

LDIR#214

ART. III

PART 8

SALES

**ADMINISTRA-
TION**

LDIR 214

ART. III

PART 8. SALES

ADMINISTRATION

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3.11φ
Sec. ~~19.01~~. No priority between real and personal property.

In determining what property of the estate shall be sold, mortgaged, leased or exchanged for any purpose provided in section ~~19.03~~ ^{3.11φ} there is no priority as between real and personal property, except as provided by will, by court order or by the provisions of section ~~11.04~~ ^{3.15φ}.

Source: (Mod. Sec. 150, Cal 750.1)

Comment: ^(etc) ~~in~~ England during the development of the common-law, real property was the foundation of wealth and was dealt with differently from personal property. This distinction was long maintained, but has now lost its reason for existence. See Simes, The Function of Will Contests, Model 683, 688.

The provisions of the will however ^(may make a distinction) ~~are to govern~~, or where ^(a distinction is) necessary the court may provide by order for ~~disposition~~. In some cases the order of abatement of legacies of Sec. ~~11.04~~ ^{3.15φ} may have the effect of distinguishing between real and personal property.

¶ The provisions of Secs. 61-14-2, and 61-14-5, ACLA 1949 perpetuated the old distinction by requiring the disposition of personal property first, but Ch. 64, SLA1960 ^{amended} ~~so changed~~ Sec. 61-14-5 ^(to permit) ~~that~~ real property ^(to) ~~may~~ be sold without reference to whether the personal property has been sold, if the court decides this to be advisable. The new provision is in accord with this change.

VIII. Sales

Sec. 9.01. No priority between real and personal property.

In determining what property of the estate shall be sold, mortgaged, leased or exchanged for any purpose provided in section 9.03 there shall be no priority as between real and personal property, except as provided by the will, if any, or by order of the court or by the provisions of section 11.04.

Source:

Comment: