

Memorandum 77-43

Subject: Study 30.300 - Guardianship-Conservatorship

At present, under Divisions 4 (guardianship) and 5 (conservatorship) of the Probate Code, a guardian but not a conservator may be appointed for a minor, and a conservator but not a guardian may be appointed for an adult not incompetent but who is "substantially unable to . . . resist fraud or undue influence." See Prob. Code §§ 1440, 1460, 1751. However, either a guardian or a conservator may be appointed for an incompetent adult. See Prob. Code §§ 1460, 1751.

At the September 1976 meeting, the Commission approved a staff recommendation that Divisions 4 and 5 of the Probate Code be revised to eliminate the overlap between them by removing the provisions for appointment of a guardian for an incompetent adult. Thus, guardianships would be limited to minors. Conservatorships would continue to apply to adults as at present.

Pursuant to this decision, the staff has prepared the attached staff draft of a tentative recommendation relating to guardianships and conservatorships. The Commission's consultant, Garrett Elmore, has reviewed this draft. Some of Mr. Elmore's suggestions have been incorporated in this draft, others have not; the staff plans further consultation with Mr. Elmore concerning any technical points raised by him which have not yet been incorporated in the draft. Mr. Elmore will supply the Commission with a separate memorandum detailing policy issues he believes should be considered.

The tentative recommendation is explained in more detail in the preliminary part to the attached staff draft and in the Comments to the individual sections. The following discussion supplements the tentative recommendation by giving additional background information for a few sections.

Probate Code § 1

Section 1 of the Probate Code recites incorrectly that the code "is composed of four divisions." In fact, the code is composed of seven divisions. The staff proposes to amend the section to read simply: "This code shall be known as the Probate Code." Use of the term "code"

in lieu of "act" conforms to Section 1 of the Commercial, Education, Evidence, and Fish and Game Codes. Section 1 of the other 22 codes reads: "This act shall be known as the _____ Code."

Probate Code §§ 1436-1437

Proposed Section 1436 provides for appointment by a parent of a testamentary guardian for the child. Proposed Section 1437 provides for appointment by any person of a special guardian of the estate for the property which the minor will receive by will from the person appointing. Under the proposed sections, as under present law, such appointments are subject to court confirmation on petition. Under present law, however, it is unclear whether the court is bound by a testamentary appointment, or whether such an appointment is merely persuasive on the court. See 3 N. Condee, California Probate Court Practice § 2029, at 151 (2d ed. 1964); Schlesinger, Testamentary Guardianships for Minors and Incompetents, in California Will Drafting § 10.10 (Cal. Cont. Ed. Bar 1965). The staff draft resolves this question as follows:

For a testamentary guardianship of the person, proposed Section 1451 applies the child custody provisions of the Family Law Act (Civil Code Section 4600). Section 4600 is itself revised to give a testamentary appointee some preference as the child's custodian, but, as under the Family Law Act generally, the court retains a considerable measure of discretion to act in the best interests of the child. See 6 B. Witkin, Summary of California Law, Parent and Child § 72, at 4592 (8th ed. 1974). It is also the rule in a majority of United States jurisdictions that the court retains discretion to disapprove the testamentary appointee when to do so will serve the best interests of the child. See Annot., 67 A.L.R.2d 803, 810 (1959).

For a testamentary guardianship of the estate, the court is required under proposed Section 1452 to confirm a special guardian of the estate for the property passed by will unless the court finds the appointee unsuitable. If the testamentary guardianship is of the general estate, the court "may" confirm if it finds the appointment to be in the minor's best interests; such an appointee is given third preference behind the person appointed or confirmed as guardian of the person of the minor and behind a living parent.

Probate Code § 1631

Section 1631 concerns the powers of a guardian of an adult incompetent person pending an appeal from the order of appointment. The general rules concerning the extent to which proceedings in the trial court are stayed pending appeal are set forth in Sections 916 through 923 of the Code of Civil Procedure. The basic stay rule is set forth in subdivision (a) of Section 916:

(a) Except as provided in Sections 917.1 through 917.9 and in Sections 117ha, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.

Section 1631 of the Probate Code restates the basic rule that "[a]n appeal from an order appointing a guardian for an incompetent person shall stay the power of the guardian," but provides an important exception: The court appointing the guardian may, to prevent injury or loss to person or property, authorize the guardian to act as though no appeal were pending. Section 1631, however, does not apply to guardianships of minors. In re Stratton, 133 Cal. App. 738, 739, 24 P.2d 832, ___ (1933).

With respect to guardianships of minors, the basic stay rule of Section 916(a) of the Code of Civil Procedure set forth above applies, as does a specific exception to the stay rule set forth in Section 917.7. See 6 B. Witkin, California Procedure, Appeal § 151(1), at 4145 (2d ed. 1971). Section 917.7 provides:

The perfecting of an appeal shall not stay proceedings as to those provisions of a judgment or order which award, change or otherwise affect the custody, including the right of visitation, of a minor child in any civil action, in an action filed under the Juvenile Court Law, or in a special proceeding . . . ; provided, the trial court may in its discretion stay execution of such provisions pending review on appeal or for such other period or periods as to it may appear appropriate

Thus an appeal would appear to stay the powers of a guardian of the estate of a minor, but would not stay the powers of a guardian of the person of a minor unless the trial court in its discretion so ordered.

The staff-proposed revision of Section 1631 would (1) apply it to minors where it had not been previously so applied, (2) make explicit

the application of Section 917.7 of the Code of Civil Procedure (no stay unless ordered) to guardianships of the person of a minor, and (3) change the rule that an appeal stays the powers of a guardian of the estate of a minor by conferring discretionary power on the trial court to authorize the guardian to act to prevent injury or loss to person or property during the pendency of an appeal. Although it has been suggested that "[i]n the case of a minor's guardianship there seems to be no reason for such an exception to a complete stay as has been made in the case of an alleged incompetent," In re Stratton, supra, the staff does not agree with this view.

Probate Code § 1852

In its present form, Section 1852 gives a conservator of the estate or of the person and estate the powers granted to a guardian of the estate or of the person and estate of an incompetent in Chapters 7, 8, and 9 of Division 4 (guardian and ward), and, if granted by the court, the additional powers authorized by Section 1853. The precise effect of these provisions is not entirely clear.

First, a number of the provisions of Chapters 7, 8, and 9 of Division 4 have to do with the duties of the guardian rather than powers. See, e.g., Sections 1501-1503, 1512, 1534a, 1536, 1550, 1551, 1553, 1556.3. It is not clear whether Section 1852 imposes these duties on a conservator. However, it has been said that "there is no clear distinction" between a power and a duty, and "each may usually be spoken of interchangeably." W. Johnston & G. Zillgitt, California Conservatorships § 5.1, at 152 (Cal. Cont. Ed. Bar 1968).

Second, some of the powers given to a guardian which do not require court approval are duplicated by provisions in Section 1853 (conservatorship) which do require court approval. See, e.g., Sections 1501 (second and third sentences), 1508, 1517, 1533, 1538.6.

Third, some of the guardian's powers which do require court approval appear to be duplicated in Section 1853. See, e.g., Sections 1506, 1507, 1516, 1530a, 1537, 1537.5, 1538, 1540, 1557, 1557.1.

Fourth, some of the guardian's powers are duplicated in Division 5 by sections other than Section 1853. Compare Section 1505 with Section 1857; compare Section 1558 with Section 1856; compare Section 1560 with Section 1911.

Fifth, five sections in Chapter 7 of Division 4 apply by their terms to minors only and, hence, are not presently incorporated by Section 1852. These are Sections 1504, 1509, 1511, 1512, and 1518.

Finally, there are powers granted to a guardian in Division 4 which do not appear in Division 5, and which should therefore be incorporated by Section 1852. See, e.g., Section 1537; W. Johnston & G. Zillgitt, supra § 5.43, at 191.

In view of the uncertain scope of the provisions incorporated by reference by Section 1852, any extensive revision of that section will be hazardous. The staff proposes to revise the section in two respects. First, the staff proposes to delete the phrase "of an incompetent" from the reference to the powers of a guardian. Thus, Section 1852 will purport to incorporate the powers provisions of Division 4 formerly applicable only to guardians of minors. These are Sections 1504, 1512, and 1518.¹ Section 1504 (support of minor out of own estate) is paralleled by a substantively identical section in Division 5, i.e., Section 1857, and thus its incorporation makes no substantive change.

1. Two additional sections of Chapter 7 of Division 4 apply only to minors but do not confer powers on the guardian. These are Sections 1509 and 1511. Section 1509 provides that a contract for attorney's fees for services in litigation for a minor is void unless approved by the court. Section 1511 provides that, when the court in which the litigation is pending approves an attorney's fee for services rendered to a minor, the court may direct that the fee be paid to the attorney with the balance of the judgment payable to the guardian ad litem or the general guardian. Cf. Code Civ. Proc. § 373.5 (reasonable expenses of guardian ad litem, including counsel fees, shall be determined by the court and paid as it may order). If litigation is prosecuted or defended for an incompetent adult by a conservator as authorized by Section 1853, attorney's fees would appear to be allowable to the conservator by Section 1908 ("every conservator shall be allowed the amount of his reasonable expenses incurred in the execution of his trust, including . . . reasonable attorneys' fees"). It would thus appear to be unnecessary to deal further in Division 5 with the subject embraced by Sections 1509 and 1511.

Section 1512 (court may impose "conditions not otherwise obligatory" for "care and custody" of minor's property) parallels Section 1853 (additional powers). It is not clear whether Section 1512 authorizes powers not authorized by Section 1853. The staff proposes to leave the resolution of this question to case law development.

Section 1518 permits the guardian, with court approval, to maintain in force a minor's insurance contract. Section 1518 will properly be applied to conservatorships of a married minor by Section 1852 as revised.

Second, the staff proposes to add to Section 1852 a provision that "the court may grant to such conservator the powers which a court may grant to such guardian." This will make clear that the court in a conservatorship proceeding may grant to the conservator the powers which a court may grant to a guardian under Sections 1506, 1507, 1516, 1530a, 1537, 1537.5, 1538, 1540, 1557, and 1557.1.

Respectfully submitted,

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STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

GUARDIANSHIP AND CONSERVATORSHIP LAW

Introduction

California's guardianship law, which may be traced back to the first legislature in 1850, was codified as Division 4 of the Probate Code in 1931.¹ Under present law, a guardian may be appointed for a minor or an incompetent adult.² Since an adjudication of incompetency is required for appointment of a guardian for an adult, experience has shown that many people and their families have avoided guardianship proceedings because of the stigma associated with such an adjudication.³ As a result, a comprehensive conservatorship statute was enacted in 1957 as Division 5 of the Probate Code providing for appointment of a conservator for a broad category of adults in need of protective supervision.⁴ Under the conservatorship provisions, an adjudication of incompetency may be made⁵ but is not required.⁶

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1. See generally Turrentine, Introduction to the California Probate Code, in 52 West's Annotated California Codes, Probate Code 1 (1956); Cupp, McCarroll, & McClanahan, Guardianships of Minors, in 1 California Family Lawyer §§ 16.3-16.5, at 597-99 (Cal. Cont. Ed. Bar 1962). There are numerous provisions relating to guardianship scattered elsewhere throughout the codes.
 2. See Prob. Code §§ 1405, 1460.
 3. Lord, Conservatorship vs. Guardianship, 33 L.A. B. Bull. 5, 5-6 (1957) [hereinafter cited as Lord]; 32 Cal. St. B.J. 585 (1957); W. Johnstone & G. Zillgitt, California Conservatorships § 1.2, at 3 (Cal. Cont. Ed. Bar 1968) [hereinafter cited as Johnstone].
 4. Johnstone, supra §§ 1.2, 3.1, at 3, 53.
 5. An adjudication of incompetency may be made under Division 5 by a finding in the order of appointment that the conservatee is a person "for whom a guardian could be appointed." Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, ___ n.6, ___, 120 Cal. Rptr. 407, ___ n.6, ___ (1975).
 6. Lord, supra at 5-6; Johnstone, supra § 1.2, at 3.

Although at the time Division 5 was enacted it was thought that eventually conservatorships would replace guardianships,⁷ the guardianship provisions were retained to give the bar and the public time to become familiar with the conservatorship proceeding.⁸ Thus, there is at present an overlap between Divisions 4 and 5: Protective proceedings for a minor may be brought only under Division 4, protective proceedings for an adult who is not incompetent may be brought only under Division 5, but protective proceedings for an incompetent adult may be brought either under Division 4 or Division 5.

The Probate and Trust Law Committee of the State Bar of California has considered the possible consolidation of guardianship and conservatorship law and in 1974 recommended that guardianships be limited to minors, that conservatorships be retained for adults, and that the matter be referred to the California Law Revision Commission for study and revision.¹⁰ The Commission has been authorized since 1956 to study certain aspects of guardianship,¹¹ and that authority has since been broadened to embrace child custody generally, including guardianship.¹² Pursuant to this authority, the Commission has prepared this tentative recommendation to limit guardianships to minors and to retain conservatorships for adults.

Overlap Between Guardianship and Conservatorship

Since the enactment of Division 5, conservatorships have become well accepted and have come into widespread use throughout the state.¹³ At the same time, the provisions for guardianship of minors have different antecedents and different purposes and are largely irrelevant to the

7. Lord, supra at 6; Johnstone, supra § 1.2, at 3.

8. Johnstone, supra § 1.2, at 3.

9. W. Johnstone & G. Zillgitt, Introduction to California Conservatorships Supplement at xi (Cal. Cont. Ed. Bar 1976).

10. Minutes of the May 18, 1974, meeting of the Probate and Trust Law Committee of the State Bar of California (unpublished).

11. See 1956 Cal. Stats., Res. Ch. 42.

12. See 1972 Cal. Stats., Res. Ch. 27.

13. W. Johnstone & G. Zillgitt, Introduction to California Conservatorships Supplement at xi (Cal. Cont. Ed. Bar 1976).

subject of conservatorships.¹⁴ The Commission therefore recommends that guardianships be retained for minors, that conservatorships be retained for adults, and that the redundant provisions for guardianship of an incompetent adult be eliminated.

Separate Divisions for Guardianship and Conservatorship

The Commission has considered the possibility of consolidating into one division of the Probate Code the provisions for guardianship and conservatorship as initially suggested by the State Bar Committee on Probate and Trust Law.¹⁵ However, the Commission recommends retaining the guardianship provisions in Division 4 and the conservatorship provisions in Division 5. While there is some statutory duplication in the two divisions,¹⁶ their preservation in separate form will facilitate the development of each body of law in a manner consistent with the purposes of each. Moreover, wholesale renumbering and redrafting of sections will be avoided, thus minimizing the extent to which practitioners will

14. Johnstone, *supra* § 1.1, at 3.

15. Minutes of the May 18, 1974, meeting of the Probate and Trust Law Committee of the State Bar of California (unpublished).

16. Compare, for example, the following sections of Division 4 of the Probate Code with the corresponding sections of Division 5:

<u>Division 4</u> <u>(guardian and ward)</u>	<u>Division 5</u> <u>(conservatorship)</u>
§ 1483.1	§ 1803
§ 1486	§ 1805
§ 1519	§ 1862
§ 1550	§ 1901
§ 1554	§ 1905
§ 1554.1	§ 1906
§ 1555	§ 1907
§ 1559	§ 1909
§ 1560	§ 1911
§ 1561	§ 1910
§ 1580	§ 1951
§ 1640	§ 2201
§ 1641	§ 2202
§ 1642	§ 2203
§ 1643	§ 2204
§ 1644	§ 2205
§ 1645	§ 2206
§ 1646	§ 2207

be required to relearn the law of guardianship and conservatorship. To some extent, statutory duplication may be reduced by incorporating by reference provisions of one division by the other.¹⁷

Revision of Conservatorship Law Limited

Since the basic purpose of the revision of Divisions 4 and 5 of the Probate Code as recommended by the Commission is to eliminate the overlap between them, Division 5--which now applies only to adults--may generally be left intact. However, the revision of Division 4 so that it no longer applies to incompetent persons necessitates the addition of a number of provisions to Division 5.

Community and Homestead Property Transactions

Chapter 2A (commencing with Section 1435.1) of Division 4 provides a procedure for court approval of a transaction involving community or homestead property where at least one of the spouses is incompetent, without the necessity of appointing a guardian or conservator.¹⁸ Since the term "incompetent" is defined to refer to an adult,¹⁹ these provisions should be relocated in Division 5 and the references to guardianship should be changed to references to conservatorship. The obsolete provisions of Chapter 2A relating to management and control of community property²⁰ should be revised to reflect that either spouse has the management and control of such property.²¹ The provisions of Chapter 2A requiring that both spouses join in any conveyance of the separate property of one spouse which is subject to a homestead,²² and requiring written consent of the other spouse for a conveyance of community personal property,²³ should not be continued. These are special provisions

17. See, e.g., Prob. Code §§ 1702, 1751, 1852, 2151.

18. See Prob. Code §§ 1435.3, 1435.18.

19. Prob. Code § 1435.2.

20. Prob. Code §§ 1435.16, 1435.17.

21. Civil Code §§ 5125, 5127.

22. Prob. Code § 1435.16.

23. Prob. Code § 1435.17.

applicable only in the context of Chapter 2A, and no such joinder or consent is required under the Civil Code.²⁴

Married Minor

Since Division 4 (guardian and ward) will be limited to minors under the Commission's recommendation, it will no longer be necessary to provide in Division 4 for an adjudication of incompetency. The minority of the proposed ward, together with a showing of the need for appointment of a guardian,²⁵ will constitute the grounds for such an appointment. The married minor, however, presents a special situation.

Under existing law, no guardian of the person of a married minor may be appointed solely by reason of such minority.²⁶ And, if the appointment of a guardian was made solely because of the ward's minority, marriage of the ward terminates the guardianship of the person.²⁷ The Commission recommends codification of an express provision authorizing protective proceedings for a married minor under circumstances when such proceedings would be appropriate for an adult.²⁸ Such a provision should be located in Division 5 rather than in Division 4 since Division 5 is concerned with proceedings where the protected person is mentally or physically impaired in some way, and many unnecessary provisions may thus be eliminated from Division 4.

24. See Civil Code § 5125 (community personal property); 5 B. Witkin, California Procedure, Enforcement of Judgment § 34(b)(2), at 3415 (2d ed. 1971) (married person's separate homestead).

25. Under Section 1440 of the Probate Code in its present form, a guardian may be appointed for a minor when it appears "necessary or convenient."

26. Prob. Code § 1433.

27. Prob. Code § 1590(1).

28. A conservator of the person may be appointed for an adult who is "unable properly to provide for his personal needs for physical health, food, clothing or shelter." Prob. Code § 1751. A conservator of the property may be appointed for an adult who, among other things, is "substantially unable to manage his own financial resources, or resist fraud or undue influence." Id.

Conservatee's Capacity to Contract

Since under the Commission's recommended revision a guardian may no longer be appointed for an adult, the ground for appointment of a conservator for a person "for whom a guardian could be appointed under Division 4"²⁹ should be deleted from Division 5. Since appointment of a conservator on this ground was the only manner in which the court could withdraw the conservatee's capacity to make a contract or conveyance,³⁰ the provision should be replaced with a new provision authorizing the court to provide in its order of appointment that the conservatee lacks the power to make a conveyance or contract or lacks such power in excess of a specified money amount. This will preserve the effect of former law and yet avoid the necessity of a stigmatizing adjudication of incompetency.

Revision of Guardianship Law

The Commission recommends that Division 4 (guardian and ward) be revised so that it will continue to apply to unmarried minors but will no longer apply to incompetent adults. Many provisions applicable only to incompetent adults may thus be removed from Division 4. The provisions for appointment as guardian of the person should be made consistent with the child custody provisions of the Family Law Act,³¹ and separate provisions should be written for guardianship of the estate.

Incompetent Adults

The provisions for appointment of a guardian for incompetent persons and for restoration to capacity³² should be repealed. A number of other procedural provisions which relate only to incompetent adults should also be repealed;³³ these include provisions added by the 1976

29. Prob. Code § 1751.

30. See Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, ___ n.6, ___, 120 Cal. Rptr. 407, ___ n.6, ___ (1975).

31. Civil Code §§ 4600, 4601.

32. Prob. Code §§ 1405, 1460-1472.

33. E.g., Prob. Code §§ 1500.1, 1500.2, 1606. Section 1606 is expressly limited to an incompetent person. Sections 1500.1 and 1500.2 are not expressly so limited, but that is the apparent intent of the sections.

Legislature for visitation to the ward by a court investigator and for periodic court review of the guardianship.³⁴

Guardian of the Person of a Minor

Section 1407 of the Probate Code sets forth the order of preference for appointment as guardian of a minor. The Commission's consultant on child custody, Professor Brigitte M. Bodenheimer of the U.C. Davis Law School, recommended in 1971 that, with respect to guardianship of the person, the Probate Code provisions should be conformed to the child custody provisions of the Family Law Act with the ultimate goal of having uniform standards regardless of the nature of the custody proceeding.³⁵ Since that recommendation was made, two decisions construing Section 4600 of the Civil Code, which applies by its terms to "any proceeding where there is at issue the custody of a minor child," have held that the standards for custody of Section 4600 apply to guardianship proceedings and take precedence over the Probate Code provisions.³⁶ The Commission recommends that the guardianship provisions of the Probate Code be conformed to the present state of the law by repealing the order of preference of Section 1407 as it applies to guardianship of the person and by expressly incorporating by reference in the guardianship statute the standards for child custody contained in the Family Law Act.

Guardian of the Estate of a Minor

Although the order of preference for selection of a guardian contained in Section 1407 of the Probate Code applies by its terms to guardianships generally, its primary concern is with guardianships of the person or of the person and estate and not with guardianships solely of the estate.³⁷ The Commission recommends that a guardian of the

34. Prob. Code § 1500.1.

35. Bodenheimer, The Multiplicity of Child Custody Proceedings--Problems of California Law, 23 Stan. L. Rev. 703, 731 (1971).

36. Guardianship of Pankey, 38 Cal. App.3d 919, 934, 113 Cal. Rptr. 858, ____ (1974); Guardianship of Marino, 30 Cal. App.3d 952, 958-59, 106 Cal. Rptr. 655, ____ (1973); cf. In re B.G., 11 Cal.3d 679, 695-96, 523 P.2d 244, ____, 114 Cal. Rptr. 444, ____ (1974) (applying Civil Code Section 4600 to juvenile court proceeding).

37. Estate of Rosin, 226 Cal. App.2d 166, 170, 37 Cal. Rptr. 830, ____ (1964).

estate be selected in accordance with the minor's best interests and that the court be given guidance in selecting from among those otherwise equally entitled by an advisory order of preference comparable to that now set forth in Section 1407.

Testamentary Guardianship

Under existing law, there are three sets of provisions for appointment of a testamentary guardian.³⁸ First, any person may appoint a special guardian of the estate for the property the minor will receive from the person so appointing.³⁹ If such appointment is made by a parent for a child of that parent, it may be done by will or by deed; if by anyone else, it may be by will only.⁴⁰ Second, a parent may appoint a general guardian by will or by deed for a child of that parent, to take effect on the parent's death.⁴¹ Finally, a parent of an unmarried incompetent adult child may appoint a general guardian by will or by deed, to take effect on the parent's death.⁴² Each of these various testamentary appointments is subject to court confirmation upon petition,⁴³ but it is not clear whether the testamentary appointment is binding on the court or is merely persuasive.⁴⁴

The Commission recommends that the provisions for appointment of a testamentary guardian for an adult incompetent person be deleted from Division 4 (guardian and ward) and not be carried over into Division 5

38. Prob. Code §§ 1402-1404.

39. Prob. Code § 1402.

40. Id.

41. Prob. Code § 1403. Written consent of the other parent is required if consent would be required for an adoption of the child. Id.

42. Prob. Code § 1404. Written consent of the other parent is required. Id. If the incompetent person is married, the testamentary appointment may be made by the spouse. Id.

43. Prob. Code § 1405.

44. See 3 N. Condee, California Probate Court Practice § 2029, at 151 (2d ed. 1964); Schlesinger, Testamentary Guardianships for Minors and Incompetents, in California Will Drafting § 10.10 (Cal. Cont. Ed. Bar 1965).

(conservatorship). There is no provision in Division 5 at present for the appointment of a testamentary conservator.⁴⁵ Under Section 1753 of the Probate Code, however, the "nominee" of a parent is entitled to some preference for appointment, and it may be that the court will treat a purported appointment of a conservator for an adult child by will as such a nomination.⁴⁶ With respect to property to be left to an incompetent adult, the creation of a testamentary trust is a preferable alternative to guardianship.⁴⁷

The Commission recommends that the provisions for appointment of a testamentary guardian for a minor be continued with the exception that the rarely used⁴⁸ appointment by deed be discontinued for appointment of a special guardian of the estate. The appointment by a parent of a general guardian by deed should be preserved, however, so that the parent's written wishes will be given some effect although not expressed in a will.

The Commission recommends that appointment of a testamentary guardian not be binding on the court but that the appointee be given a statutory preference. Where the guardianship is of the minor's person, the Family Law Act should apply so that the standard will be uniform regardless of the nature of the proceeding. The order of preference for child custody in the Family Law Act⁴⁹ should be revised so that, among persons equally entitled in other respects to custody of the child, preference will be given to the testamentary appointee. Where the guardianship is

45. Schlesinger, Testamentary Guardianships for Minors and Incompetents, in California Will Drafting § 10.8, at 312 (Cal. Cont. Ed. Bar 1965).

46. Cf. Guardianship of Waish, 100 Cal. App.2d 194, 195-97, 223 P.2d 322, ____ (1950) (copy of will not yet probated admitted into evidence to show "wishes of a deceased parent" under Probate Code Section 1407).

47. See Schlesinger, Testamentary Guardianships for Minors and Incompetents, in California Will Drafting §§ 10.50-10.61, at 331-37 (Cal. Cont. Ed. Bar 1965).

48. Cupp, McCarroll, & McClanahan, Guardianships of Minors, in 1 California Family Lawyer § 16.11, at 603 (Cal. Cont. Ed. Bar 1962).

49. Civil Code § 4600.

of the minor's estate, a similar preference for the testamentary appointee should be codified in the guardianship provisions of the Probate Code.

Temporary Guardian

The guardianship law provides for appointment of a "special guardian" of the estate pending court determination of the petition for appointment of a guardian.⁵⁰ This provision is analogous to provisions for appointment of a temporary conservator.⁵¹ Unlike the temporary conservatorship provisions which permit both a temporary conservator of the person and of the estate, the guardianship law is limited to special guardianship of the estate.⁵² It may be desirable in some cases to have a temporary guardian pending appointment of a guardian of the person. The guardianship provisions should be expanded to permit appointment of a temporary guardian of the person or estate.

Uniform Veterans' Guardianship Act

The Uniform Veterans' Guardianship Act⁵³ constitutes one chapter in Division 4 and provides for the appointment of a guardian when necessary for the payment of benefits by the United States Veterans Administration.⁵⁴ If the ward is an adult, the proceeding may be termed either a guardianship or a conservatorship.⁵⁵ However, in either case, the proceeding is governed by the provisions of the Uniform Veterans' Guardianship Act and by those provisions of Division 4 which are not inconsistent with the act.⁵⁶

50. See Chapter 14.5 (commencing with Section 1640) of Division 4 of the Probate Code.

51. See Chapter 11 (commencing with Section 2201) of Division 5 of the Probate Code.

52. Compare Prob. Code § 1640 with Prob. Code § 2201.

53. Prob. Code §§ 1650-1669.

54. See Prob. Code § 1651.

55. See Prob. Code § 2151.

56. See Prob. Code §§ 1669, 2151.

If the proposed ward or conservatee has property in addition to benefits to be received from the Veterans Administration, a guardian or conservator should be appointed for the management of such property.⁵⁷ Thus, it is possible to have a conservator appointed and governed by the provisions of Division 5 with respect to the general estate and governed by the provisions of Division 4 with respect to the veterans' benefits. The Commission therefore recommends that, if the proceedings under the Uniform Veterans' Guardianship Act are for an adult or a married minor, they be termed a conservatorship and that the provisions of Division 5, rather than Division 4, be applied in such proceedings to the extent they are not inconsistent with the act.

57. See Estate of Vaell, 158 Cal. App.2d 204, 210-12, 322 P.2d 579, (1958).

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

[Insert here bill title]

The people of the State of California do enact as follows:

REVISION OF GUARDIANSHIP AND CONSERVATORSHIP LAW

669/000

Civil Code § 4600 (amended)

SEC. 4600. Section 4600 of the Civil Code is amended to read:

4600. (a) In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of ~~such~~ the child during ~~his~~ minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to ~~his~~ the child's wishes in making an award of custody or modification thereof.

(b) Custody should be awarded in the following order of preference:

~~(a)~~ (1) To either parent according to the best interests of the child.

~~(b)~~ (2) To the person or persons in whose home the child has been living in a wholesome and stable environment.

~~(c)~~ (3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child. Of persons equally entitled in other respects to the custody of the child, preference is to be given to the person appointed as guardian of the person of the child pursuant to Section 1436 of the Probate Code.

(c) Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it

shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

Comment. Section 4600 is amended to add the second sentence to subdivision (b)(3) to assure that testamentary appointment by a parent of a guardian of the person of a child will be given preference regardless of the nature of the custody proceeding. This preserves the effect of former Probate Code Sections 1403 and 1405 to the extent they provided for testamentary appointment and confirmation of a guardian of the person. See Probate Code Section 1436 and the Comment thereto. Prior law was not clear whether the order of preference under Section 4600, which applies to "any proceeding where there is at issue the custody of a minor child," superseded the Probate Code provisions for testamentary appointment of a guardian of the person of a minor. See Guardianship of Marino, 30 Cal. App.3d 952, 958-959, 106 Cal. Rptr. 655, ___ (1973).

969/014

Probate Code § 1400 (Part heading) (added)

SEC. _____. A part heading is added to Division 4 of the Probate Code immediately preceding Chapter 1 (commencing with Section 1400) to read:

PART 1. GUARDIANSHIP OF MINORS

Comment. This part governs the appointment, powers, and duties of persons appointed or confirmed by the court to take care of the person and estate, or person or estate, of a minor other than a married minor. Other provisions of law may apply to protective proceedings for minors in certain cases. See, e.g., Part 2 (commencing with Section 1650) (Uniform Veterans' Guardianship Act); Division 5 (commencing with Section 1701) (conservatorship for married minor); Welf. & Inst. Code §§ 5350-5371 (conservatorship for gravely disabled minor).

Probate Code §§ 1400-1410 (repealed)

SEC. ____ . Chapter 1 (commencing with Section 1400) of Division 4 of the Probate Code is repealed.

Note. The text of each section in Chapter 1 of Division 4 is set out in the Appendix. The disposition of each section is indicated in the Comment that follows the text of the section.

Probate Code §§ 1400-1406 (added)

SEC. ____ . Chapter 1 (commencing with Section 1400) is added to Division 4 of the Probate Code, to read:

CHAPTER 1. GENERAL PROVISIONS

§ 1400. Definitions

1400. As used in this part, unless the context otherwise requires:

- (a) "General guardian" means a guardian of the person or of the general estate of the ward, or of both.
- (b) "Guardian" means a person appointed to take care of the person or estate of a ward, or both.
- (c) "Person" includes a corporation, trust, or other entity, as well as a natural person.
- (d) "Special guardian" means a guardian of less than all of the ward's estate.
- (e) "Temporary guardian" means a guardian appointed pursuant to Chapter 14.5 (commencing with Section 1640).
- (f) "Ward" means a minor for whom a guardian is appointed.

Comment. Subdivision (a) of Section 1400 continues the second sentence of former Section 1401 except that the reference to the ward's estate "within this state" is not continued. A general guardian may deal with personal property of the ward even though it is located out of state. In re Estate of Boutz, 24 Cal. App.2d 644, 648, 76 P.2d 154, ____ (1938).

Subdivisions (b) and (f) continue the substance of the first two sentences of former Section 1400.

Subdivision (c) is new. Subdivision (d) supersedes the third sentence of former Section 1401. Subdivision (e) is new and is to distinguish between a temporary guardian and a special guardian.

969/021

§ 1401. Confidentiality of relationship

1401. The relation of guardian and ward is confidential and is subject to the provisions of law relating to trusts.

Comment. Section 1401 continues the fifth sentence of former Section 1400.

969/023

§ 1402. Control of guardian by court

1402. In the management and disposition of the person or property committed to a guardian, the guardian may be regulated and controlled by the court.

Comment. Section 1402 continues the substance of the last sentence of former Section 1400.

969/029

§ 1403. Law governing practice and procedure

1403. Except as otherwise specifically provided in this part, practice and procedure and the making and entry of orders under this part are governed by the provisions of Division 3 so far as they are applicable.

Comment. Section 1403 continues the substance of former Section 1606 as enacted by Chapter 281 of the Statutes of 1931.

969/032

§ 1404. Guardian ad litem

1404. The provisions of this part do not limit the power of a court to appoint a guardian ad litem as provided by law.

Comment. Section 1404 continues the substance of former Section 1607. For provisions relating to a guardian ad litem, see Civil Code Section 42 and Code of Civil Procedure Sections 372-373.5.

Probate Code § 1433. Restriction on appointment of guardian for married minor (repealed)

SEC. ____ . Section 1433 of the Probate Code is repealed.

~~1433. No guardian shall be appointed of the person of a married minor solely by reason of such minority, and no guardian shall be appointed of the estate of a married person who has reached the age of 18 years solely by reason of age.~~

Comment. Former Section 1433 is superseded by Section 1450.

Probate Code § 1433 (added)

SEC. ____ . Section 1433 is added to the Probate Code, to read:

1433. Whenever it appears to the satisfaction of the superior court by verified application of the minor concerned that the consent of a parent or guardian is necessary to permit hospital or medical care or enlistment in the armed services for or by a minor of the age of 16 years or over residing in the State of California and that such minor has no parent or guardian available to give such consent, the court may summarily grant such consent. No fee shall be charged for proceedings under this section.

Comment. Section 1433 continues former Section 1444.

Probate Code §§ 1435.1-1435.18 (repealed)

SEC. ____ . Chapter 2A (commencing with Section 1435.1) of Division 4 of the Probate Code is repealed.

Comment. The substance of former Chapter 2A (commencing with Section 1435.1) of Division 4 is revised and reenacted as Chapter 12 (commencing with Section 2250) of Division 5 (conservatorship).

Note. The text of each section in Chapter 2A of Division 4 is set out in the Appendix. A disposition table for the chapter is included in the Appendix.

Heading of Chapter 3 of Division 4 of the Probate Code (amended)

SEC. __. The heading of Chapter 3 (commencing with Section 1436) of Part 1 of Division 4 of the Probate Code is amended to read:

CHAPTER 3. APPOINTMENT OF GUARDIANS FOR MINORS

992/901

Probate Code §§ 1436-1437 (added)

SEC. __. Article 1 (commencing with Section 1436) is added to Chapter 3 of Part 1 of Division 4 of the Probate Code, to read:

Article 1. Appointment by Will or Deed§ 1436. Appointment of general guardian by parent by will or deed

1436. Subject to confirmation pursuant to Section 1453 or 1454, either parent of a minor child living or likely to be born may appoint, by will or by deed, a guardian of the person, general guardian of the estate, or both, for such child to take effect on the death of the parent appointing. Written consent of the other parent is required if such consent would be required for an adoption of the child and such parent is living and capable of consent.

Comment. Section 1436 continues the substance of former Section 1403. Appointment of a general guardian pursuant to this section is subject to court confirmation. Sections 1451 (guardianship of person) and 1452 (guardianship of estate). In the case of a guardianship of the person, the court on confirmation applies the standards of Civil Code Section 4600 (Family Law Act). Section 1451(a). Although the testamentary appointee is given a preference for custody under Section 4600(b)(3), the court retains discretion whether or not to confirm.

For cases in which consent of a parent to adoption of a child is required, see Civil Code Sections 223-224.

969/049

§ 1437. Appointment of special guardian of the estate by will

1437. Subject to confirmation pursuant to Section 1452, a person may by will appoint a special guardian of the estate for the property of

a minor, living or likely to be born, which the minor may take from the person by the will.

Comment. Section 1437 continues the substance of former Section 1402, making clear that a testamentary guardianship may only be created for a minor and eliminating the rarely used appointment by deed. See Cupp, McCarroll, & McClanahan, Guardianships of Minors, in 1 California Family Lawyer § 16.11, at 603 (Cal. Cont. Ed. Bar 1962). A special testamentary guardianship under Section 1437 may coexist with a general guardianship; the special guardianship controls the property thus received, and the general guardianship controls the balance of the estate. See Guardianship of Joaquin, 168 Cal. App.2d 99, 101, 335 P.2d 507, ___ (1959). A guardianship pursuant to this section is subject to court confirmation upon petition. Section 1452 (guardianship of estate).

969/036

Heading of Article 2 of Chapter 3 of Division 4 of the Probate Code
(added)

SEC. _____. An article heading is added to Chapter 3 (commencing with Section 1440) of Part 1 of Division 4 of the Probate Code, immediately preceding Section 1440, to read:

Article 1. Procedure

969/041

Probate Code § 1440 (amended)

SEC. _____. Section 1440 of the Probate Code is amended to read:

1440. (a) ~~When it appears necessary or convenient, the~~ The superior court of the county in which a minor resides or is temporarily domiciled, or in which a nonresident minor has estate, may appoint or confirm a guardian ~~for his~~ of the person and estate, or person or ~~estate.~~ estate as provided in this chapter. The appointment or confirmation may be made upon the petition of a relative or other person on behalf of the minor, or on the petition of the minor, if 14 or more years of age.

(b) ~~The court may issue letters of guardianship over the person or estate, or both, of more than one minor upon the same application, in its discretion.~~ When there is an application for more than one minor, the

court may permit a joint or separate bond in such multiple application. The petition of a nonprofit charitable corporation shall include in the caption the name of a responsible corporate officer. If for any reason such officer should cease to act as the responsible officer hereunder, the corporation shall file with the court a notice of the name of the successor responsible officer and the date of succession.

(c) If the petitioner for guardianship, other than for the estate exclusively, is a nonrelative not named in a will as guardian, the petitioner shall serve a copy of the petition upon the State Department of Health and proof of such service shall be shown to the court at the time of the hearing on the petition. In addition, a petition for guardianship, other than for the estate exclusively, by a nonrelative not named in a will as guardian shall contain (1) an allegation that, upon request by an agency referred to in Section 1440.1 for information relating to the investigation referred to therein, the petitioner will promptly submit the information requested; (2) a disclosure of any petition for adoption of the minor who is the subject of the guardianship petition by the petitioner for guardianship regardless of when filed; and (3) an allegation as to whether or not the petitioner's home is licensed as a foster family home.

(d) If the petitioner for guardianship files a petition for adoption of the minor of whom he is seeking guardianship after the guardianship petition is filed, he shall amend the guardianship petition to disclose such fact.

Comment. The first clause of the first sentence of subdivision (a) of Section 1440 that authorized appointment of a guardian when it appears "necessary or convenient" is superseded by Sections 1451 (guardianship of person) and 1452 (guardianship of estate).

The provision formerly found in subdivision (b) that related to issuance of letters of guardianship for more than one minor on the same application is continued in Section 1453(a). The provision that related to a joint or separate bond is continued in Section 1480(b).

New subdivision (b) continues the substance of the fourth sentence of former Section 1400.

Probate Code § 1441 (amended)

SEC. ____ . Section 1441 of the Probate Code is amended to read:

1441. Before making the ~~appointment,~~ appointment or confirmation, such notice as the court or a judge thereof deems reasonable must be given to the person having the care of the minor and to such relatives of the minor residing in the state as the court or judge deems proper. In all cases notice must be given to the parents of the ~~minor~~ minor, if living, or proof made to the court that their addresses are unknown, or that, for other reason, such notice cannot be given. Notice shall not be given to the parents or other relatives of a minor who has been relinquished to a licensed adoption agency or who has been declared free from the custody and control of ~~his~~ the parents.

Comment. Section 1441 is amended to make clear that the notice provisions of the section apply to court confirmation of an appointment of a guardian made by will or by deed under Section 1436 or 1437.

Probate Code § 1443 (amended)

SEC. ____ . Section 1443 of the Probate Code is amended to read:

1443. The probation officer in the county in which the petition for appointment of guardian of a minor ~~or incompetent person~~ is pending, shall make an investigation of each case whenever he is requested so to do by a judge of the superior court. In the event that a petition for guardianship is filed for a minor of two years of age or under and the person petitioning for appointment as guardian is not a relative of the minor, the court shall require the probation officer to make an investigation.

Comment. Section 1443 is amended to delete the reference to appointment of a guardian of an incompetent person. This part applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and the Comments thereto. Compare Section 1754 (appointment of court investigator in conservatorship proceeding).

Probate Code § 1444 (repealed)

SEC. ____ . Section 1444 of the Probate Code is repealed.

~~1444. Whenever it appears to the satisfaction of the superior court by verified application of the minor concerned that the consent of a parent or guardian is necessary to permit hospital or medical care or enlistment in the armed services for or by a minor of the age of 16 years or over residing in the State of California and that such minor has no parent or guardian available to give such consent, the court may summarily grant such consent. No fee shall be charged for proceedings under this section.~~

Comment. Former Section 1444 is continued in Section 1433.

