by the statutory percentages cannot be obtained was obtained in open court. The offer complies with all applicable law.
8. The personal representative conservator guardian of the estate of the decedent, conservatee, or minor has made reasonable efforts to obtain the highest and best price reasonably attainable for the property.

THE COURT ORDERS

- 9. The sale of the real property legally described in item 15 on page 2 on Attachment 9 and other property sold as a unit described in item 15 on page 2 on Attachment 9 is confirmed to (name):

(manner of vesting title):
for the sale price of: \$ on the following terms (use item 15 on page 2 or Attachment 9 if necessary):

- Continued in item 15 on page 2. Continued on Attachment 9.
10. The personal representative conservator guardian of the estate of the decedent, conservatee, or minor (name):
is directed to execute and deliver a conveyance of the estate's interest in the real property described in item 9 and other property described in item 9 sold as a unit upon receipt of the consideration for the sale.

<input type="checkbox"/> ESTATE <input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP    OF _____ (Name):	CASE NUMBER: _____
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11. a.  No additional bond is required.  
 b.  Additional bond is required in the amount of: \$ \_\_\_\_\_, surety, or otherwise, as provided by law.  
 c.  Net sale proceeds must be deposited by escrow holder in a blocked account to be withdrawn only on court order. Receipts must be filed. (Specify institution and location): \_\_\_\_\_

12. a.  No commission is payable.  
 b.  A commission from the proceeds of the sale is approved in the amount of: \$ \_\_\_\_\_ to be paid as follows (specify): \_\_\_\_\_

13. Other (specify, use Attachment 13 if necessary): \_\_\_\_\_

14. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

JUDICIAL OFFICER

Signature follows last attachment.

15.  (Check all that apply):  Legal description of the  real property  personal property in item 9:  
 Additional terms of sale from item 9: \_\_\_\_\_

[SEAL]	<p style="text-align: center;"><b>CLERK'S CERTIFICATE</b></p> <p>I certify that the foregoing <i>Order Confirming Sale of Real Property</i>, including any attached description of real or personal property, is a true and correct copy of the original on file in my office.</p> <p>Date: _____ CLERK, by _____, Deputy</p>
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ESTATE OF (Name): _____	CASE NUMBER: _____
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**5. Commission**

- a.  Sale without broker
- b.  A written  exclusive  nonexclusive contract for commission was entered into with (name):
- c.  Purchaser was procured by (name):  
a licensed real estate broker who is not buying for his or her account.
- d.  Commission is to be divided as follows:

**6. Bond**

- a. Amount before sale: \$  none
- b. Additional amount needed: \$  none
- c.  Proceeds are to be deposited in a blocked account. Receipts will be filed. (Specify institution and location):

**7. Notice of sale**

- a.  Published  posted as permitted by Probate Code section 10301 (\$5,000 or less)
- b.  Will authorizes sale of the property
- c.  Will directs sale of the property

**8. Notice of hearing**

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>a. Specific devisee           <ul style="list-style-type: none"> <li>(1) <input type="checkbox"/> None</li> <li>(2) <input type="checkbox"/> Consent to be filed</li> <li>(3) <input type="checkbox"/> Written notice will be given</li> </ul> </li> <li>b. Special notice           <ul style="list-style-type: none"> <li>(1) <input type="checkbox"/> None requested</li> <li>(2) <input type="checkbox"/> Has been or will be waived</li> <li>(3) <input type="checkbox"/> Required written notice will be given</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>c. Personal representative           <ul style="list-style-type: none"> <li>(1) <input type="checkbox"/> Petitioner (none required)</li> <li>(2) <input type="checkbox"/> Consent to be filed</li> <li>(3) <input type="checkbox"/> Written notice will be given</li> </ul> </li> </ul> |
|--|--|

**9. Reason for sale (need not complete if 7b or 7c checked)**

- a.  Necessary to pay
  - (1)  debts
  - (2)  devises
  - (3)  family allowance
  - (4)  expenses of administration
  - (5)  taxes
- b.  The sale is to the advantage of the estate and in the best interest of the interested persons.

**10. Formula for overbids**

a. Original bid:	\$ _____
b. 10% of first \$10,000 of original bid:	\$ _____
c. 5% of (original bid minus \$10,000):	\$ _____
d. Minimum overbid (a + b + c):	\$ _____

11. **Overbid.** Required amount of first overbid (see item 10): \$ \_\_\_\_\_

12. **Petitioner's efforts** to obtain the highest and best price reasonably attainable for the property were as follows (specify activities taken to expose the property to the market, e.g., multiple listings, advertising, open houses, etc.):

13. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_  
 \* (Signature of all petitioners also required (Prob. Code, § 1020).) ▶ \_\_\_\_\_  
(SIGNATURE OF ATTORNEY \*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
 Date: \_\_\_\_\_

.....  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
(SIGNATURE OF PETITIONER)

.....  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
(SIGNATURE OF PETITIONER)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):

After recording return to:

TELEPHONE NO.:

FAX NO. (Optional):

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

ESTATE OF (Name):

FOR RECORDER'S USE

DECEDENT CONSERVATEE MINOR

ORDER CONFIRMING SALE OF REAL PROPERTY

And Confirming Sale of Other Property as a Unit

CASE NUMBER:

FOR COURT USE ONLY

1. Hearing date: Time: Dept.: Room:

THE COURT FINDS

- 2. All notices required by law were given and, if required, proof of notice of sale was made.
3. a. Sale was authorized or directed by the will
b. Good reason existed for the sale of the property commonly described as (street address or location):
4. The sale was legally made and fairly conducted.
5. The confirmed sale price is not disproportionate to the value of the property.
6. Private sale: The amount bid is 90% or more of the appraised value of the property as appraised within one year of the date of the hearing.
7. An offer exceeding the amount bid by the statutory percentages cannot be obtained was obtained in open court. The offer complies with all applicable law.
8. The personal representative has made reasonable efforts to obtain the highest and best price reasonably attainable for the property.

THE COURT ORDERS

9. The sale of the real property legally described on next page in Attachment 9 and other property sold as a unit described on next page in Attachment 9a is confirmed to (name):

(manner of vesting title):

for the sale price of: \$ on the following terms (use attachment or reverse if necessary):

- 10. The personal representative (name): is directed to execute and deliver a conveyance of the estate's interest in the property described in item 9 and other property described in item 9 upon receipt of the consideration for the sale.
11. a. No additional bond is required.
b. Personal representative shall give an additional bond for: \$, surety, or otherwise, as provided by law.
c. Net sale proceeds shall be deposited by escrow holder in a blocked account to be withdrawn only on court order. Receipts shall be filed. (Specify institution and location):
12. a. No commission is payable.
b. A commission from the proceeds of the sale is approved in the amount of: \$ to be paid as follows (specify):

13. Other (specify; use attachment or next page if necessary):

Date:

JUDGE OF THE SUPERIOR COURT

14. Number of pages attached: \_\_\_\_\_

SIGNATURE FOLLOWS LAST ATTACHMENT

15. Legal description on page 2.

ESTATE OF <i>(Name)</i> : _____	CASE NUMBER:
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16.  **Legal description** of the  real property  personal property in item 9 (*describe*):

[SEAL]	<p><b>CLERK'S CERTIFICATE</b></p> <p>I certify that the foregoing <i>Order Confirming Sale of Real Property</i>, including any attached description of real or personal property, is a true and correct copy of the original on file in my office.</p> <p>Date: _____ CLERK, by _____, Deputy</p>
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**SPR05-44**

**Probate Forms: Report of Sale and Petition for Confirmation of Sale of Real Property,  
and Order Confirming Sale of Real Property  
(revise forms DE-260/GC-060 and DE-265/GC-065)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Response of the Probate and Mental Health Advisory Committee</b>
1.	W. F. Docker Member, Executive Committee, Trusts & Estates Section The State Bar of California San Francisco, California	A	Y	Agree with proposed changes.	No response necessary.
2.	Mr. Samuel Ingham Attorney at Law Certified Specialist, Estate Planning, Trust and Probate Law Beverly Hills, California	A	N	Agree with proposed changes.	No response necessary.
3.	Mr. Stephen V. Love Court Executive Officer Superior Court of California, County of San Diego San Diego, California	A	N	Agree with proposed changes.	No response necessary.
4.	Ms. Emily Stuhlbarg Private Professional Conservator Emily Stuhlbarg & Associates, Inc. Torrance, California	A	N	Agree with proposed changes.	No response necessary.
5.	Superior Court of California, County of Los Angeles (commentator not identified).	AM	Y	1. REPORT OF SALE AND PETITION FOR ORDER CONFIRMING SALE OF REAL PROPERTY • Suggest “Trusts Funded by Court Order” be added to proceeding types—and, if added, change items 1, 3a(2), 4h,	1. Report of Sale and Petition: • The advisory committee disagrees with this recommendation for two

**SPR05-44**

**Probate Forms: Report of Sale and Petition for Confirmation of Sale of Real Property,  
and Order Confirming Sale of Real Property  
(revise forms DE-260/GC-060 and DE-265/GC-065)**

	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
				<p>and 8c to include trust or trustee as appropriate.</p> <ul style="list-style-type: none"> <li>• Also add to footer “Trusts Funded by Court Order” and add reference to CRC, rule 7.903 with other citations at the bottom of the form.</li> </ul>	<p>reasons. First, this recommended change is so substantial and fundamental that the committee believes that the form revision proposal would have to be recirculated for public comment if these changes are made before it could be submitted for action by the Judicial Council.</p> <p>Second, it is unclear which trusts and trustees are subject to the sale confirmation requirements and uncertain which aspects of the sale confirmation procedure would be applicable to trusts and trustees. The committee is going to undertake a broader examination of all forms used in decedents’ estates to determine which of them should be modified to be used in proceedings involving trusts. That review will include an</p>

**SPR05-44**

**Probate Forms: Report of Sale and Petition for Confirmation of Sale of Real Property,  
and Order Confirming Sale of Real Property  
(revise forms DE-260/GC-060 and DE-265/GC-065)**

	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
				<ul style="list-style-type: none"> <li>Suggest adding a provision addressing Probate Code 2540(b) when property sold is the conservatee’s residence or former residence.</li> </ul>	<p>examination of these issues.</p> <ul style="list-style-type: none"> <li>The advisory committee disagrees with this suggestion. Section 2540(b) requires a detailed showing of the need for the sale and the lack of alternatives, and the conservatee’s attitude toward the sale. In most cases the preferred practice is for the conservator to petition the court for authority to sell the residence and obtain the authorizing order before entering into a sale to be confirmed. The order granting authority for the sale, not the order confirming sale, would contain the findings required by section 2540(b), and would be recorded together with the order confirming sale. (See 1 Johnstone and House, California Conservatorships and</li> </ul>

**SPR05-44**

**Probate Forms: Report of Sale and Petition for Confirmation of Sale of Real Property,  
and Order Confirming Sale of Real Property  
(revise forms DE-260/GC-060 and DE-265/GC-065)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Response of the Probate and Mental Health Advisory Committee</b>
				<p>2. ORDER CONFIRMING SALE OF REAL PROPERTY</p> <ul style="list-style-type: none"> <li>• See 1.A. above. If the petition includes Trusts Funded by Court Order, paragraphs 8 and 10 of the order should be amended to include “trustee.”</li> <li>• Add to footer “Trusts Funded by Court Order.”</li> <li>• Add CRC, rule 7.903 to legal citations at the bottom of the form.</li> </ul>	<p>Guardianships (Cont.Ed.Bar, 2004) Time of Presentation of Information to Court § 12A.87, p. 759.</p> <p>2. Order Confirming Sale.</p> <ul style="list-style-type: none"> <li>• See the above discussion concerning the petition.</li> </ul>
6.	Mr. Dean Zipser President Orange County Bar Association Irvine, California	A	N	Agree with proposed changes.	No response necessary.