Probate Code §§ 1450-1457 (added)

SEC. ____ . Article 3 (commencing with Section 1450) is added to Chapter 3 of Part 1 of Division 4 of the Probate Code, to read:

Article 3. Court Appointment or Confirmation§ 1450. No guardian for married minor

1450. (a) Notwithstanding any other provision of this part, no guardian shall be appointed or confirmed of the person and estate or person or estate of a minor who is or has been married and who has complied with Section 4101 of the Civil Code.

(b) Nothing in this section precludes appointment of a conservator of the person and property or person or property of a minor described in subdivision (a).

Comment. Section 1450 supersedes former Section 1433, which precluded appointment of a guardian of a married minor solely by reason of minority. Section 1450 makes clear that proceedings for a married minor in need of protective supervision may be brought pursuant to Division 5 (conservatorship). See Section 1751 and Comment thereto.

§ 1451. Appointment or confirmation of guardian of the person

1451. (a) Upon petition as provided in this chapter, the court may, when it appears necessary or convenient, appoint a guardian of the person of a minor, or confirm an appointment made pursuant to Section 1436. In appointing or confirming the guardian, the court is governed by the provisions of Section 4600 of the Civil Code, relating to custody of a minor.

(b) Section 4601 of the Civil Code applies to the award to a parent or grant to any other person of reasonable visitation rights in a guardianship proceeding.

Comment. Section 1451 applies only to a guardian of the person of a minor. Proceedings for an adult in need of protective supervision may be brought pursuant to Division 5 (conservatorship).

Subdivision (a) of Section 1451 supersedes the portions of former Sections 1403 through 1409, and the first sentence of subdivision (a) of former Section 1440, that related to guardianship of the person of a minor. Subdivision (a) incorporates by reference Section 4600 of the Civil Code, which applies to any proceeding where there is at issue the custody of a minor child, including a guardianship proceeding. See, e.g., Guardianship of Marino, 30 Cal. App.3d 952, 958-959, 106 Cal. Rptr. 655, ___ (1973).

Former Section 1406 permitted a minor over 14 years of age to nominate a guardian, but the court had considerable latitude in approving or disapproving the minor's nominee. See Guardianship of Kentera, 41 Cal.2d 639, 642-644, 262 P.2d 317, ___-___ (1953); Guardianship of Rose, 171 Cal. App.2d 677, 680-681, 340 P.2d 1045, ___ (1959). Section 1440(a) preserves the standing of a minor 14 years of age or older to petition as a party in a guardianship proceeding for appointment of his or her own guardian. Civil Code Section 4600 requires the court to consider and give due weight to the minor's preference.

Subdivision (b) codifies the rule that the court may in a guardianship proceeding grant visitation rights. See Guardianship of Ross, 6 Cal. App. 597, 599-600, 92 P. 671, ___ (1907).

§ 1452. Appointment or confirmation of guardian of the estate

1452. Upon petition as provided in this chapter, the court:

(a) Shall confirm the appointment of a special guardian of the estate made pursuant to Section 1437 unless the court determines that the appointee is unsuitable.

(b) May, when it appears necessary or convenient, appoint a general or special guardian of the estate, or may confirm the appointment of a general guardian of the estate made pursuant to Section 1436. In appointing or confirming the guardian, the court is to be guided by what appears to be for the best interest of the minor and, if the minor is of sufficient age to form an intelligent preference, the court may consider that preference in determining the question. Of persons equally entitled in other respects to the guardianship of the estate of a minor, preference is to be given as follows:

(1) To the person appointed or confirmed as guardian of the person of the minor.

(2) To a parent of the minor. As between parents claiming the guardianship adversely to each other, neither is entitled to priority.

(3) To the person appointed pursuant to Section 1436.

(4) To a trustee of a fund to be applied to the minor's support.

(5) To a relative of the minor.

(6) To the nominee of a person specified in paragraph (1), (2), or (5).

Comment. Section 1452 applies only to a guardian of the estate of a minor. Proceedings for an adult in need of protective supervision may be brought pursuant to Division 5 (conservatorship).

Subdivision (a) and the portion of subdivision (b) that relates to confirmation continue the portion of the last sentence of former Section 1405 that related to confirmation of a testamentary guardian of the estate of a minor. Prior law was not clear whether appointment of a testamentary guardian was binding on the court or was merely persuasive. See 3 W. Condee, California Probate Court Practice § 2029, at 151 (2d ed. 1964); Schlesinger, Testamentary Guardianships for Minors and Incompetents, in California Will Drafting § 10.10 (Cal. Cont. Ed. Bar 1965). Subdivision (a) requires confirmation of a special testamentary guardian

unless the court determines that the appointee is unsuitable. Subdivision (b) permits confirmation of a general testamentary guardian in the court's discretion, as in the case of a judicial appointment.

The first sentence of subdivision (b) continues the portion of the first sentence of former Section 1405 that related to appointment of a general guardian of the estate of a minor with the deletion of language that the court may appoint a general guardian when no guardian has been appointed for the purpose by will or by deed. A general guardian may coexist with a special testamentary guardian of the estate, with the latter controlling the property received by will or by deed. See Guardianship of Joaquin, 168 Cal. App.2d 99, 101, 335 P.2d 507, ___ (1964). However, no new general guardian may be appointed when an existing general guardian is serving until the existing guardian is removed or the appointment is vacated. See Guardianship of Kimball, 80 Cal. App.2d 884, 887, 182 P.2d 612, ___ (1947).

The second sentence of subdivision (b) continues the first sentence of former Section 1406 insofar as it related to appointment of a general guardian of the estate of a minor. In determining the best interest of the minor, the court should be guided by the proposed guardian's ability to manage property as well as his or her concern for and interest in the welfare of the minor.

The third sentence of subdivision (b) continues the order of preference of former Section 1407 insofar as it related to guardianship of the estate of a minor. Former Section 1407 related primarily to guardianship of the person or of the person and estate rather than to guardianship of the estate only. Estate of Rosin, 226 Cal. App.2d 166, 170, 37 Cal. Rptr. 830, ___ (1964). Section 1452 relates solely to guardianship of the estate. As under former law, the order of preference is advisory only. See Cupp, McCarroll, & McManahan, Guardianships of Minors, in 1 California Family Lawyer § 16.20, at 612-613 (Cal. Cont. Ed. Bar 1962). Paragraph (1) is new, because a guardian of the person and a guardian of the estate are no longer selected by the same criteria under Sections 1451 and 1452, paragraph (1) is designed to encourage appointment of a single person by creating a preference for the guardian of the person as the guardian of the estate. The second sentence of

paragraph (2) continues former Section 1403 insofar as it related to guardianship of the estate. Appointment by a deceased parent of a general testamentary guardian of the estate is advisory only under subdivision (b), but such an appointment is given a preference by paragraph (3). This clarifies a matter that was unclear under former law. See 3 W. Condee, supra § 2029, at 149-152. Paragraph (6) is new; it is derived from Section 5-410 of the Uniform Probate Code.

[§ 1453. Reserved]

992/910

§ 1454. Multiple guardians; multiple wards

1454. (a) The court, in its discretion, may appoint more than one guardian or may appoint a guardian for more than one minor on the same application.

(b) Where two or more guardians are appointed as coguardians, each shall be governed and liable in all respects as a sole guardian.

Comment. The portion of subdivision (a) of Section 1454 that permits the court to appoint coguardians continues a portion of the second sentence of former Section 1405. The portion that permits the court to appoint a guardian for more than one minor on the same application continues a provision formerly contained in subdivision (b) of Section 1440. Subdivision (b) continues the third sentence of former Section 1405.

If the court appoints multiple guardians or appoints a guardian for several wards, the court may permit either a separate bond or a joint and several bond. Section 1480(c).

992/911

§ 1455. Who may be appointed guardian

1455. (a) Either of the following may be appointed as guardian of the person and estate, or person or estate:

- (1) A natural person.
- (2) A nonprofit charitable corporation incorporated in this state whose articles of incorporation specifically authorize it to accept appointments as guardian and which has been providing care, counseling, or financial assistance to the proposed ward under the supervision of a

registered social worker certified by the Board of Behavioral Science Examiners of this state.

(b) A trust company, as defined in Section 107 of the Financial Code, may be appointed as guardian of the estate only.

Comment. Section 1455 continues the substance of the third sentence of former Section 1400 with the deletion of the reference to guardians of "incompetents." This part applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto.

992/920

Probate Code §§ 1460-1463 (repealed)

SEC. ____ . Chapter 4 (commencing with Section 1460) of Division 4 of the Probate Code is repealed.

Comment. Former Sections 1460-1463, which related to appointment of guardians for incompetent persons, are not continued. Division 4 applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and the Comments thereto.

Proceedings for an adult in need of protective supervision may be brought under Division 5 (conservatorship). Provisions in Division 5 that are substantively similar to former Sections 1460-1463 are in Sections 1751-1754.1.

Note. The text of each section in Chapter 4 of Division 4 is set out in the Appendix. Comparable provisions of Division 5 are indicated in a table in the Appendix.

992/921

Probate Code §§ 1470-1472 (repealed)

SEC. ____ . Chapter 5 (commencing with Section 1470) of Division 4 of the Probate Code is repealed.

Comment. Former Sections 1470-1472, which related to restoration to capacity of an incompetent adult, are not continued. Division 4 applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and the Comments thereto.

Proceedings for an adult in need of protective supervision may be brought under Division 5 (conservatorship). Provisions in Division 5 that parallel former Sections 1470-1472 are in Section 1755.

Note. The text of each section in Chapter 5 of Division 4 is set out in the Appendix.

043/185

Probate Code § 1480 (amended)

SEC. ____ . Section 1480 of the Probate Code is amended to read:

1480. (a) Before the order appointing a guardian takes effect and before letters issue, the person appointed must take an oath, which must be attached to or endorsed upon ~~his~~ the letters, that ~~he~~ the person will perform the duties of ~~his~~ the office as such guardian according to law and, except as otherwise provided in Section 1480.6 and elsewhere in this division, must furnish a bond to the ~~ward; with~~ ward as provided in subdivision (b).

(b) The bond shall have two or more persons or an authorized surety company as surety, to be approved by the judge if the surety is not an authorized surety company, and company. The bond shall be in such sum as required by the order, which sum shall be not less than twice the value of the personal property and twice the value of the probable annual rents, issues and profits of all property belonging to the ward or, when the bond is given by an authorized surety company, not less than the value of the personal property and the probable annual rents, issues and profits of all property belonging to the ~~ward; and~~ ward. The bond shall be conditioned that the guardian will faithfully execute the duties of ~~his~~ the trust according to law.

(c) If the court appoints more than one guardian, or appoints a guardian for more than one minor, the court may provide that the bond shall be separate or joint and several.

Comment. Section 1480 is amended to divide the former section into subdivisions (a) and (b), to add subdivision (c), and to make other technical revisions. Subdivision (c) continues a portion of the second sentence of former Section 1405 (relating to coguardians) and a portion of a provision formerly found in subdivision (b) of Section 1440 (relating to more than one guardianship in a single petition). The language

formerly found in Section 1440(b) has been revised to authorize a joint and several bond rather than a "joint" bond as formerly provided. For provisions authorizing the appointment of more than one guardian, or a guardian for more than one minor, see Section 1454.

09/593

Probate Code § 1482 (added)

SEC. ____ . Section 1482 is added to the Probate Code, to read:

1482. (a) As used in this section:

(1) "Account in an insured savings and loan association" means one or more accounts in one or more insured savings and loan associations and has the same meaning as in Section 1516.

(2) "Bank" means one or more banks in this state.

(3) "Trust company" means one or more trust companies authorized to transact a trust business in this state.

(b) Notwithstanding any other provision of this part, in any proceedings for the determination of the amount of bond to be required of a guardian (whether at the time of the appointment or subsequently), when it appears that the estate of the ward includes money or securities which have been or will be deposited in a bank or trust company, or money which has been or will be invested in an account in an insured savings and loan association, upon condition that such money or securities will not be withdrawn except on authorization of the court, the court may in its discretion order such money or securities so deposited or such money so invested, and may exclude such deposited or invested property from the computation of the amount of the bond, or may reduce the amount of bond to be required with respect to such money or securities to such amount as the court deems reasonable. The petitioner for letters of guardianship may (1) deliver to any bank or trust company any such money or securities in his possession, (2) deliver to any insured savings and loan association any such money in his possession, (3) allow a bank or trust company to retain any such money or securities already in its possession, or (4) allow such association to retain any such money already invested with it. In any event, the petitioner shall secure and file with the court a written receipt including the agreement

of the bank, trust company, or association that such money or securities shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money or securities, the bank, trust company, or association shall be protected to the same extent as though it had received the money or securities from a person to whom letters of guardianship had been issued.

(c) If the estate does not exceed ten thousand dollars (\$10,000), the court may require that the money in the estate be deposited in a bank or trust company or be invested in an account in an insured savings and loan association subject to withdrawal only upon the order of the court. In such case, no bond shall be required of the guardian.

Comment. Section 1482 continues former Section 1405.1 and the fourth sentence of former Section 1405.

992/923

Probate Code § 1500 (amended)

SEC. ____ . Section 1500 of the Probate Code is amended to read:

1500. (a) Every guardian of the person has the care and custody care, custody, and control of the person of his ward the ward, and the management of his estate, or the care and custody of the person of his ward or the management of his estate, according to the order of appointment, until legally discharged, or until his ward is restored to capacity pursuant to Chapter 5 (commencing with Section 1470) of this division, whichever shall occur first, or, in the case of the guardianship of the person of a minor, until the minor reaches the age of majority or marries, or, as to the guardianship of his estate, until the ward attains his majority as provided in Section 25 of the Civil Code. The guardian of a minor also has charge of the education of the minor. The guardian of the person of a ward and may fix the residence of the ward at any place in the state, but not elsewhere without the permission of the court.

(b) Every guardian of the estate has the management of the ward's estate.

No person for whom a guardian of the person has been appointed shall be placed in a mental health treatment facility against his will.

Involuntary civil mental health treatment for a ward shall be obtained only pursuant to the provisions of Article 1 (commencing with Section 5150); Article 1.5 (commencing with Section 5170); Article 2 (commencing with Section 5200); Article 3 (commencing with Section 5225); Article 4 (commencing with Section 5250); Article 4.5 (commencing with Section 5260); Article 5 (commencing with Section 5275); Article 6 (commencing with Section 5300); Article 7 (commencing with Section 5325); Article 8 (commencing with Section 5340); and Chapter 3 (commencing with Article 5350) of Division 5 of the Welfare and Institutions Code.

(a) A person who is not a ward shall not be presumed to be incompetent by virtue of his having been a ward under the provisions of this division.

(b) All petitions filed under this chapter shall be set for hearing within 30 days of the filing of such petitions.

(c) The guardian shall promptly advise the court issuing the letters of guardianship in writing of all changes in the residence of the ward.

Comment. Section 1500 is amended to delete the provisions relating to termination of guardianship and the provisions relating to guardianship of an incompetent person. Chapters 11 (commencing with Section 1530) and 12 (commencing with Section 1590) concern discharge of a guardian and termination of guardianship. An adult or married minor in need of protective proceedings is governed by Division 5 (conservatorship). See Section 1751.

The former language of Section 1500 that full powers of the guardian would continue "until legally discharged" was incorrect and is not continued. See, e.g., *In re Estate of Curtis*, 121 Cal. 468, 475, 53 P. 936, 100 (1898). The words "and control" are added to subdivision (a) to conform to the language of Section 1851 (conservatorship). This addition makes no substantive change. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 5.3, at 152-153 (Cal. Cont. Ed. Bar 1968).

Nothing in Section 1500 precludes appointment or confirmation of the same person as guardian of both the person and the estate of a minor. See Section 1440(a).

Probate Code § 1500.1 (repealed)

SEC. . . . Section 1500.1 of the Probate Code is repealed.

1500.1- Each guardianship initiated pursuant to this chapter shall be reviewed by the court one year after the appointment of the guardian and biennially thereafter. The court investigator shall visit the ward and personally inform the ward that he is under a guardianship and the name of his guardian. The investigator shall also determine whether the ward wishes to petition the court for restoration to capacity; whether the ward is still incompetent; and whether the present guardian is acting in the best interests of the ward.

The findings of the court investigator, including the facts upon which such findings are based, shall be certified in writing to the court within 15 days of the date of review.

If the ward wishes to petition the court for restoration to capacity or for removal of the existing guardian, the court shall notify the attorney of record for the ward, if any, or appoint the public defender or other attorney to file the petition and represent the ward at the hearing or trial.

If, based upon information contained in the court investigator's report, the court determines that a hearing for restoration to capacity or removal of the existing guardian is in the best interests of the ward, the court shall notify the attorney of record for the ward, if any, or appoint the public defender or other attorney to file the petition and represent the ward at the hearing or trial.

If the court investigator is unable to locate the ward, the court shall serve notice upon the guardian to produce the ward within 15 days of the receipt of such notice or show cause why the guardianship should not be terminated. If the ward is not produced within the time prescribed and if no good cause is shown for not producing the ward, the court shall terminate the guardianship and order the guardian to file an accounting, if the guardianship is of the estate.

Comment. Former Section 1500.1 is not continued, it apparently related only to guardianship of an incompetent person. For comparable provisions for conservatorships, see Section 1851.1.

Probate Code § 1500.2 (repealed)

SEC. _____. Section 1500.2 of the Probate Code is repealed.

~~1500.2. For all guardianships established prior to the effective date of the amendments to this division adopted at the 1975-76 regular session of the legislature review pursuant to the terms of section 1500.1 shall commence at the time of the next financial accounting, but in all cases within three years from the effective date of such amendments.~~

Comment. Former Section 1500.2 is not continued. For comparable provisions for conservatorships, see Section 1851.2.

Probate Code § 1501a (amended)

SEC. _____. Section 1501a of the Probate Code is amended to read:

1501a. Every guardian must promptly pay wage claims of not exceeding six hundred dollars (\$600) to each claimant, for work done or services rendered for the ward within 90 days prior to the date the petition for the appointment of the guardian was filed, before the claim of any general creditor is paid. If there is insufficient money with which to pay all labor claims in full, the money available must be distributed among the claimants in proportion to the amount of their respective claims. If a guardian neglects or refuses to pay such preferred labor claims, as provided in this section the court shall order ~~his~~ the guardian to do so upon the informal application of any labor claimant or ~~his~~ assignee or representative. The guardian shall have the right to require sworn claims to be presented and shall have the right to refuse to pay any such preferred claim, either in whole or in part, if ~~he~~ the guardian has reasonable cause to believe that such claim is not valid but must pay any part thereof that is not disputed, without prejudice to the claimant's rights as to the balance of ~~his~~ the claim, and withhold sufficient money to cover the disputed portion until the claimant in question has a reasonable opportunity to establish the validity of ~~his~~ the claim by court action against the said guardian, either in ~~his~~ the claimant's own name or through an assignee.

Nothing in this section contained shall be construed to require the payment of such preferred labor claims if the assets available are insufficient, in the opinion of the court, to provide for the reasonable current needs of the ward and ~~the wife and/or minor children of those~~ legally entitled to support and maintenance from the ward; provided, however, that all wages earned within 30 days prior to the date of the filing of the petition for the appointment of the guardian shall be paid out of the first available assets.

Comment. Section 1501a is amended to substitute a general reference to persons the ward is obligated to support for the reference to wife and children. Cf. Section 1855 (conservatorship). A married minor in need of protective supervision is governed by Division 5 (conservatorship). See Section 1751.

992/935

Probate Code § 1502 (amended)

SEC. _____. Section 1502 of the Probate Code is amended to read:

1502. Every guardian of an estate must manage it frugally and without waste, and apply the income, as far as may be necessary, to the comfortable and suitable support, maintenance and education of the ward and ~~his family~~; those legally entitled to support and maintenance from the ward, if any; and if the income is insufficient for that purpose, ~~he the guardian~~ may sell or mortgage or give a deed of trust upon any of the property, as hereinafter provided. When a guardian has advanced, for the suitable support, maintenance or education of ~~his~~ the ward, an amount not disproportionate to the value of the ward's estate or ~~his~~ condition of life, and the same is made to appear to the satisfaction of the court, by proper vouchers and proofs, the guardian must be allowed credit therefor in ~~his~~ the settlements.

Comment. Section 1502 is amended to substitute a general reference to persons the ward is obligated to support for the reference to family. Cf. Section 1855 (conservatorship). A married minor in need of protective supervision is governed by Division 5 (conservatorship). See Section 1751.

Probate Code § 1505 (repealed)

SEC. ____ . Section 1505 of the Probate Code is repealed.

~~1505.~~ If a guardian has been appointed over the estate of a spouse by reason of the mental incompetency of the spouse and the other spouse is unable to provide the support otherwise required by law, the expense of providing the support may, to the extent necessary, be charged against and defrayed out of the estate, as directed by the court or as approved by the court in settling the accounts of the guardian. For this purpose, the guardian may sell or mortgage or give a deed of trust upon any of the property as hereinafter provided.

Comment. Former Section 1505 is not continued since incompetency is not ground for appointment of a guardian. An adult or married minor in need of protective supervision is governed by Division 5 (conservatorship). For comparable provisions for conservatorships, see Section 1857 (support of conservatee notwithstanding liability of another).

08161

Probate Code § 1521 (added)

SEC. ____ . Section 1521 is added to the Probate Code, to read:

1521. The authority of a guardian is not extinguished or affected by the marriage of the guardian.

Comment. Section 1521 continues former Section 1410.

08162

Probate Code § 1529 (repealed)

SEC. ____ . Section 1529 of the Probate Code is repealed.

~~1529.~~ The provisions of this chapter and Chapter 4 (commencing with Section 1451) of Division 5 shall apply to property owned by husband and wife as community property or owned by husband and wife or either of them which is subject to a homestead only to the extent authorized by Chapter 24 (commencing with Section 1435) of Division 4 of this code.

Comment. The substance of former Section 1529 is continued in Section 1850.

Probate Code § 1530 (amended)

SEC. ___ Section 1530 of the Probate Code is amended to read:

1530. If the income of an estate under guardianship is insufficient for the support, maintenance and education of the ward or of such ~~members of his family as he persons~~ as the ward is legally obligated to support and maintain, including ~~his the ward's~~ the ward's care, treatment and support, if confined in a ~~State state~~ state hospital ~~for the insane, in this state,~~ or if the personal estate and the income from the real estate is insufficient to pay ~~his debts, the debts of the ward,~~ or if it is for the advantage, benefit, and best interests of the estate or ward or of such ~~members of his family as he persons~~ as the ward is legally bound to support and maintain, ~~his the~~ the guardian may sell any of ~~his the~~ the real or personal ~~property, property of the ward,~~ or mortgage or give a deed of trust upon any of ~~his the~~ the real property for any of such purposes, subject to authorization, confirmation or direction by the court as hereinafter provided.

Comment. Section 1530 is amended to substitute a general reference to persons the ward is obligated to support for the reference to members of his family. Cf. Section 1855 (conservatorship). A married minor in need of protective supervision is governed by Division 5 (conservatorship). See Section 1751.

Probate Code § 1536 (amended)

SEC. ___ Section 1536 of the Probate Code is amended to read:

1536. The guardian must apply the proceeds of sale to the purposes for which it was made, as far as necessary, and put out the residue, if any, at interest, or invest it in the best manner in ~~his the~~ the guardian's power, until needed for the support, maintenance or education of the ward or ~~his family, those legally entitled to support and maintenance~~ from the ward, or the payment of debts, at which time the capital may be used for that purpose, as far as necessary, in like manner as if it had been personal estate of the ward.

Comment. Section 1536 is amended to substitute a general reference to persons the ward is obligated to support for the reference to his family. Cf. Section 1855 (conservatorship). A married minor in need of protective supervision is governed by Division 5 (conservatorship). See Section 1751.

06165

Probate Code § 1537 (amended)

SEC. __. Section 1537 of the Probate Code is amended to read:

1537. When an incompetent ward is bound by a contract in writing to convey any real property, executed by him while competent, or executed by his predecessor in interest, or when a minor ward has succeeded to the interest of a person bound by a contract in writing to convey any real property, the court may authorize and direct the guardian of his the estate to convey the property to the person entitled thereto. The proceedings to obtain such an order and the proceedings thereunder must conform, as nearly as may be, to the provisions of this code concerning conveyances by administrators of property contracted to be sold by their decedents.

Comment. Section 1537 is amended to delete the reference to an incompetent ward. This part applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto. Pursuant to Section 1852, however, these provisions may be applied in conservatorship proceedings.

08166

Probate Code § 1537.5 (amended)

SEC. __. Section 1537.5 of the Probate Code is amended to read:

1537.5. If an incompetent or a minor ward is in possession of, or holding title to, real or personal property which, or some interest in which, is claimed to belong to another, the court may authorize and direct the guardian of his the estate to convey the property to the person entitled thereto. The proceedings to obtain such order and the proceedings thereunder must conform, as nearly as may be, to the provision of this code concerning conveyances by executors or administrators of property claimed to belong to another.

Comment. Section 1537.5 is amended to delete the reference to an incompetent ward. This part applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto. Pursuant to Section 1852, however, these provisions may be applied in conservatorship proceedings.

08167

Probate Code § 1540 (amended)

SEC. __. Section 1540 of the Probate Code is amended to read:

1540. When property can be exchanged to the advantage and best interests of the ward and such members of his family as he persons as the ward is legally bound to support and maintain, after hearing before the court, conveyances to effectuate such exchange may be executed to the person with whom such exchange is made, by the guardian. The provisions of this code governing exchanges of property by administrators shall apply to and govern exchanges of property by guardians so far as applicable.

Comment. Section 1540 is amended to substitute a general reference to persons the ward is obligated to support for the reference to members of his family. Cf. Section 1855 (conservatorship). A married minor in need of protective supervision is governed by Division 5 (conservatorship). See Section 1751.

08168

Probate Code § 1554 (amended)

SEC. __. Section 1554 of the Probate Code is amended to read:

1554. No account of the guardian of an incompetent person a minor ward who is or has been during the guardianship confined in a state hospital in this state shall be settled or allowed unless notice of the time and place of hearing and a copy of the account have been given to the Director of Health at his office in Sacramento at least 15 days before the hearing. The statute of limitations shall not run against any claim of the State Department of Health against the estate of the incompetent minor ward for board, care, maintenance or transportation if the account is settled without giving the notice prescribed above.

Comment. Section 1554 is amended to substitute the term "minor ward" for the term "incompetent." This part applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto. For comparable provisions for conservatorship, see Section 1905.

08169

Probate Code § 1554.1 (amended)

SEC. ____ . Section 1554.1 of the Probate Code is amended to read:

1554.1. If the ~~insane or incompetent person~~ minor ward is no longer confined in a state hospital, the Attorney General, upon ascertaining the facts, may file a certificate to the effect that the ward is not indebted to the ~~state~~; state, and waive the giving of further notices or accounts.

Comment. Section 1554.1 is amended to substitute the term "minor ward" for the term "insane or incompetent person." This part applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto. For comparable provisions for conservatorship, see Section 1906.

08170

Probate Code § 1555 (amended)

SEC. ____ . Section 1555 of the Probate Code is amended to read:

1555. The ~~termination of the relation of a guardian and ward by the death of either guardian or ward or by the ward attaining his majority or being restored to capacity shall not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the guardian.~~

(a) If the guardian dies or becomes incompetent, ~~his~~ the account may be presented by ~~his~~ the guardian's personal representative and upon petition of the successor of ~~such deceased or incompetent~~ the guardian, the court shall compel the guardian's personal representative ~~of the deceased or incompetent guardian to render such~~ the account and ~~must~~ shall settle ~~such~~ the account as in other cases.

(b) In the event if the guardian dies or becomes incompetent and there is no ~~executor, administrator, or personal representative~~ appointed for ~~his~~ the guardian's estate, or he ~~if the guardian~~ absconds, then the court may compel the attorney for ~~such absconding, deceased or incompetent~~ the guardian or the attorney of record in the guardianship ~~proceeding, proceeding~~ to render an account of the guardianship to the extent that the attorney has information or records available to him for the purpose. The account of the attorney need not be verified. A fee shall be allowed to the attorney by the court for this extraordinary service. ~~for the purposes of this section "personal representative"~~ shall include a guardian and conservator.

(c) As used in this section, "personal representative" includes an executor, administrator, guardian, or conservator.

Comment. The first sentence formerly found in Section 1555, relating to jurisdiction of the court on termination of guardianship, is superseded by Sections 1590 and 1591. The other changes in Section 1555 are technical. For comparable provisions for conservatorship, see Section 1907.

08171

Probate Code § 1557.1 (amended)

SEC. __. Section 1557.1 of the Probate Code is amended to read:
1557.1. On the application of the guardian, the court may authorize the guardian to purchase or join with ~~the spouse of the ward or with~~ any other person or persons in the purchase of real property, or some interest, equity or estate therein, in severalty, in common, ~~in community, or~~ in joint tenancy, or otherwise, for cash or upon a credit or for part cash and part credit. Upon the filing of the application, the clerk shall set the same for hearing by the court and shall give notice thereof by causing a notice to be posted at the courthouse of the county where the proceeding is pending at least five days before the day of hearing in the manner prescribed in Section 1200 of this code. At least five days before the day of hearing, the guardian shall cause a copy of the notice to be given to all persons who have requested special notice in the manner prescribed in Section 1200 of this code. The court

or judge may order the notice to be given for a shorter period or dispensed with. At the hearing the court shall proceed to hear the application and any objection thereto that may be presented and may require such additional proof of the fairness and feasibility of the transaction as it deems proper and may inquire into the terms of the purchase. If, after such hearing, the court is satisfied that it will be to the advantage of the ward or those whom he the ward is legally bound to support to enter into the proposed purchase, it may make an order authorizing the guardian to consummate such purchase on behalf of the ward and to execute all necessary instruments and commitments to consummate the transaction, and such order may prescribe the terms upon which the purchase shall be made.

Comment. Section 1557.1 is amended to delete the reference to a spouse of the ward and to purchase of real property in community. A married minor in need of protective supervision is governed by Division 5 (conservatorship). See Section 1751. Pursuant to Section 1852, Section 1557.1 may be applied in conservatorship proceedings and, when so applied, the language "or otherwise" is sufficiently broad to include community property.

08172

Probate Code § 1558 (repealed)

SEC. __. Section 1558 of the Probate Code is repealed.

~~1558: On the application of the guardian or next of kin of an insane or incompetent person, the court may direct the guardian to pay and distribute surplus income not used for the support and maintenance of the ward, or any part of such surplus income, to the next of kin whom the ward would, in the judgment of the court, have aided, if said ward had been of sound mind. The granting of such allowance and the amounts and proportions thereof shall be discretionary with the court, but the court shall give consideration to the amount of surplus income available after due provision has been made for the proper support and maintenance of the ward, to the circumstances and condition of life to which the ward and said next of kin have been accustomed and to the amount which the ward would, in the judgment of the court, have al-~~

lowed said next of kin, had said ward been of sound mind. Notice of the hearing of said application shall be given as provided in Section 1557 of this code. When the ward is or has been, during the guardianship, confined in a state hospital in this state, notice of hearing and copy of the petition must be given to the Director of the State Department of Health at his office in Sacramento at least 15 days before the hearing.

The term "surplus income," as used herein, includes any income received by the guardian during the guardianship, whether received before or after September 15, 1935.

Comment. Former Section 1558, which applied to guardianship of an adult, is superseded by Sections 1661 (Uniform Veterans' Guardianship Act) and 1856 (conservatorship). This part now applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto.

38173

Probate Code § 1559 (repealed)

SEC. ____ . Section 1559 of the Probate Code is repealed.

~~1559.~~ If, upon the settlement of any account, it appears that the estate of the ward has been entirely exhausted through expenditures made for the benefit of the ward or in the management of his estate and such expenditures are approved by the court, the court upon the settlement of the account, shall order the guardianship of the estate of the ward terminated and the guardian of the estate forthwith discharged.

Comment. Former Section 1559, requiring termination of a guardianship of the estate when the ward's estate has been entirely exhausted, is not continued. Section 1590 permits the court to terminate a guardianship whenever the guardianship is no longer necessary or convenient. The court thus has discretion to terminate a guardianship of the estate under circumstances where termination would have been required by former Section 1559.

Note. The Commission's consultant, Mr. Elmore, is opposed to the repeal of this section on the basis that (1) termination should be mandatory when the estate is entirely exhausted and (2) under the section, a petition for termination is unnecessary and it may be done on an accounting.

Probate Code § 1561 (repealed)

SEC. __. Section 1561 of the Probate Code is repealed.

~~1561. Unless otherwise ordered by the court, if an adult ward shall at any time during the continuance of the guardianship be employed, his wages or salary from such employment shall not be part of the guardianship estate and the guardian shall not be accountable therefor, and such wages and salaries shall be paid to the ward and shall be subject to his control to the same extent as if the guardianship did not exist. Any such order shall be binding on the ward's employer only after notice thereof to him.~~

Comment. Former Section 1561 is not continued. This part applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and the Comments thereto. For the comparable provision for conservatorship, see Section 1910.

Probate Code § 1570 (amended)

SEC. __. Section 1570 of the Probate Code is amended to read:

1570. (a) The superior court may appoint a guardian of the person and estate, or person or estate, of a minor ~~or incompetent person~~ who resides out of the state and who is within the county, or who has estate within the county, and who has no guardian within the state, upon petition of any relative or friend of such person. A minor may, if he is 14 years of age or older, petition to have a guardian appointed for himself. state.

If the nonresident ward is an incompetent person, the appointment shall be made in compliance with Section 1461 of this code. If the nonresident ward is a minor, the appointment shall be made in compliance with Section 1441 of this code.

(b) The appointment may be made upon the petition of a relative or friend of the minor, or, if the minor is 14 years of age or older, upon petition of the minor.

(c) Before the appointment is made, notice shall be given as provided in Section 1441.

(d) The guardianship which is first granted of a nonresident ward extends to all the estate of the ward within this state, and the court of no other county has jurisdiction.

Comment. Section 1570 is amended to delete the references to an "incompetent person." This part applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and the Comments thereto. Proceedings for appointment of a conservator for a nonresident adult may be brought under Division 5 (conservatorship). See Section 2051.

16/898

Probate Code § 1580 (amended)

SEC. ____ . Section 1580 of the Probate Code is amended to read:

1580. A guardian however appointed may be removed by the court, after notice and hearing substantially as provided in Section ~~1755~~ ~~of this code;~~ 1755, for any of the following causes:

- (1) For waste or mismanagement of the estate, or abuse of ~~his~~ trust;
- (2) For failure to file an inventory or to render an account within the time allowed by law, or for continued failure to perform ~~his duties;~~ the duties of the office;
- (3) For incapacity to perform ~~his~~ the duties of the office suitably;
- (4) For gross immorality or conviction of a felony;
- (5) For having an interest adverse to the faithful performance of ~~his~~ the trust;
- (6) In the case of a guardian of an estate, for insolvency or bankruptcy;
- (7) When it is no longer necessary that the ward should be under guardianship; or
- (8) In any other case in which the court shall in its discretion deem such removal to be in the best interests of the ward provided, in considering the best interests of the ward, if the guardian was appointed by will or deed, the court shall take that fact into consideration.

~~(9)~~ In the case of a guardian of the person, failure to comply with the provisions of Section 1506.

Comment. Section 1580 is amended to delete subdivision (9) in conformity with the deletion of the second paragraph of Section 1500 and to make other technical revisions.

08351

Probate Code : 1582 (amended)

SEC. __. Section 1582 of the Probate Code is amended to read:

1582. (a) Any guardian may resign when it appears proper to allow ~~it~~; and upon the resignation or removal of a it.

(b) Upon the occurrence of any vacancy in the office of guardian, the court may appoint another in ~~his~~ the guardian's place, after notice and a hearing as in the case of an original appointment.

Comment. Section 1582 is amended to conform its language to Section 1954. The broader language includes authority for the court to appoint a successor upon the death of the guardian. The death of the guardian terminates the relation of guardian and ward but does not terminate the guardianship proceeding. Section 1591.

08352

Probate Code : 1590 (amended)

SEC. __. Section 1590 of the Probate Code is amended to read:

1590. ~~(1)~~ Where the appointment of a guardian was made solely because of the ward's minority, the marriage of a minor ward terminates the guardianship of the person, and the guardianship of the estate of a minor ward is terminated upon attaining majority as provided in Section 25 of the Civil Code.

~~(2)~~ If the appointment of a guardian is made solely because of the ward's minority the guardianship is terminated by his attaining majority.

(a) A guardianship of the person and estate or person or estate of a minor terminates when the minor marries, attains majority, or dies.

~~(3)~~ (b) In all other cases the guardianship is terminated only by order of the court upon application of the guardian or the ward, after

such notice to the other as the court or judge may require, or by restoration of the ward to capacity pursuant to Chapter 5 (commencing with Section 1470) of this division, whichever shall occur first, may require. The court may make an order terminating the guardianship whenever the guardianship is no longer necessary or convenient.

(c) Termination of guardianship does not divest the court of jurisdiction of the proceeding.

Comment. Subdivision (a) of Section 1590 continues former subdivisions (1) and (2), relating to termination of guardianship when a minor attains majority. The minor attains majority upon reaching 18 years of age. See Civil Code § 25. Subdivision (a) also codifies the rule that death of the ward terminates the guardianship. See In re Estate of Kelley, 184 Cal. 448, 450, 194 P. 4, ___ (1920); In re Estate of Livermore, 132 Cal. 99, 64 P. 113 (1901). Former law provided for termination of guardianship of the person but not guardianship of the estate of a minor upon marriage; subdivision (a) provides for termination of both. Cf. Section 1450 (guardian may not be appointed for married minor).

Subdivision (b) continues the first portion of former subdivision (3) but deletes the provision relating to restoration to capacity under Chapter 5 since Chapter 5 is repealed. The last sentence of subdivision (b) is new; it makes clear that the court has discretion to terminate a guardianship when the conditions warranting its creation no longer exist. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate).

Subdivision (c) supersedes language formerly found in the first sentence of Section 1555. Upon termination of guardianship, the court retains jurisdiction not only "for the purpose of settling the accounts of the guardian" as formerly provided in Section 1555, but also for the purpose of appointing a successor guardian after the death, resignation, or removal of the original guardian. See Section 1582. The guardian remains charged with the care and preservation of the guardianship estate until discharged by the court pursuant to Section 1603. In re Estate of Kelley, 184 Cal. 448, 450, 194 P. 4, ___ (1920). See also Section 1593. The court may make other "appropriate orders relating to

the administration of the guardianship estate. Hartford Accident & Indemnity Co. v. Crawford, 204 Cal. App.2d 557, 561, 22 Cal. Rptr. 424, ___ (1961).

08354

Probate Code § 1591 (amended)

SEC. ___. Section 1591 of the Probate Code is amended to read:

1591. (a) The death of a guardian terminates the relation of guardian and ward but does not terminate the guardianship proceeding.

(b) On the death of one or two or more joint guardians, the powers continue in the survivor until a further appointment is made by the court.

Comment. Subdivision (a) is added to Section 1591 to preserve the portion of the first sentence of Section 1555 that related to termination of the guardian and ward relation on the death of the guardian. Subdivision (a) codifies the rule of Estate of Mims, 202 Cal. App.2d 332, 337-338, 20 Cal. Rptr. 667, ___ (1962), that death of the guardian does not terminate the guardianship proceeding. The court retains jurisdiction to appoint a successor guardian. Section 1582.

08355

Probate Code § 1606 (repealed)

SEC. ___. Section 1606 of the Probate Code, as enacted by Chapter 281 of the Statutes of 1931, is repealed.

~~1606. When not otherwise specially prescribed in this division, practice and procedure and the making and entry of orders under this division shall be governed by the provisions of Division 3 of this code, so far as they are applicable.~~

Comment. The substance of former Section 1606, as enacted by Chapter 281 of the Statutes of 1931, is continued in Section 1405.

08356

Probate Code § 1606 (repealed)

SEC. ___. Section 1606 of the Probate Code, as enacted by Chapter 1357 of the Statutes of 1976, is repealed.

~~1606. In any proceeding for the appointment of a guardian for the person and estate of person or estate of an alleged incompetent person~~

or for restoration of his capacity under this division, the alleged or adjudicated incompetent person shall be represented by legal counsel at the hearing, if he so chooses, irrespective of whether he appears to have capacity to make such choice. If he so chooses, but is unable to retain legal counsel, the court shall, at the time of the hearing, appoint the public defender or other attorney to represent him.

The court shall hear and determine the matter according to the laws and procedure relating to civil actions, including trial by jury if demanded.

In any case in which the alleged or adjudicated incompetent person is furnished legal counsel, either through the public defender or private counsel appointed by the court, upon conclusion of the hearing, the court shall make a determination of the present ability of the alleged or adjudicated incompetent person to pay all or a portion of the costs of such counsel. If the court determines that the alleged or adjudicated incompetent person has the present ability to pay all or a portion of the costs, it shall order him or the guardian of the estate to pay the sum, in the case of the public defender, to the county, and in the case of private counsel, to such counsel, in any installments and manner which is believed reasonable and compatible with his financial ability. If a guardian is not appointed for the alleged incompetent person, execution may be issued on the order in the same manner as on a judgment in a civil action.

Comment. Former Section 1606 as added to the Probate Code by Chapter 1357 of the Statute of 1976 is not continued. This part applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto. See also Section 2006 (conservatorship).

08358

Probate Code § 1607 (repealed)

SEC. __. Section 1607 of the Probate Code is repealed.

~~1607.~~ The provisions of this division do not limit the power of any court to appoint a guardian ad litem to protect the interests of any minor or insane or incompetent person in an action or proceeding pending therein.

Comment. The substance of former Section 1607 is continued in Section 1406.

998/835

Probate Code § 1631 (amended)

SEC. _____. Section 1631 of the Probate Code is amended to read:

1631. ~~An appeal from an order appointing a guardian for an incompetent person shall stay the power of the guardian, except that, for~~
(a) Except as provided in subdivisions (b) and (c), in proceedings under this part, an appeal from any judgment, order, or decree shall stay the operation and effect thereof.

(b) For the purpose of preventing injury or loss to person or property, the trial court making the appointment may direct the exercise of the powers of the guardian, or may appoint a temporary guardian to exercise such powers, from time to time, as though no appeal were pending, and all acts of the guardian or temporary guardian pursuant to such directions shall be valid, irrespective of the result of the appeal.

(c) In proceedings for guardianship of the person of a minor, the provisions of Section 917.7 of the Code of Civil Procedure apply.

Comment. Section 1631 is amended to broaden its application to appeals in all proceedings under this part. For a comparable provision, see Section 2102 (conservatorship).

Subdivision (c) recognizes the effect of Section 917.7 of the Code of Civil Procedure, which applies to proceedings that affect the custody of a minor child, including guardianship proceedings. See G. L. Witkin, California Procedure, Appeal § 151, at 4145 (2d ed. 1971). Section 917.7 provides that, with certain exceptions, the perfecting of an appeal does not stay proceedings in the trial court that affect the custody of the minor.

999/314

Probate Code § 1640 (chapter heading)

SEC. _____. The chapter heading for Chapter 14.5 (commencing with Section 1640) of Division 4 of the Probate Code is amended to read:

CHAPTER 14.5. SPECIAL TEMPORARY GUARDIANS

Comment. The word "temporary" is substituted for "special" in the heading of Chapter 14.5 to conform to the usage in Divisions 4 (guardianship) and 5 (conservatorship). See Sections 1400, 2201.

99/315

Probate Code § 1640 (amended)

SEC. _____. Section 1640 of the Probate Code is amended to read:

1640. On and after the filing of a petition for the appointment of a guardian, the court, with or without notice as the court or judge may require, upon a verified petition establishing good cause therefor, and filed by any person entitled to apply for the appointment of a guardian, may appoint a ~~special~~ temporary guardian of the person and estate or person or estate of any ~~person~~ minor to serve pending the final determination of the court upon the petition for appointment of a guardian.

Comment. Section 1640 is amended to substitute the term "minor" for the term "person" since this part applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto. Authority is also added for the appointment of a temporary guardian of the person to correspond to the conservatorship provisions. See Section 2201.

999/316

Probate Code § 1641 (technical amendment)

SEC. _____. Section 1641 of the Probate Code is amended to read:

1641. Such ~~special~~ temporary guardian shall be issued ~~special~~ temporary letters of guardianship upon posting bond as in the case of a guardian.

Comment. See Comment to chapter heading.

992/942

Probate Code § 1642 (amended)

SEC. _____. Section 1642 of the Probate Code is amended to read:

1642. A ~~special~~ temporary guardian shall have only such power and authority and only such duties as may be necessary to provide for the

temporary care, maintenance, and support of the ward or to conserve and protect the property of the ward from loss or injury, and such other powers and duties as may be ordered by the court in the order of appointment, or by subsequent order made with or without notice as the court or judge may require.

Comment. Section 1642 is amended to give the temporary guardian power over the person of the ward when ordered by the court, to correspond to the conservatorship provisions. See Section 2203.

992/946

Probate Code § 1643 (amended)

SEC. _____. Section 1643 of the Probate Code is amended to read:

1643. A ~~special~~ temporary guardian of the estate or of the person and estate of a ward may inventory the estate of the ward in ~~his~~ the final account without the necessity for an appraisal thereof, provided that such final account is filed with the court within three months of the entry of the order of ~~his appointment.~~ appointment of the temporary guardian. In all other cases, an inventory and appraisal of the estate shall be filed as required by Chapter 9 (commencing with Section 1550) of this division.

Comment. See Comment to chapter heading and to Section 1640.

992/948

Probate Code § 1644 (technical amendment)

SEC. _____. Section 1644 of the Probate Code is amended to read:

1644. If the ~~special~~ temporary guardian is appointed general guardian of the ward's estate ~~he~~ guardian, the general guardian may account for ~~his~~ the administration as special guardian in ~~his~~ the first regular account. In all other cases, ~~he~~ the temporary guardian must present ~~his~~ the account to the court for settlement and allowance within 90 days from the appointment of a general guardian or within such time as the court or the judge may fix. Such accounts shall be subject to Sections 1553 through 1556.5.

Comment. See Comment to chapter heading and to Section 1640.

Probate Code § 1645 (technical amendment)

SEC. ____ . Section 1645 of the Probate Code is amended to read:

1645. (a) The appointment and qualification of a general guardian terminates the powers of the ~~special~~ temporary guardian except for the rendering of ~~his~~ the account unless by reason of an appeal therefrom or other cause the court appointing the general guardian otherwise orders. If so ordered, the court shall fix the time for the termination of the powers of the ~~special~~ temporary guardian.

(b) Except as provided in subdivision (a) the powers of the ~~special~~ temporary guardian shall not extend beyond 30 days unless the court, with or without notice as it may require, for good cause shall extend such powers pending the final determination of the court upon the petition for appointment of a guardian.

Comment. See Comment to chapter heading.

Probate Code § 1646 (technical amendment)

SEC. ____ . Section 1646 of the Probate Code is amended to read:

1646. ~~Special~~ Temporary guardians shall be subject to the provisions of ~~this division part~~ governing suspension, removal, resignation and discharge of guardians.

Comment. See Comment to chapter heading.

Probate Code § 1650 (part heading)

SEC. ____ . A part heading is added to Division 4 of the Probate Code immediately preceding Chapter 15 (commencing with Section 1650), to read:

PART 2. UNIFORM VETERANS' GUARDIANSHIP ACT

Probate Code § 1652 (amended)

SEC. ____ . Section 1652 of the Probate Code is amended to read:

1652. (a) A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by any relative or friend

of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within 30 days after mailing of notice by the Veterans Administration to the last known address of such person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of this State-state.

(b) The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the Veterans Administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(c) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the person proposed for appointment as guardian. ~~Notwithstanding~~ Except as provided in subdivision (e), notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other person as guardian, if the court determines it is for the best interest of the ward.

(d) In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans Administration.

(e) In appointing a guardian of the person of a minor other than a minor described in Section 1450 under this section, the court is governed by Section 4600 of the Civil Code. Section 4601 of the Civil Code applies to the award to a parent or grant to any other person of reasonable visitation rights in a proceeding under this section.

Comment. Section 1652 is amended to add subdivision (e) and to make other technical revisions. The language of subdivision (e) parallels the language of Section 1451 and makes clear that, in determining who shall be appointed guardian of the person of an unmarried minor under the Uniform Veterans' Guardianship Act, the same standards will be

applied as in other proceedings where there is at issue the custody of a minor. See Comment to Section 1451. In the case of a married minor, a conservator instead of a guardian shall be appointed, and the appointment may not be made on the grounds of minority alone. See Sections 1669, 1751.

998/822

Probate Code § 1660 (technical amendment)

SEC. _____. Section 1660 of the Probate Code is amended to read:

1660. Every guardian shall invest the surplus funds of ~~his~~ the ward's estate in such securities or property as authorized under the laws of this ~~State~~; state, or may deposit funds of the estate with any bank, or in an account or accounts in one or more insured savings and loan associations, but only upon prior order of the court; except that the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this ~~State~~ state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the Veterans Administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account. The term "account or accounts in one or more insured savings and loan associations" used in this section has the same meaning as the corresponding term in Section ~~4431~~ of this code; 1510.

Comment. Section 1660 is amended to correct the reference to the definition in Section ~~1510~~.

99936

Probate Code § 1669 (amended)

SEC. _____. Section 1669 of the Probate Code is amended to read:

1669. (a) All acts or parts of acts relating to beneficiaries of the Veterans Administration inconsistent with this chapter are hereby repealed. Except where inconsistent with this chapter, the laws of this

State state relating to guardian and ward or to conservator and conservatee, as the case may be, and the judicial practice relating thereto, including the right to trial by jury and the right of appeal, shall be applicable to such beneficiaries and their estates.

(b) In the case of a minor described in Section 1450 or an adult person, a conservator instead of a guardian shall be appointed under this chapter, and Division 5 (commencing with Section 1701) shall apply. In such case, the ward shall be called a conservatee. In the case of all other minors, Part 1 (commencing with Section 1400) shall apply.

Comment. Section 1669 is amended to make clear that, absent a contrary provision in this chapter, Part 1 of this division governs guardianship of an unmarried minor, and Division 5 (conservatorship) governs for a married minor or an adult. Subdivision (b) supersedes former Section 2151.

09/595

Probate Code § 1700 (repealed)

SEC. ____ . Section 1700 of the Probate Code is repealed.

~~1700.~~ Sections 236 to 257, inclusive, and 1270 to 1409, inclusive, of the Civil Code and section 1205 and sections 1294 to 1722, inclusive, and sections 1724 to 1810e, inclusive, of the Code of Civil Procedure and "An act concerning the guardianship of incompetent veterans and of minor children of disabled or deceased veterans, and the commitment of veterans and to make uniform the law with reference thereto," approved June 3, 1929, and "An act to provide for the appointment of guardians of children maintained in any orphan's home or orphan asylum in this state," approved March 23, 1893, are hereby repealed.

Comment. Section 1700 is repealed as having served its purpose.

404/802

Probate Code § 1703 (repealed)

SEC. ____ . Section 1703 of the Probate Code is repealed.

~~1703.~~ No provision of this division shall repeal or modify any of the provisions relating to guardianships. No appointment

of both a conservator and a guardian shall be made for the same person or estate. A petitioner may elect to apply either for letters of conservatorship or letters of guardianship; or he may apply for such letters in the alternative. In the latter case the court upon the hearing of the petition shall take such action and issue such letters as shall be for the best interests of the conservatee or ward. After the issuance of letters of conservatorship or guardianship the proceeding shall thereafter be governed by the provisions of this code applicable to the relationship established by the original appointment and issuance of letters.

Comment. Former Section 1703 is not continued. Part 1 (commencing with Section 1400) of Division 4, applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto. See also Section 1669 (Uniform Veterans' Guardianship Act).

09937

Probate Code § 1703 (added)

SEC. __. Section 1703 is added to the Probate Code, to read:

1703. Nothing in this division precludes appointment of a conservator under the Uniform Veterans' Guardianship Act, Part 2 (commencing with Section 1650) of Division 4.

Comment. Section 1703 is new and makes clear that Division 5 (conservatorship) is not the exclusive authority for appointment of a conservator. See Section 1669; see also Welf. & Inst. Code §§ 5350-5371 (conservatorship for gravely disabled persons).

968/643

Probate Code § 1705 (repealed)

SEC. __. Section 1705 of the Probate Code is repealed.

1705. Upon a petition and after notice and hearing thereon all as provided for an initial petition for the appointment of a guardian, a guardian may be appointed to succeed an existing conservator and an existing conservator, upon the settlement of his

accounts as conservator, may be appointed by the court as a guardian, and new letters issued. Thereafter such proceeding and the parties affected thereby shall be governed by the provisions of Division 4 of this code.

Comment. Former Section 1705 is not continued. Part 1 (commencing with Section 1400) of Division 4, applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto. See also Section 1669 (Uniform Veteran's Guardianship Act).

999/325

Probate Code § 1751 (amended)

SEC. _____. Section 1751 of the Probate Code is amended to read:

1751. (a) Upon petition as provided in this chapter, the superior court, if satisfied by sufficient evidence of the need therefor, shall appoint a conservator of the person and property or person or property of any adult ~~person~~ person, or of any minor described in Section 1450, who, in the case of a conservatorship of the person, is unable properly to provide for his personal needs for physical health, food, clothing or shelter, and, in the case of a conservatorship of the property, is substantially unable to manage his own financial resources, or resist fraud or undue influence, ~~or for whom a guardian could be appointed under Division 4 of this code,~~ or who voluntarily requests the same and to the satisfaction of the court establishes good cause therefor, or who is an absentee as defined in Section 1751.5. "Substantial inability" shall not be evidenced solely by isolated incidents of negligence or improvidence.

(b) The court, in its discretion, may appoint one or more conservators.

Comment. Section 1751 is amended to eliminate the authority to appoint a conservator for a person for whom a guardian could be appointed. Part 1 (commencing with Section 1400) of Division 4, applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto.

Section 1751 is also amended to permit appointment of a conservator for a married minor. Under Section 1450, a guardian may not be appointed for a married minor. The standard for appointment of a conservator for a married minor is the same as that for appointment of a conservator of an adult.

406/124

Probate Code § 1753 (amended)

SEC. __. Section 1753 of the Probate Code is amended to read:

1753. The selection of a conservator of the person or property shall be solely in the discretion of the court. Of persons equally entitled in the opinion of the court to appointment as conservator of the person and property or person or property of another, preference is to be given as follows:

(1) To the nominee under Section 1752 of this code of the person to be placed under conservatorship; then

(2) To the spouse of a married person to be placed under conservatorship or the nominee of such spouse; then

(3) To an adult child of the person to be placed under conservatorship or the nominee of such child; then

(4) To a parent of the person to be placed under conservatorship or the nominee of such parent; then

(5) To a brother or sister of the person to be placed under conservatorship or the nominee of such brother or sister; then

(6) To any qualified person or corporation who upon appropriate petition to the court might be appointed guardian of an incompetent person or of his estate under this code eligible for appointment as conservator either under Section 1701 or, if there is no such person or corporation qualified and willing to act in such capacity, under the Welfare and Institutions Code.

The preference for any nominee for appointment under subparagraphs (3), (4), and (5) shall be subordinate to the preference for any other parent, child, brother or sister in such class.

No person or corporation prohibited by law from serving as a guardian of the estate of an incompetent person may be appointed a conservator.

Comment. Section 1753 is amended to replace the reference to guardianship standards with reference to conservatorship standards. This makes no substantive change since the persons or corporations eligible for appointment as a conservator under Section 1701 are the same as those who were eligible for appointment as a guardian under Section 1457.

08368

Probate Code § 1754 (technical amendment)

SEC. ____ . Section 1754 of the Probate Code is amended to read:

1754. Any person or any relative or friend of any person, other than a creditor of the proposed conservatee, may file a verified petition alleging that the appointment of a conservator is required. If the proposed conservatee is a minor, the petition may be filed during minority so that the appointment of a conservator may be made effective immediately upon the minor's becoming eligible therefor as provided in Section 1751. The petition shall set forth, so far as they are known to the petitioner, the names and residences of the spouse, if any, and of the relatives of the proposed conservatee within the second degree. Upon the filing of the petition, the clerk shall set the petition for hearing by the court. Notice of the nature of the proceedings and of the time and place of the hearing on the petition shall be mailed by the petitioner to the spouse, if any, and to each of such relatives, and if the proposed conservatee is an "absentee" as defined in Section 1751.5, to the secretary concerned or to the head of the United States department or agency concerned, as the case may be, at least 15 days before such hearing date. If the proposed conservatee is an "absentee," as defined in Section 1751.5, such notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proceedings will be held.

If the petition is filed by a person other than the proposed conservatee, the clerk shall issue a citation directed to the proposed conservatee setting forth the time and place of the hearing. The citation shall include a specific delineation of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1751, and

shall state that the proposed conservator may be adjudged unable to provide for his personal needs or manage his financial resources, and by reason thereof, a conservator may be appointed for his person and property or person or property, that such adjudication may transfer the proposed conservatee's right to contract, manage and control his property, and to fix his residence to the appointed conservator, that the court or a court investigator will explain the nature, purpose and effect of the proceeding to the proposed conservatee and answer questions concerning such explanation, that the proposed conservatee shall have the right to appear at such hearing and oppose such petition, that he shall have the right to legal counsel of his own choosing, including the right to have legal counsel appointed for him by the court if he is unable to retain one, and that he has the right to a jury trial if he so desires.

The citation, and a copy of the petition, shall be served upon the proposed conservatee in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court, at least 10 days before the time of the hearing. No such citation shall, however, be required if the proposed conservatee is an "absentee" as defined in Section 1751.5.

The proposed conservatee, if he is the petitioner, or if he is in the state at date of service and, if able to attend, shall be produced at the hearing, and, if not able to attend by reason of medical inability, such inability shall be established by the affidavit or certificate of a duly licensed medical practitioner. If the proposed conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of such religion, an affidavit as to his or her medical inability to attend by an accredited practitioner shall be acceptable. Emotional or psychological instability shall not be considered good cause for the absence of the proposed conservatee within the meaning of this section, unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee. The medical affidavit shall be evidence only of the proposed conservatee's medical inability to attend the hearing and shall not be considered in determining the issue of need for appointment of a conservator. If the proposed conservatee is an "ab-

sentee" as defined in Section 1751.5 his inability to attend the hearing shall be established by a certificate complying with Section 1283 of the Evidence Code, showing the determination of the Secretary of the Military Department or the head of the department, or agency concerned or his delegate, as the case may be, that the "absentee" is in missing status.

Upon receipt of the affidavit or certificate attesting to the proposed conservatee's inability to attend the hearing, the court shall appoint a court investigator to personally interview the proposed conservatee and to inform him as to the contents of the citation, the nature, purpose and effect of the proceeding, and of his right to oppose the proceeding, attend the hearing, have the matter tried by jury and be represented by counsel. The investigator shall also determine whether it appears that the proposed conservatee is unable to attend the hearing, whether the proposed conservatee wishes to contest the establishment of the conservatorship, whether the proposed conservatee wishes to be represented by counsel, and if so, whether the proposed conservatee has retained counsel, and if not, the name of an attorney the proposed conservatee wishes to retain.

If the proposed conservatee does not wish to contest the establishment of the guardianship, the investigator shall determine if the proposed conservatee objects to the proposed conservator, or if he prefers another person to act as conservator.

The court investigator shall report his findings, including the proposed conservatee's express statement concerning representation by counsel, in writing, to the court at least five days before the date set for hearing.

As used in this chapter, a "court investigator" or "investigator" is a person trained in law who is an officer or special appointee of the court with no personal or other beneficial interest in the proceedings.

~~Whenever a notice to any officer or agency of this state or of the United States would be required upon a petition for the appointment of a guardian of an alleged incompetent person a like notice shall be given of a petition under this chapter.~~ If the proposed conservatee is a patient in or on leave of absence from a state institution under the

jurisdiction of the State Department of Health and such fact is known to the petitioner, the petitioner shall name the institution in the petition, and shall give notice of the filing of the petition for appointment of a conservator and of the time and place of the hearing by mailing such notice and a copy of the petition to the Director of Health at his office in Sacramento at least 15 days before the hearing unless the time is shortened by the court for good cause shown. If the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be given to the Veterans Administration as provided in Part 2 (commencing with Section 1650) of Division 4. Any officer or agency of this state or of the United States, or the authorized delegate thereof, or any relative or friend of the proposed conservatee, or the proposed conservatee himself, may appear and oppose the petition.

Comment. Section 1754 is amended to add the second sentence and substitute for the reference to notice provisions under Division 4 (guardianship) the text of the provisions referred to. The addition of the second sentence will permit the uninterrupted continuation of protective proceedings for an incompetent minor under guardianship who is approaching majority. The guardian in such a case may be appointed as conservator under this division. See Section 1704.

The first sentence of the last paragraph continues the substance of former Section 1461.3 (guardianship). The second sentence of the last paragraph continues the substance of Section 1655 (Uniform Veteran's Guardianship Act).

08371

Probate Code § 1779 (technical amendment)

SEC. ____ . Section 1779 of the Probate Code is amended to read:

1779. Upon filing of the petition, the court shall set the petition for hearing by the court. Notice of the nature of the proceedings and of the time and place of the hearing thereon, together with a copy of the petition, shall be mailed by the petitioner to all persons comprising the family of the absentee, as defined in Section 1776, and shall be delivered by the same method specified in Section 1754.5 to the

secretary concerned or to the head of the United States department or agency concerned, as the case may be, at least 15 days before such hearing date. If the proposed conservatee is an "absentee," as defined in Section 1751.5, such notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proceedings will be held. Whenever a notice to any officer or agency of this state or of the United States would be required upon a petition for the appointment of a ~~guardian of an alleged incompetent person,~~ conservator, a like notice shall be given of the petition under this chapter. Any officer or agency of this state or the United States or the authorized delegate thereof, or any relative or friend of the absentee, may appear and oppose the petition.

Comment. Section 1779 is amended to substitute a reference to notice required upon petition for appointment of a conservator for the reference to notice required upon petition for appointment of a guardian of an alleged incompetent person. For the notice required upon petition for appointment of a conservator, see Section 1754 and Comment thereto.

08372

Probate Code § 1850 (added)

SEC. ____ . Section 1850 is added to Chapter 4 of Division 5 of the Probate Code, to read:

1850. This chapter applies to property owned by husband and wife as community property or owned by husband and wife or either of them which is subject to a homestead only to the extent authorized by Chapter 12 (commencing with Section 2250).

Comment. Section 1850 continues the substance of former Section 1529 except that the reference to Chapter 8 of Part 1 of Division 4 is not continued since a married minor is governed by this division. See Section 1751 and Comment thereto.

Probate Code § 1852 (amended)

SEC. ____ . Section 1852 of the Probate Code is amended to read:

1852. Every conservator of the estate or of the person and the estate of a conservatee shall have the powers granted to a guardian of the estate or of the person and estate of an ~~incompetent~~ a ward, and the court may grant to such conservator the powers which a court may grant to such guardian, in Chapters ~~7, 7~~ 7 (commencing with Section 1500), 8 (commencing with Section 1529), and 9 (commencing with Section 1550) of Part 1 of Division 4 of this code; ~~4,~~ and, if granted by the court, the additional powers authorized by Section ~~1853 of this code;~~ 1853.

Comment. Section 1852 is amended to delete the reference to a guardian of an incompetent and to add the reference to the powers a court may grant to a guardian. Part 1 of Division 4 applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1452 (guardianship of estate) and Comments thereto.

The addition of the reference to the powers which a court may grant to a guardian makes clear, for example, that a conservator may be given the powers authorized by Sections 1537 and 1537.5.

Probate Code § 1863 (added)

SEC. ____ . Section 1863 is added to the Probate Code, to read:

1863. Notwithstanding any other provision of this division, if the court determines that it is necessary for the protection of the conservatee or the conservatee's estate, the court may make a determination that the conservatee lacks legal capacity to the extent provided in Section 40 of the Civil Code, or may withdraw the power of the conservatee to make a conveyance or contract in excess of a specified money amount.

Comment. Section 1863 is added to preserve the effect under former law (Section 1751) of appointing a conservator for a person for whom a guardian could have been appointed. The appointment of a guardian for an adult under Division 4 constituted a judicial determination of incapacity under Section 40 of the Civil Code and made void any contract

entered into by the ward after such determination. *Hellman Commercial Trust & Sav. Bank v. Alden*, 206 Cal. 592, 604-605, 275 P. 794, ___ (1929). An order appointing a conservator for a person for whom a guardian could have been appointed rendered the conservatee incapable of contracting. *Board of Regents State Univs. v. Davis*, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, ___ n.6, ___, 120 Cal. Rptr. 407, ___ n.6, ___ (1975).

Section 1863 permits the court to withdraw or constrict the conservatee's power to contract, thus giving notice to the world of the conservatee's incapacity but without the necessity of a stigmatizing adjudication of incompetency. The provision authorizing the court to withdraw the power of the conservatee to make a conveyance or contract in excess of a specified money amount is adapted from Section 5357 of the Welfare and Institutions Code.

08925

Probate Code § 2151 (repealed)

SEC. ___. Chapter 10 (commencing with Section 2151) is repealed.

Comment. Former Chapter 10 (consisting of Section 2151) is superseded by Section 1669, which requires that a conservator instead of a guardian be appointed under the Uniform Veterans' Guardianship Act for an adult or married minor.

Note. For the text of former Chapter 10 (consisting of Section 2151), see Appendix.

406/123

Probate Code §§ 2250-2298 (added)

SEC. ___. Chapter 12 (commencing with Section 2250) is added to Division 5 of the Probate Code, to read:

CHAPTER 12. TRANSACTIONS INVOLVING COMMUNITY AND
HOMESTEAD PROPERTY OF INCOMPETENT PERSONS

Comment. Chapter 12 is a recodification of former Chapter 2A (commencing with Section 1435.1) of Division 4. The former chapter affected only incompetent adults and is thus relocated in Division 5 (conservatorship). References to a "guardian" have uniformly been converted to references to a "conservator."

Article 1. General Provisions and Definitions

§ 2250. Definitions

2250. As used in this chapter:

(a) "Incompetent" means a legal, not a medical disability and is measured by functional incapacities. It shall be construed to mean or refer to any adult person or married minor who is substantially unable to manage his or her own financial resources. Substantial inability shall not be evidenced solely by isolated instances of negligence or improvidence.

(b) "Property" includes real and personal property or any interest therein or lien or encumbrance thereon.

Comment. Subdivision (a) of Section 2250 continues the substance of former Section 1435.2 with the exception of the provisions relating to guardianship of the person. This chapter is solely for the protection of property and not of the person. See Section 2251.

Subdivision (b) defines "property" in the language of the first portion of the first sentence of former Section 1435.1.

406/122

§ 2251. Application of chapter

2251. (a) Notwithstanding Section 1242, 1243, 5125, or 5127 of the Civil Code, where property is owned by husband and wife as community property, or as community or separate property subject to a homestead, and one or both of the spouses is incompetent, the property may be sold, conveyed, assigned, transferred, pledged, exchanged, mortgaged, encumbered, deeded in trust, unitized or pooled with other property, or leased, in whole or in part, for any purpose, with or without consideration, to any natural or artificial person or persons, pursuant to this chapter.

(b) Nothing in this chapter is intended to or shall affect the management and control of community property of either spouse unless the spouse is incompetent.

Comment. Subdivision (a) of Section 2251 continues the substance of the last portion of the first sentence of former Section 1435.1.

Subdivision (a) is broadly phrased to include all transactions with property and is not limited to those formerly listed in Section 1435.1. Thus, under subdivision (a), property may be conveyed pursuant to a preexisting contract, leased for the exploration for and production of oil, gas, minerals, or other substances, assigned, transferred, or conveyed in compromise, composition, or settlement of an indebtedness, demand, or proceeding to which the property may be subject, or an easement therein or thereover conveyed or dedicated.

Subdivision (b) is based on the second sentence of former Section 1435.1, but refers to "community property" (both real and personal), and reflects the fact that either spouse has the management and control of community property. See Civil Code §§ 5125(d), 5127.

406/120

Article 2. Petition

§ 2255. Persons who may bring petition

2255. (a) If one spouse is incompetent, a petition for an order under this chapter may be brought by:

- (1) The competent spouse without the necessity of having a conservator appointed for the incompetent spouse.
- (2) A conservator of the estate of the incompetent spouse.

(b) If both spouses are incompetent, a petition for an order under this chapter may be brought by a conservator of the estate of either spouse.

Comment. Section 2255 continues the substance of former Section 1435.3. The term "incompetent" as used in this section means "substantially unable to manage . . . financial resources." Section 2250(a). The application of this chapter is therefore somewhat narrower than the application of provisions for appointment of a conservator of the property since the latter apply also to a person who is "substantially unable to . . . resist fraud or undue influence." Section 1751.

§ 2256. Verification and contents of petition

2256. The petition shall be verified and shall set forth:

- (a) The name, age, and residence of both spouses.
- (b) If one or both of the spouses have been adjudged incompetent, the fact of such adjudication; otherwise, the facts establishing incompetency.
- (c) If there is an existing conservator for either or both of the spouses, the name of the conservator, the county in which the conservatorship proceeding is pending, and the court number of the proceeding.
- (d) The names and addresses of the adult relatives of the incompetent person or persons within the second degree residing in this state, other than a spouse, if such names and addresses are known to the petitioner.
- (e) Whether the property described in the petition is community property, is subject to a homestead, or both.
- (f) The estimated value of the property.
- (g) A sufficient legal description of the property.
- (h) The terms and conditions of the proposed transaction, including the names of all parties thereto.
- (i) Facts in addition to the incompetency of the spouse or spouses to show that the order sought is for one or more of the following purposes:

- (1) The advantage, benefit, or best interests of the spouses or their estates.
- (2) The care and support of either spouse, or of such persons as either of them may be legally obligated to support.
- (3) To pay taxes, interest, or other encumbrances and charges for the protection and preservation of the homestead or the community property.

Comment. Section 2256 continues the substance of the portion of former Section 1435.4 that related to the contents of the petition.

406/001

§ 2257. When alleged incompetent person is a patient in a state institution

2257. (a) If the alleged incompetent person is a patient in or on leave of absence from a state institution under the jurisdiction of the

State Department of Health, the petition shall set forth the name of the institution, and a copy of the notice and petition shall be mailed to the office of the Director of Health in Sacramento at least 10 days prior to the hearing.

(b) The director may appear and represent the interests of the incompetent spouse.

Comment. Section 2257 is the same in substance as former Section 1435.6. The provision for notice is contained in Section 2262.

405/978

§ 2258. Venue

2258. (a) If the proceeding affects real property or any lien or encumbrance thereon, the petition shall be filed in the superior court of the county in which the real property, or some part thereof, is situated.

(b) If the proceeding affects only personal property other than a lien or encumbrance on real property, the petition shall be filed in the superior court of the county in which the spouses or either of them reside or in which a conservator for either spouse has been appointed.

Comment. Section 2258 continues the substance of the portion of the first sentence of former Section 1435.4 that related to the place of filing the petition.

405/979

Article 3. Citation and Notice of Hearing

§ 2260. Setting petition for hearing

2260. Upon the filing of the petition, the clerk shall set the petition for hearing by the court.

Comment. Section 2260 is the same as the first portion of the first sentence of former Section 1435.5.

404/166

§ 2261. Issuance and service of citation

2261. (a) Except as provided in subdivision (b), the clerk shall issue a citation directed to the spouse or spouses not petitioning, setting forth the time and place of the hearing.

(b) No citation to a spouse need be issued if (1) there is a conservator of the estate of the spouse and (2) a copy of the notice and petition is served on the conservator at least 10 days before the hearing in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

(c) The citation and a copy of the petition shall be served on the spouse or spouses not petitioning, whether within or without the state, in the manner provided by law for the service of summons in a civil action, other than by publication, at least 10 days before the hearing if served within the state, otherwise three weeks before the hearing. If the citation and copy of the petition cannot with reasonable diligence be so served on a spouse, service of the citation may be made by publication pursuant to Section 415.50 of the Code of Civil Procedure, and no copy of the petition need then be served on the spouse.

Comment. Subdivision (a) of Section 2261 continues the substance of the last portion of the first sentence of the first paragraph of former Section 1435.5. Subdivision (b) continues the substance of the first sentence of the fourth paragraph of former Section 1435.5. Subdivision (c) is the same in substance as the third sentence of the first paragraph and the entire second paragraph of former Section 1435.5.

The provision for notice is contained in Section 2262.

405/972

§ 2262. Contents and mailing of notice of hearing

2262. (a) Notice of the hearing of the petition shall give the name or names of the incompetent persons, the name of the petitioner, and the purpose for which the order is sought, referring to the petition for further particulars, and notifying all interested persons to appear at the time and place mentioned in the notice and to show cause, if any they have, why the order should not be made.

(b) The petitioner shall mail a copy of the notice and petition by prepaid first-class mail at least 10 days before the hearing to the adult relatives named in the petition at their addresses set forth in the petition.

(c) If there is no conservator of the estate of the incompetent spouse to whom the citation is issued, or if the conservator cannot be

served as provided in subdivision (b) of Section 2261, a copy of the notice and petition shall be served personally upon the public guardian or public administrator of the county in which the petition was filed, or upon his or her deputy or assistant, in the manner provided in Section 415.10, 415.20(a), or 415.30 of the Code of Civil Procedure at least 10 days prior to the hearing.

Comment. Subdivision (a) of Section 2262 continues the substance of the third paragraph of former Section 1435.5. Subdivision (b) continues the substance of the fifth paragraph of former Section 1435.5. Subdivision (c) continues the substance of a portion of the first sentence of the sixth paragraph of former Section 1435.5.

For provisions concerning mailing of a copy of the notice and petition to the Director of Health when the alleged incompetent is a patient in a state institution, see Section 2257.

405/966

Article 4. Hearing and Order

§ 2265. Representation of alleged incompetent at hearing; fees

2265. (a) A conservator who is served as provided in subdivision (b) of Section 2261, or a public guardian or public administrator who is served as provided in subdivision (c) of Section 2262, shall appear at the hearing and represent the interests of the incompetent spouse.

(b) If the alleged incompetent spouse is not represented at the hearing by a conservator, by the public guardian or public administrator or a deputy or assistant, or by the Director of Health, the court may in its discretion appoint a guardian ad litem to represent the interests of the spouse.

(c) The court may fix a reasonable fee, to be paid out of the cash proceeds of the transaction or otherwise as the court directs, for all services rendered by the public guardian, public administrator, or guardian ad litem.

Comment. Subdivision (a) of Section 2265 continues the substance of the second sentence of the fourth paragraph, and a portion of the first sentence of the sixth paragraph, of former Section 1435.5.

Subdivision (b) continues the substance of a portion of the second paragraph of former Section 1435.7. For provisions concerning representation of a patient in a state institution by the Director of Health, see Section 2257.

Subdivision (c) continues the substance of the second sentence of the sixth paragraph of former Section 1435.5 and a portion of the second paragraph of former Section 1435.7.

405/965

§ 2266. Presence of alleged incompetent spouse at hearing

2266. (a) If a spouse alleged in the petition to be incompetent has not been so found in proceedings under this division or under the Uniform Veteran's Guardianship Act, Part 2 (commencing with Section 1650) of Division 4, or has been restored to capacity as provided in this code, the spouse, if able to attend, must be produced at the hearing.

(b) If the spouse is not able to attend because of mental or physical condition, the affidavit or certificate of a duly licensed physician, surgeon, or other medical practitioner, or the certificate of the medical superintendent or acting medical superintendent of a state hospital in this state in which such spouse is a patient, shall be prima facie evidence of the facts therein stated as to the inability of the spouse to attend.

Comment. Section 2266 continues the substance of the first paragraph of former Section 1435.7. The reference to an adjudication of incompetency under Division 4 is replaced by a reference to the Uniform Veterans' Guardianship Act (Sections 1650-1669), the only provisions of Division 4 pursuant to which a determination of incompetency may be made.

405/958

§ 2267. Order

2267. (a) If it appears to the court that the property is the homestead or community property of the spouses, and that one or both of the spouses are then incompetent or have been so found under this division or under the Uniform Veterans' Guardianship Act, Part 2 (commencing with Section 1650) of Division 4, and have not been restored to capacity, the court shall so adjudge.

(b) If it further appears to the court that the petition should be granted, it may then so order and may authorize the petitioner to do and perform all acts and to execute and deliver all papers, documents, and instruments necessary to effectuate the order.

Comment. Section 2267 continues the substance of former Section 1435.8. The reference to an adjudication of incompetency under Division 4 is replaced by a reference to the Uniform Veterans' Guardianship Act (Sections 1650-1669), the only provisions of Division 4 pursuant to which a determination of incompetency may be made.

405/976

§ 2268. Vacation of order; authorization for other sale or encumbrance

2268. (a) If any party to the transaction other than the petitioner neglects or refuses to consummate a transaction which has been authorized by the court under this chapter, the court may vacate its order authorizing such transaction after such notice to the parties to the transaction as the court on application of the petitioner shall direct.

(b) If the original order provided for the sale or encumbrance of property, the petitioner may by verified supplemental petition apply to the court for an order authorizing any other sale or encumbrance to the advantage, benefit, or best interests of the spouses. The supplemental petition shall be served and mailed as provided in Article 3 (commencing with Section 2260) except that no further citation need be issued. If it appears to the court that such other sale or encumbrance is to the advantage, benefit, or best interests of the spouses and that the supplemental petition should be granted, the court may so order and may authorize the petitioner to do and perform acts and to execute and deliver all papers, documents, and instruments necessary to effectuate the order.

Comment. Section 2268 continues the substance of former Section 1435.13. The section is revised somewhat for clarity and to parallel subdivision (b) of Section 2267.

Article 5. Bond§ 2270. Requirement of bond

2270. Unless the court for cause shown dispenses with the necessity of a bond, the court shall require the petitioner to give a bond conditioned on the duty of the petitioner to account for and apply the proceeds of the transaction to be received by the petitioner only as the court may by its original or any subsequent order direct.

Comment. Section 2270 is the same in substance as the first sentence and a portion of the last sentence of former Section 1435.9.

405/956

§ 2271. Sureties

2271. The surety or sureties on the bond shall be either of the following:

- (a) An authorized surety company.
- (b) Two or more persons to be approved by the court.

Comment. Section 2271 is the same in substance as a portion of the second sentence of former Section 1435.9. See also Code Civ. Proc. § 1056 (one surety will suffice if a "corporate or reciprocal insurer" authorized by Insurance Commissioner to write surety insurance).

405/935

§ 2272. Amount of bond

2272. Unless the court for cause shown determines that the bond may be in a lesser amount, the bond shall be in an amount equal to or greater than the following:

- (a) If the surety is an authorized surety company, the value of the personal property, including cash and any note or notes, to be received by the petitioner as determined by the court.
- (b) If the sureties do not include an authorized surety company, twice the value of the personal property, including cash and any note or notes, to be received by the petitioner as determined by the court.

Comment. Section 2272 is the same in substance as portions of the second and fourth sentences of former Section 1435.9.

§ 2273. Application of certain provisions

2273. The provisions of Sections 1483, 1483.1, 1483.2, 1483.3, 1488, 1489, and 1490 relating to guardians and the bonds thereof apply to petitioners and the bonds thereof under the provisions of this chapter.

Comment. Section 2273 continues the substance of the third sentence of former Section 1435.9.

Article 6. Effect of Order

§ 2275. Duty of petitioner

2275. (a) The petitioner shall execute, acknowledge, and deliver any necessary instruments or documents as directed by the court, setting forth therein that they are made by authority of the order.

(b) The petitioner shall cause a certified copy of the order to be recorded in the office of the recorder of each county in which is situated any land affected by the order or upon which there is a lien or encumbrance affected by the order.

(c) If a sale is made upon a credit in pursuance of the order, the petitioner shall take the note or notes of the person to whom the sale is made for the amount of the unpaid balance of the purchase money, with such security for the payment thereof as the court shall by order approve. Such note or notes shall be made payable to the petitioner or, if the petition was made as conservator, to the petitioner as conservator.

Comment. Subdivisions (a) and (b) of Section 2275 continue the substance of the first sentence of former Section 1435.10. The words "upon receipt of the consideration therefor" are omitted from subdivision (a) since the conveyance need not be made for consideration. Section 2251(a).

Subdivision (c) continues the substance of the first paragraph of former Section 1435.12.

§ 2276. Validity of conveyance

2276. Any sale, conveyance, assignment, transfer, pledge, exchange, mortgage, deed of trust, or lease and any instrument or document made in pursuance of the court's order is as valid and effectual as if the property affected thereby was the sole and absolute property of the person making it.

Comment. Section 2276 continues the substance of the second sentence of former Section 1435.10.

§ 2277. Liability of conservator

2277. Any note or notes, pledges, mortgages, leases, or deeds of trust executed as provided in this article by a petitioning conservator as such, shall create no personal liability against the conservator so executing unless the conservator is one of the spouses, and then only to the extent that personal liability would have resulted had both spouses been competent and joined in the execution.

Comment. Section 2277 continues the substance of former Section 1435.11.

§ 2278. Proceeds of community and homestead property

2278. (a) This section applies to property dealt with or disposed of under the provisions of this chapter, including Article 8 (commencing with Section 2290).

(b) The proceeds, rents, issues, and profits of community property, and any property taken in exchange therefor or acquired with such proceeds, shall be community property.

(c) The proceeds of sale of homestead property and any property taken in exchange therefor or acquired with such proceeds shall enjoy the exemptions prescribed in Sections 1265 and 1265a of the Civil Code, provided that in the case of property so taken or acquired the petitioner with leave of court makes the declaration required by Section 1265a of the Civil Code.

Comment. Section 2278 continues the substance of the last paragraph of former Section 1435.12 and the second sentence of the last paragraph of subdivision (c) of former Section 1435.16. The protection of proceeds of homestead property in subdivision (c) is not conditioned on court approval of the transaction (so conditioned under former Section 1435.12 but not under former Section 1435.16). See also Section 2298(b) (court approval of reinvestment under Article 8).

100/974

Article 7. Restoration to Capacity

§ 2280. Retention of jurisdiction to restore capacity

2280. In proceedings brought under this chapter, the court shall retain jurisdiction to hear and determine any petition for restoration to capacity as provided in this article.

Comment. Section 2280 continues the substance of the third sentence of former Section 1435.14.

101/134

§ 2281. Petition for restoration to capacity

2281. (a) Any person who has been found to be incompetent in proceedings under this chapter and is not then the subject of pending proceedings under any other chapter of this division, or any relative or friend of such person, may at any time apply by a verified petition to have the fact of the person's restoration to capacity judicially determined.

(b) The petition shall be filed in the proceeding brought under this chapter and shall allege that the person is then competent.

Comment. Section 2281 continues the substance of the first two sentences of former Section 1435.14.

405/931

§ 2282. Rules for proceedings for restoration to capacity

2282. Proceedings on a petition for restoration to capacity brought under this article shall be as prescribed in Section 1755.

Comment. Section 2282 continues the substance of the fourth sentence of former Section 1435.14. The reference to former Sections 1471 and 1472 (guardianship) is replaced by a reference to the comparable provision of Division 5 (conservatorship).

30/699

§ 2283. No effect on acts done under prior order

2283. Any adjudication of restoration to capacity shall not prejudice or affect anything theretofore lawfully done pursuant to and in accordance with any prior order made under the provisions of this chapter.

Comment. Section 2283 is the same as the fifth sentence of former Section 1435.14.

30/698

Article 8. Alternate Procedure Where There Is an Existing Conservator of the Property

§ 2290. Definitions

2290. As used in this article:

(a) "Competent spouse" means a spouse who has the legal capacity to contract and for whom no conservator of the property has been appointed.

(b) "Conservatee spouse" means a spouse for whom a conservator of the property has been appointed.

Comment. Section 2290 is new.

30/697

§ 2291. Alternative application of this article

2291. The provisions of this article may be used as an alternative to the procedure prescribed elsewhere in this chapter.

Comment. Section 2291 continues the substance of the first clause of former Section 1435.15.

30/696

§ 2292. Powers of court

2292. If there is an existing conservator of the respective estates of one or both of the spouses, the court in which the conservatorship proceeding is pending may, for the purpose of administration under this article, do all of the following:

(a) Determine the validity of any homestead and whether property is community property or the separate property of one or both of the spouses.

(b) After such determination, authorize the conservator to deal with or dispose of such property in the manner provided in this article or to join in any transaction or to concur therein when required by this article.

Comment. Section 2292 is the same in substance as former Section 1435.15. Court approval of action by the conservator is required in certain cases. See Section 2293.

30/695

§ 2293. Court approval required for action by conservator

2293. When a conservator is required by this article to join in any transaction or to concur therein, an order of court approving the same must first be obtained under Section 1860.

Comment. Section 2293 restates the requirement of court approval contained in subdivisions (a), (b), and (c) of former Section 1435.16, and in subdivisions (b) and (c) of former Section 1435.17.

30/693

§ 2294. Management and disposition of community property where there is a conservator of the property of one spouse

2294. A conservator of the estate of either spouse may deal with and dispose of community property, whether or not subject to a homestead, as part of the conservatorship estate if the competent spouse consents thereto in writing.

Comment. Section 2294 is based on a portion of subdivision (a) of former Section 1435.16, the first sentence of subdivision (a) of, and a portion of subdivision (b) of, former Section 1435.17. The former provisions are revised to conform to Sections 5125 and 5127 of the Civil Code, which give either spouse the management and control of community property. In the case of community real property, both the conservator and the competent spouse must join in executing any instrument where both spouses would be required to join by Section 5127 of the Civil Code. Section 2297. Joinder by the conservator must first be authorized by order of court. Section 2293.

§ 2295. Management and disposition of separate property subject to a homestead where there is a conservator of the property of one spouse

2295. (a) Where property subject to a homestead, other than a married person's separate homestead, is the separate property of a conservatee spouse, the conservator may deal with and dispose of such property if the competent spouse consents thereto in writing.

(b) Where property subject to a homestead is the separate property of a competent spouse, the competent spouse may deal with and dispose of such property.

Comment. Section 2295 is based on portions of subdivisions (a) and (b) of former Section 1435.16. The former provisions have been revised so that consent of the competent spouse is required whether such spouse is the husband or the wife, and so that no consent is required where the homestead is a married person's separate homestead. As thus revised, Section 2295 conforms to Section 1242 of the Civil Code.

Except in the case of a married person's separate homestead, both the conservator and the competent spouse must join in any conveyance or encumbrance of the homestead property, whether the separate property of the conservatee spouse or the competent spouse. See Section 2297, Civil Code § 1242. Such action by the conservator must have the prior approval of the court. Section 2293.

Where the spouse has claimed a married person's separate homestead (Civil Code § 1300), such spouse or the spouse's conservator may deal with the property without the joinder or consent of the other spouse. See Civil Code § 1242; 5 B. Witkin, California Procedure, Enforcement of Judgment § 34(b)(2), at 3415 (2d ed. 1971).

Note. Existing Section 1435.16 and Civil Code Section 1242 require that, where one spouse is incompetent, a conveyance of a married person's separate homestead property may be made only with the consent of the spouse or his or her guardian. This draft does not continue this requirement.

§ 2296. Management and disposition of community and homestead property where there is a conservator of the property of both spouses

2296. (a) This section shall apply when there are conservators of the estates of both spouses. Both conservators must concur in any transaction described in this section.

(b) An undivided one-half interest in the community property, whether or not subject to a homestead, may be included in, dealt with, and disposed of as a part of the conservatorship estate of the husband, and an undivided one-half interest therein may be included in, dealt with, and disposed of as a part of the conservatorship estate of the wife.

(c) If property subject to a homestead, other than a married person's separate homestead, is the separate property of both spouses as joint tenants, tenants in common, or otherwise, the respective interests of each may be included in, dealt with, and disposed of as a part of their respective conservatorship estates.

Comment. Section 2296 is based on the first paragraph of subdivision (c) of former Section 1435.16 and the first paragraph of subdivision (c) of former Section 1435.17. The former provisions have been revised to make the rule with respect to community property subject to a homestead the same as the rule for community property not subject to a homestead, i.e., one-half in each conservatorship.

The concurrence required of both conservators by subdivision (a) is subject to prior approval by the court. Section 2293.

§ 2297. Joinder required in certain transactions

2297. Whenever both spouses, if competent, would be required to join in any transaction under Section 1242 or Section 5127 of the Civil Code, both the conservator and the competent spouse, or both conservators, must join in such transaction for it to be effective under this article.

Comment. Section 2297 is based on portions of subdivisions (a), (b), and (c) of former Section 1435.16 and portions of subdivisions (a) and (b) of former Section 1435.17. The former provisions have been revised so that joinder is not required under this article in situations where joinder would not be required under Sections 1242 or 5127 of the Civil Code, e.g., in the case of separate property subject to a married person's separate homestead.

Before a conservator may join in a transaction referred to in this section, prior approval of the court must be obtained. Section 2293.

Note. Existing Section 1435.17(b) requires the consent of the wife's guardian where the husband disposes of community real or personal property. This section, by referring to Civil Code Section 5127, requires the consent of the wife's guardian only in the case of disposition of community real property.

30/690

§ 2298. Character of property; reinvestment of proceeds

2298. (a) Proceedings under this article shall not alter the character of the property or of the proceeds, rents, issues, or profits thereof, or the rights of the respective spouses therein except with respect to the procedure for the management and disposition thereof as expressly provided in this article.

(b) The court, on petition of the conservator or the competent spouse, with such notice to the other as the court shall prescribe, may authorize the investment of the proceeds in another home for the spouses to be held by the same tenure as the property sold or exchanged.

Comment. Section 2298 continues the substance of the last paragraph of former Section 1435.17 and the first sentence of the last paragraph of former Section 1435.16. Section 2298 applies both to community and to homestead property.

Under Section 2278, the proceeds of community property retain their community character, and the proceeds of homestead property may remain protected if proper steps are taken.

TRANSITION PROVISION

SEC. _____. (a) All guardianships and proceedings for guardianship of an incompetent adult or a married minor in existence on the operative date of this act under Part 1 (commencing with Section 1400) of Division 4 of the Probate Code are deemed to be conservatorships and are governed by Division 5 (commencing with Section 1701) of the Probate Code without application, order, or amendment of letters or title of the proceeding, and all bonds, security, and other obligations then in effect shall continue to apply. Conservatees subject to such conservatorships shall be deemed to have been judicially determined to lack legal capacity as provided in Section 1863 of the Probate Code until otherwise ordered by the court.

(b) Any action, cause of action, defense, accounting, or other proceeding instituted or maintained before the operative date of this act shall be continued under this act, so far as applicable, and if no provision of this act is applicable, under the law in effect immediately prior to the operative date of this act, and for this limited purpose prior law is continued in force and effect. If any right or remedy is abrogated or substantially curtailed by the provisions of this act, the person entitled thereto shall have one year after the operative date in which to commence enforcement thereof under prior law.

(c) The changes made by this act in the standards for appointment or confirmation of a guardian shall not affect the validity of any nomination, appointment, or confirmation made under prior law.

(d) The Judicial Council may prescribe by rule for the orderly transition of pending proceedings affected by this act, including but not limited to amendment of the title of the proceedings and amendment of, or issuance of, letters of guardianship or conservatorship. The validity of transactions and acts of a guardian or conservator shall not be affected by a misdescription of the office, nor shall any judgment, decree, or order of the court be invalidated by any such misdescription.

Comment. This section continues in effect as conservatorships all guardianships for incompetent adults and married minors established

under Division 4. It preserves the effect of the creation of a guardianship under Division 4, which renders the ward incapable of making a valid contract. *Hellman Commercial Trust & Sav. Bank v. Alden*, 206 Cal. 592, 604-605, 275 P. 794, ____ (1929). Section 1863 of the Probate Code permits the court to order that the conservatee lacks the power to make a conveyance or contract in excess of a specified amount. If the court removes entirely the disability imposed on the conservatee by this section, the conservatee will have the limited power to contract provided by Section 1858 of the Probate Code. See *Board of Regents State Univs. v. Davis*, 14 Cal.3d 33, 41, 533 P.2d 1047, ____, 120 Cal. Rptr. 407, ____ (1975).

CONFORMING REVISIONS

Civil Code § 40 (technical amendment)

SEC. _____. Section 40 of the Civil Code is amended to read:

40. Subject to ~~Sections 1561 and~~ Section 1910 of the Probate Code, and subject to Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code after his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power or waive any right, until his restoration to capacity. But a certificate from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom, cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge.

Comment. Section 40 is amended to delete the reference to Section 1561 of the Probate Code which is repealed.

18475

Civil Code § 206.5 (amended)

SEC. _____. Section 206.5 of the Civil Code is amended to read:

206.5. Any adult person may file in the superior court of the county where his parent resides a verified petition alleging that, while he was a minor, he was abandoned by such parent, and such abandonment continued for a period of two or more years prior to the time such person reached the age of 18 years, and such parent during such period was physically and mentally able to support such person, and praying the court to free such person from the obligation otherwise imposed by law to support such parent. The clerk shall thereupon set the same for hearing by the court and issue a citation directed to said parent and to his guardian or conservator, if any, or, if said parent be deceased, to the personal representative of his estate, setting forth the time and place of hearing so fixed by him. The citation and a copy of the petition shall be personally served on the parent and guardian or conservator, if any, or, if said parent be deceased, on the personal representative of his estate in the same manner as provided by law for the service

of summons at least five days before the time of hearing. If, upon hearing, the court determines that the allegations of the petition are true it shall issue a decree granting the relief prayed for.

A person released from the obligation to support a parent as provided in this section shall be deemed to be so released with respect to any state law under which a child is required to pay for the support, care, maintenance, and the like of a parent, or to reimburse the State staté or a local public agency for furnishing such support, care, maintenance, or the like.

Comment. Section 206.5 is amended to delete the references to a guardian of the parent since, under Division 4 of the Probate Code, a guardian may not be appointed for an adult.

18476

Civil Code § 1242 (technical amendment)

SEC. ____ . Section 1242 of the Civil Code is amended to read:

1242. Except as provided in Chapter 2a (~~commencing with Section 1435.1~~) Division 4 12 (commencing with Section 2250) of Division 5 of the Probate Code where one or more spouses is incompetent, and except in the case of a married person's separate homestead, the homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife or unless each spouse executes and acknowledges a separate instrument so conveying or encumbering the homestead in favor of the same party or his successor in interest; provided, however, that a conveyance of the homestead between husband and wife need be executed and acknowledged only by the spouse conveying, and unless the one conveying expressly reserves his homestead rights, the spouse to whom the conveyance is made may convey or encumber the homestead property in the same manner and to the same extent as though no homestead had been declared.

Comment. Section 1242 is amended to reflect the recodification of former Chapter 2A of Division 4 of the Probate Code as Chapter 12 of Division 5 of that code.

Civil Code § 1243 (technical amendment)

SEC. ____ . Section 1243 of the Civil Code is amended to read:

1243. Except as provided in Chapter 2A ~~(commencing with Section 1435-1)~~ of Division 4 10 (commencing with Section 2250) of Division 5 of the Probate Code where one or both spouses are incompetent, a homestead can be abandoned only by:

1. A declaration of abandonment executed and acknowledged by the husband and wife, jointly or by separate instruments, if the claimant is married.

2. A declaration of abandonment or a conveyance by the claimant if unmarried.

3. A declaration of abandonment or a conveyance by the grantee named in a conveyance by which one spouse conveys the homestead to the other spouse without expressly reserving his homestead rights.

4. A conveyance or conveyances by both spouses as provided in Section 1242.

5. A declaration of abandonment or a conveyance by the claimant alone in the case of a married person's separate homestead.

Comment. Section 1243 is amended to reflect the recodification of former Chapter 2A of Division 4 of the Probate Code as Chapter 12 of Division 5 of that code.

Civil Code § 2939-1/2 (amended)

SEC. ____ . Section 2939-1/2 of the Civil Code is amended to read:

2939-1/2. Foreign executors, ~~administrators and guardians~~ administrators, guardians, and conservators may satisfy mortgages upon the records of any county in this state, upon producing and recording in the office of the county recorder of the county in which such mortgage is recorded, a duly certified and authenticated copy of their letters testamentary, or of ~~administration or of guardianship~~, administration, guardianship, or conservatorship, and which certificate or authentication shall also recite that said letters have not been revoked.

Comment. Section 2939-1/2 is amended to add the references to conservators and conservatorship.

Civil Code § 4510 (amended)

SEC. ____ . Section 4510 of the Civil Code is amended to read:

4510. (a) A marriage may be dissolved on the grounds of incurable insanity only upon proof, including competent medical or psychiatric testimony, that the insane spouse was at the time the petition was filed, and remains, incurably insane.

(b) No decree granted on this ground shall relieve a spouse from any obligation imposed by law as a result of the marriage for the support of the spouse who is incurably insane, and the court may make such order for support, or require a bond therefor, as the circumstances require.

(c) If the insane spouse has a ~~general~~ guardian or ~~guardian of his conservator of the person~~, other than the spouse bringing the action, the petition and summons shall be served upon the insane spouse and such guardian ~~and he or conservator~~. ~~The guardian or conservator shall defend and protect the interests of the insane spouse. If the insane spouse has no general guardian or guardian of his conservator of the person, or if the spouse bringing the action is the general guardian or guardian of his conservator of the person, the court shall appoint a guardian ad litem, who may be the district attorney or the county counsel, if any, to defend and protect the interests of the insane spouse. If a district attorney or county counsel is appointed guardian ad litem pursuant to this paragraph, his subdivision, the successor in the office of district attorney or county counsel, as the case may be, succeeds him as guardian ad litem, without further action by the court or parties.~~

Comment. Section 4510 is amended to add the references to a conservator of the person of an insane spouse and to delete the references to a guardian of the person. The term "general guardian" includes a guardian of the person. Prob. Code § 1402. Other technical revisions are also made.

Civil Code § 5128 (technical amendment)

SEC. ____ Section 5128 of the Civil Code is amended to read:

5128. Where one or both of the spouses are incompetent, the procedure for dealing with and disposing of community property is that prescribed in Chapter 2a (commencing with Section 1435.1) of Division 4 12 (commencing with Section 2250) of Division 5 of the Probate Code.

Comment. Section 5128 is amended to reflect the recodification of former Chapter 2A of Division 4 of the Probate Code as Chapter 12 of Division 5 of that code.

Code of Civil Procedure § 153 (amended)

SEC. ____ Section 153 of the Code of Civil Procedure is amended to read:

153. Except as otherwise expressly provided by law, the seal of a court need not be affixed to any proceeding therein, or to any document, except:

1. To a writ;
2. To a summons;
3. To a warrant of arrest;
4. To the certificate of probate of a will or of the appointment of an executor, administrator, ~~or guardian~~ guardian, or conservator.

Comment. Section 153 is amended to add the certificate of appointment of a conservator to the exceptions stated in subdivision 4.

Note. This would impose a new requirement.

Code of Civil Procedure § 166 (amended)

SEC. ____ Section 166 of the Code of Civil Procedure is amended to read:

166. The judge or judges of the superior, municipal and justice courts may, at chambers, in the matters within the jurisdiction of their respective courts.

1. Grant all orders and writs which are usually granted in the first instance upon an ex parte application, and may, at chambers, hear

and dispose of such orders and writs; and may also, at chambers, appoint appraisers, receive inventories and accounts to be filed, suspend the powers of executors, administrators, ~~or guardians~~ guardians, or conservators in the cases allowed by law, grant special letters of administration ~~or guardianship~~, and temporary letters of guardianship or conservatorship, approve claims and bonds, and direct the issuance from the court of all writs and process necessary in the exercise of their powers in matters of ~~probate~~; probate.

2. Hear and determine all motions made pursuant to Sections 657 or 663 ~~of this code~~; 663.

3. Hear and determine all uncontested actions, proceedings, demurrers, motions, petitions, applications, and other matters pending before the court other than actions for ~~divorce, maintenance or annulment of dissolution of marriage, for legal separation, or for a judgment of nullity of the marriage~~, and except also applications for confirmation of sale of real property in probate proceedings.

A ~~judge~~, judge may, out of court, anywhere in the ~~State~~, state, exercise all the powers and perform all the functions and duties conferred upon a judge as contradistinguished from the court, or which a judge may exercise or perform at chambers.

Comment. Section 166 is amended to add authority for the judge to suspend the powers of a conservator and to issue temporary letters of conservatorship. See Prob. Code §§ 1952, 2201-2202. Other technical revisions are also made.

28276

Code of Civil Procedure § 170 (amended)

SEC. ____ . Section 170 of the Code of Civil Procedure is amended to read:

170. No justice or judge shall sit or act as such in any action or proceedings:

1. To which he is a party; or in which he is interested other than as a holder or owner of any capital stock of a corporation, or of any bond, note or other security issued by a corporation;

2. In which he is interested as a holder or owner of any capital stock of a corporation, or of any bond, note or other security issued by a corporation;

3. When he is related to either party, or to an officer of a corporation, which is a party, or to an attorney, counsel, or agent of either party, by consanguinity or affinity within the third degree computed according to the rules of law, or when he is indebted, through money borrowed as a loan, to either party, or to an attorney, counsel or partner of either party, or when he is so indebted to an officer of a corporation or unincorporated association which is a party; provided, however, that if the parties appearing in the action and not then in default, or the petitioner in any probate proceeding, or the executor, or administrator of the estate, or the guardian ~~of the minor or incompetent person, or conservator,~~ or the commissioner, or the referee, or the attorney for any of the above named, or the party or his attorney in all other or special proceedings, shall sign and file in the action or matter, a stipulation in writing waiving the disqualification mentioned in this subdivision or in subdivision 2 or 4 hereof, the judge or court may proceed with the trial or hearing and the performance of all other duties connected therewith with the same legal effect as if no such disqualification existed;

4. When, in the action or proceeding, or in any previous action or proceeding involving any of the same issues, he has been attorney or counsel for any party; or when he has given advice to any party upon any matter involved in the action or proceeding; or when he has been retained or employed as attorney or counsel for any party within two years prior to the commencement of the action or proceeding;

5. When it is made to appear probable that, by reason of bias or prejudice of such justice or judge a fair and impartial trial cannot be had before him.

Whenever a judge or justice shall have knowledge of any fact or facts, which, under the provisions of this section, disqualify him to sit or act as such in any action or proceeding pending before him, it shall be his duty to declare the same in open court and cause a memorandum thereof to be entered in the minutes or docket. It shall thereupon be the duty of the clerk, or the judge if there be no clerk, to transmit forthwith a copy of such memorandum to each party, or his attorney, who shall have appeared in such action or proceeding, except

such party or parties as shall be present in person or by attorney when the declaration shall be made.

In justice courts when, before the trial, either party makes and files an affidavit that he believes that he cannot have a fair and impartial trial before the judge before which the action is pending, by reason of the interest, prejudice or bias of the judge, the court may order the transfer of the action, and the provisions of Section 398 shall apply to such transfer.

Whenever a judge of a court of record who shall be disqualified under the provisions of this section, to sit or act as such in any action or proceeding pending before him, neglects or fails to declare his disqualification in the manner hereinbefore provided, any party to such action or proceeding who has appeared therein may present to the court and file with the clerk a written statement objecting to the hearing of such matter or the trial of any issue of fact or law in such action or proceeding before such judge, and setting forth the fact or facts constituting the ground of the disqualification of such judge. Copies of such written statement shall forthwith be served by the presenting party on each party, or his attorney, who has appeared in the action or proceeding and on the judge alleged in such statement to be disqualified.

Within 10 days after the filing of any such statement, or 10 days after the service of such statement as above provided, whichever is later in time, the judge alleged therein to be disqualified may file with the clerk his consent in writing that the action or proceeding be tried before another judge, or may file with the clerk his written answer admitting or denying any or all of the allegations contained in such statement and setting forth any additional fact or facts material or relevant to the question of his disqualifications. The clerk shall forthwith transmit a copy of the judge's consent or answer to each party or his attorney who shall have appeared in such action or proceeding. Every such statement and every such answer shall be verified by oath in the manner prescribed by Section 446 for the verification of pleadings. The statement of a party objecting to the judge on the ground of his disqualification, shall be presented at the earliest practicable opportunity, after his appearance and discovery of the facts constituting the

ground of the judge's disqualification, and in any event before the commencement of the hearing of any issue of fact in the action or proceeding before such judge.

No judge of a court of record, who shall deny his disqualification, shall hear or pass upon the question of his own disqualification; but in every such case, the question of the judge's disqualification shall be heard and determined by some other judge agreed upon by the parties who shall have appeared in the action or proceeding, or, in the event of their failing to agree, by a judge assigned to act by the Chairman of the Judicial Council, and, if the parties fail to agree upon a judge to determine the question of the disqualification, within five days after the expiration of the time allowed herein for the judge to answer, it shall be the duty of the clerk then to notify the Chairman of the Judicial Council of that fact; and it shall be the duty of the Chairman of the Judicial Council forthwith, upon receipt of notice from the clerk, to assign some other judge, not disqualified, to hear and determine the question.

If such judge admits his disqualification, or files his written consent that the action or proceeding be tried before another judge, or fails to file his answer within the 10 days herein allowed, or if it shall be determined after hearing that he is disqualified, the action or proceeding shall be heard and determined by another judge or justice not disqualified, who shall be agreed upon by the parties, or, in the event of their failing to agree, assigned by the Chairman of the Judicial Council; provided, however, that when there are two or more judges of the same court, one of whom is disqualified, the action or proceeding may be transferred to a judge who is not disqualified.

A judge who is disqualified may, notwithstanding his disqualification, request another judge, who has been agreed upon by the parties, to sit and act in his place.

6. In an action or proceeding brought in any court by or against the Reclamation Board of the State of California, or any irrigation, reclamation, levee, swamp-land or drainage district, or trustee, officer or employee thereof, affecting or relating to any real property, or an easement of right-of-way, levee, embankment, canal, or any work provided

for or approved by the Reclamation Board of the State of California, a judge of the superior court of the county, or a judge of the municipal court or justice court of the judicial district, in which such real property, or any part thereof, or such easement or right-of-way, levee, embankment, canal or work, or any part thereof is situated shall be disqualified to sit or act, and such action shall be heard and tried by some other judge assigned to sit therein by the Chairman of the Judicial Council, unless the parties to the action shall sign and file in the action or proceeding a stipulation in writing, waiving the disqualification in this subdivision of this section provided, in which case such judge may proceed with the trial or hearing with the same legal effect as if no such legal disqualification existed. If, however, the parties to the action shall sign and file a stipulation, agreeing upon some other judge to sit or act in place of the judge disqualified under the provisions of this subdivision, the judge agreed upon shall be called by the judge so disqualified to hear and try such action or proceeding; provided, that nothing herein contained shall be construed as preventing the judge of the superior court of such county, or of the municipal court of such judicial district, from issuing a temporary injunction or restraining order, which shall, if granted, remain in force until vacated or modified by the judge designated as herein provided.

7. When, as a judge of a court of record, by reason of permanent or temporary physical impairment, he is unable to properly perceive the evidence or properly conduct the proceedings.

8. Notwithstanding anything contained in subdivision 6 of this section, a judge of the superior court or a judge of the municipal court or justice court of the judicial district, in which any real property is located, shall not be disqualified to hear or determine any matter in which the opposing party shall have failed to appear within the time allowed by law, or as to such of the opposing parties who shall have failed to appear within the time allowed by law, and as to which matter or parties the same shall constitute purely a default hearing; provided, that nothing in this section contained shall be construed as preventing the judge of the superior court of such county from issuing an order for possession prior to judgment in proceedings in eminent domain.

Nothing in this section contained shall affect a party's right to a change of the place of trial in the cases provided for in Title 4 (commencing with Section 392) of Part 2 of this code.

Comment. Section 170 is amended to add the reference to conservator in subdivision 3.

28281

Code of Civil Procedure § 395.1 (amended)

SEC. ____ . Section 395.1 of the Code of Civil Procedure is amended to read:

395.1. When a defendant is sued in ~~his~~ an official capacity as executor, administrator, ~~guardian~~ guardian, conservator, or trustee, on a claim for the payment of money or for the recovery of personal property, the county which has jurisdiction of the estate which ~~he~~ the defendant represents shall be the proper county for the trial of the action.

Comment. Section 395.1 is amended to add the reference to conservator.

28282

Code of Civil Procedure § 602 (amended)

SEC. ____ . Section 602 of the Code of Civil Procedure is amended to read:

602. Challenges for cause may be taken on one or more of the following grounds:

(1) A want of any of the qualifications prescribed by this code to render a person competent as a juror.

(2) Consanguinity or affinity within the fourth degree to any party or to an officer of a corporation which is a party.

(3) Standing in the relation of, or being the parent, spouse, or child of one who stands in the relation of, guardian and ward, conservator and conservatee, master and servant, employer and clerk, or principal and agent, or debtor and creditor, to either party or to an officer of a corporation which is a party, or being a member of the family of either party; or a partner in business with either party; or

or surety on any bond or obligation for either party, or being the holder of bonds or shares of capital stock of a corporation which is a party; or having stood within one year previous to the filing of the complaint in the action in the relation of attorney and client with either party or with the attorney for either party. A depositor of a bank or a holder of a savings account in a savings and loan association shall not be deemed a creditor of such bank or savings and loan association for the purpose of this subsection solely by reason of his being such a depositor or account holder.

(4) Having served as a juror in a civil action or been a witness on a previous trial between the same parties, for the same cause of action; or having served as a juror within one year previously in any civil action or proceeding in which either party was plaintiff or defendant.

(5) Interest on the part of the juror in the event of the action, or in the main question involved in the action, except his interest as a member or citizen or taxpayer of a county, city and county, incorporated city or town, or other political subdivision of a county, or municipal water district.

(6) Having an unqualified opinion or belief as to the merits of the action founded upon knowledge of its material facts or of some of them.

(7) The existence of a state of mind in the juror evincing enmity against or bias to either party.

(8) That he is a party to an action pending in the court for which he is drawn and which action is set for trial before the panel of which he is a member.

Comment. Section 602 is amended to add the reference to conservator and conservatee in subdivision (3).

26283

Code of Civil Procedure § 641 (amended)

SEC. ____ Section 641 of the Code of Civil Procedure is amended to read:

641. A party may object to the appointment of any person as referee, on one or more of the following grounds:

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror;

2. Consanguinity or affinity, within the third degree, to either party, or to an officer of a corporation which is a party, or to any judge of the court in which the appointment shall be made;

3. Standing in the relation of guardian and ward, conservator and conservatee, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or security on any bond or obligation for either party;

4. Having served as a juror or been a witness on any trial between the same parties for the same cause of action;

5. Interest on the part of such person in the event of the action, or in the main question involved in the action;

6. Having formed or expressed an unqualified opinion or belief as to the merits of the action;

7. The existence of a state of mind in such person evincing enmity against or bias to either party.

Comment. Section 641 is amended to add the reference to conservator and conservatee in subdivision 3.

28284

Code of Civil Procedure § 732 (amended)

SEC. ____ . Section 732 of the Code of Civil Procedure is amended to read:

732. If a guardian, conservator, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him such person therefor, in which action there may be judgment for treble damages.

Comment. Section 732 is amended to add the reference to conservator.

28285

Code of Civil Procedure § 751.09 (amended)

SEC. ____ . Section 751.09 of the Code of Civil Procedure is amended to read:

751.09. At the time of filing the complaint the plaintiff shall file with it ~~his~~ an affidavit fully and explicitly setting forth and showing:

(a) The character of ~~his~~ the plaintiff's estate, right, title, interest, or claim in, and possession of, the property, the period it has existed, and from whom obtained.

(b) Whether or not ~~he~~ the plaintiff has ever made any conveyance of all or any part of the property, or any interest therein, and if so when and to whom, and a statement of any and all subsisting mortgages, deeds of trust, and other liens thereon.

(c) That ~~he~~ the plaintiff does not know and has never been informed of any other person who claims or who may claim any interest in or lien upon all or any part of the property adversely to ~~him,~~ the plaintiff, or if ~~he~~ the plaintiff does know or has been informed of any such person, the name and address of such person.

If the plaintiff is unable to state any of the required matters, ~~he~~ the plaintiff shall set forth and show fully and explicitly the reasons for such inability. Such affidavit shall constitute a part of the judgment-roll. If the plaintiff is a corporation, the affidavit shall be made by an officer thereof. If the plaintiff is a person under ~~guardianship,~~ guardianship or conservatorship, the affidavit shall be made by ~~his guardian,~~ the guardian or conservator.

Comment. Section 751.09 is amended to add the references to conservator and conservatorship.

28286

Code of Civil Procedure § 751.21 (amended)

SEC. _____. Section 751.21 of the Code of Civil Procedure is amended to read:

751.21. An executor, administrator, guardian, conservator, or other person holding the possession of property in the right of another may maintain as plaintiff, and may appear and defend in any action provided for by this chapter.

Comment. Section 751.21 is amended to add the reference to conservator.

Code of Civil Procedure § 751.28 (amended)

SEC. ____ . Section 751.28 of the Code of Civil Procedure is amended to read:

751.28. An executor, administrator, guardian, conservator, or other person holding the possession of property in the right of another, may make, sign, verify, and file for record the notice and affidavit provided for in this chapter on behalf of the estate or interest which he such person represents.

Comment. Section 751.28 is amended to add the reference to conservator.

Code of Civil Procedure § 1018 (amended)

SEC. ____ . Section 1018 of the Code of Civil Procedure is amended to read:

1018. (a) Every foreign corporation and nonresident individual who either incurs any liability to the State of California under any tax law of the ~~State~~ state or who is a guardian, conservator, receiver, or fiduciary of any individual, estate or trust, or corporation, or a member of a partnership, incurring any such liability, shall file with the Secretary of State a designation of a natural person, stating his residence or business address in this ~~State~~, state, as its or his agent for the purpose of service of process in any action to enforce such liability in the courts of this ~~State~~, state, and the delivery to such agent of a copy of any process in any such action shall constitute valid service on such foreign corporation, nonresident, individual, fiduciary or partner. A copy of such designation, certified by the Secretary of State, is sufficient evidence of the appointment of such agent for service of process. Such foreign corporation or nonresident individual shall file with the Secretary of State notice of any change of address of the person thus designated, and may revoke any such designation by filing notice of the revocation thereof with the Secretary of State.

(b) Every resident individual who incurs any liability to the State of California under any tax law of the ~~State~~ state or who is a guardian, conservator, receiver, or fiduciary of any individual, estate or trust,

or corporation, or member of a partnership, incurring any such liability, who hereafter leaves the ~~State~~ state for a period of longer than one year, or is hereafter absent from the ~~State~~ state for a period longer than one year, and who is or was a resident at the time of leaving the ~~State,~~ state, shall file with the Secretary of State a designation of a natural person, stating his residence or business address in this ~~State,~~ state, as its or his agent for the purpose of service of process in any action to enforce such liability in the courts of this ~~State,~~ state, and the delivery to such agent of a copy of any process in any such action shall constitute valid service on such individual. A copy of such designation, certified by the Secretary of State, is sufficient evidence of the appointment of such agent for service of process. Such individual shall file with the Secretary of State notice of any change of address of the person thus designated, and may revoke any such designation by filing notice of the revocation thereof with the Secretary of State.

(c) In the event that no agent designated in accordance with the provisions of this section can be found with due diligence at the address given, or if the agent so designated be no longer authorized to act, or if no person has been designated, and if personal service of process upon the corporation or individual within this ~~State~~ state cannot be made with the exercise of due diligence, then service shall be made by delivery of the process to the Secretary of State or to an assistant or deputy secretary of state, and such service shall be a sufficient service on said corporation or individual subject to compliance with subsection (d) hereof. The making and filing of an affidavit or affidavits in the action or proceeding showing what effort was made or action taken to comply with the above requirements of due diligence and the making of an order of the court in which said action or proceeding is pending finding that due diligence has been exercised and directing service of summons as herein provided, shall be sufficient proof of the fact of such exercise of due diligence.

(d) In the event of service of process under subsection (c) hereof, there shall be delivered to the Secretary of State by the attorney

representing the State state a statement of the address of the corporation or individual to which or to whom notice, and a copy of the summons and complaint, shall be sent. Upon the receipt of such summons and complaint the Secretary of State forthwith shall give notice to the corporation or individual by telegraph, charges prepaid, to the address given in the statement delivered to the Secretary of State at the time of such service, of the service of the summons and complaint and shall forward to such corporation or individual by registered mail, a copy of such summons and complaint. Personal service of such notice and a copy of such summons and complaint upon the corporation or individual wherever found outside this State state shall be the equivalent of said mailing.

(e) Proof of compliance with subsection (d) hereof shall be made in the event of service by mail by certificate of the Secretary of State, under his official seal, showing said mailing, together with the defendant's return receipt. Such certificate and receipt shall be appended to the original summons which shall be filed with the court from out of which such summons issued within such time as the court may allow for the return of such summons. In the event of personal service outside this State state such compliance may be proved by the return of any duly constituted public officer, qualified to serve like process of and in the State state or jurisdiction where the defendant is found, showing such service to have been made. Such return shall be appended to the original summons which shall be filed as aforesaid.

(f) Service made under this section shall have the same legal force and validity as if service had been made personally in this State; state; provided, however, that the defendant may appear and answer the complaint within 30 days from the date of service.

(g) The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

(h) The Secretary of State shall keep a record of all process served upon him and shall record therein the time of such service and his action in respect thereto.

(i) If any clause, sentence, paragraph, or part of this section shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this section, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Comment. Section 1016 is amended to add the reference to conservator in subdivisions (a) and (b).

28291

Code of Civil Procedure § 1700.3 (amended)

SEC. ____ . Section 1700.3 of the Code of Civil Procedure is amended to read:

1700.3. "Fiduciary" includes guardians, conservators, executors, administrators, and trustees of trusts, testamentary or created inter vivos.

Comment. Section 1700.3 is amended to add the reference to conservators.

28294

Code of Civil Procedure § 1704 (amended)

SEC. ____ . Section 1704 of the Code of Civil Procedure is amended to read:

1704. In all cases where notice of hearing of a petition for substitution of fiduciaries, or suspension or delegation of the functions of a fiduciary or consultant, or for resumption of these functions is required to be given pursuant to this chapter, the clerk shall set the petition for hearing and shall post notice of the time and place of hearing in three public places in the county at least 10 days before the time set for the hearing.

At least 10 days before the time set for hearing, the petitioner shall cause further notice thereof to be given as follows:

(a) Notice shall be mailed, except as prohibited by federal statute or governmental order or regulation:

(1) To each fiduciary, including consultants if any, who does not join in the petition.

(2) In case of probate estates, to the persons enumerated in the second paragraph of Section 1200 of the Probate Code, in the manner there provided.

(3) In case of trusts, to each person receiving benefits under the trust, and to each person presumptively entitled in remainder, insofar as the addresses and identity of such persons are known to the petitioner or to the trustee. In the case of revocable or terminable trusts, notice shall be sufficient if mailed to the person having such right of revocation or termination.

(b) In the case of guardianships, guardianships or conservatorships, notice shall be given in the manner required by law upon settlement of a guardian's an account.

(c) In addition to the notice specified in subdivisions (a) and (b), in cases where the fiduciary or consultant engaged in war service is not the petitioner or where his written consent to the relief prayed for is not filed, notice served either personally or by mail, telegraph or cable shall be given to such fiduciary or consultant, unless the court finds that such notice is impracticable because his whereabouts are unknown and cannot reasonably be ascertained, or because of impossibility or difficulty of communicating with him.

(d) In all cases mentioned in this section, such additional notice, if any, shall be given to parties in interest as the court may direct.

Comment. Section 1704 is amended to add the reference to conservatorships.

28295

Code of Civil Procedure § 1704.1 (amended)

SEC. 1704.1. Section 1704.1 of the Code of Civil Procedure is amended to read:

1704.1. In all cases where notice is required to be given the court shall inquire as to whether proper notice has been given, and a finding as to the giving of due notice contained in the court's order when final shall be conclusive on the fiduciary or consultant, as the

case may be, and on all persons interested in the estate, trust, or guardianship, or conservatorship, unless modified or vacated on equitable grounds by a court of competent jurisdiction.

Comment. Section 1704.1 is amended to add the reference to conservatorship.

29296

Code of Civil Procedure § 1913 (amended)

SEC. _____. Section 1913 of the Code of Civil Procedure is amended to read:

1913. The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding, and except, also, that the authority of a ~~guardian~~ guardian, conservator, or committee, or of an executor or administrator, does not extend beyond the jurisdiction of the government under which ~~he~~ such person was invested with ~~his~~ authority.

Comment. Section 1913 is amended to add the reference to conservator. The amendment is not intended to affect prior case law with respect to the application of this section to the scope of the powers of a guardian, executor, or administrator. See, e.g., In re Estate of Boutz, 24 Cal. App.2d 644, 648, 76 P.2d 154, ____ (1938) (California guardian may deal with out-of-state personal property). See generally 24 Cal. Jur.2d, Guardian and Ward [§§ 186, ____, at 370] (1955).

28768

Code of Civil Procedure § 1953.05 (amended)

SEC. _____. Section 1953.05 of the Code of Civil Procedure is amended to read:

1953.05. The record in all cases where the proceeding is in rem, including probate, guardianship, conservatorship, and insolvency proceedings, may be supplied in like manner upon like notice to all persons who have appeared therein, and upon notice by publication or postings for not less than 10 days, as the court may order, to all persons who have not appeared. When restored the record shall have the same effect as the original upon all persons who have been personally served with notice of the application, and as to all other persons it shall be prima facie evidence of the contents of the original.

Comment. Section 1953.05 is amended to add the reference to conservatorship.

Corporations Code § 413 (amended)

SEC. _____. Section 413 of the Corporations Code is amended to read:

413. A person holding shares as pledgee, executor, administrator, guardian, conservator, trustee, receiver or in any representative or fiduciary capacity is not personally liable for any unpaid balance of the subscription price of the shares because the shares are so held but the estate and funds in the hands of such fiduciary or representative are liable and the shares are subject to sale therefor.

Comment. Section 413 is amended to add the reference to conservator.

Corporations Code § 605 (amended)

SEC. _____. Section 605 of the Corporations Code is amended to read:

605. (a) For the purpose of determining whether a corporation has outstanding shares held of record by 100 or more persons, shares shall be deemed to be "held of record" by each person who is identified as the owner of such shares on the record of shareholders maintained by or on behalf of the corporation, subject to the following:

(1) In any case where the record of shareholders has not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on such record if it had been maintained in accordance with accepted practice shall be included as a holder of record.

(2) Shares identified as held of record by a corporation, a partnership, a trust, whether or not the trustees are named, or other organization shall be included as so held by one person.

(3) Shares identified as held of record by one or more persons as trustees, executors, guardians, conservators, custodians or in other fiduciary capacities with respect to a single trust, estate or account shall be included as held of record by one person.

(4) Shares held by two or more persons as co-owners shall be included as held by one person.

(5) Shares registered in substantially similar names, where the corporation (or other person soliciting proxies) has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.

(b) Notwithstanding subdivision (a):

(1) Shares held, to the knowledge of the corporation (or other person soliciting proxies), subject to a voting trust, deposit agreement or similar arrangement shall be included as held of record by the recordholders of the voting trust certificates, certificates of deposit, receipts or similar evidences of interest in such securities, provided, however, that the corporation (or other person soliciting proxies) may rely in good faith on such information as is received in response to its request from a nonaffiliated issuer of the certificates or evidences of interest.

(2) If the corporation (or other person soliciting proxies) knows or has reason to know that the form of holding shares of record is used primarily to circumvent the provisions of this section, the beneficial owners of such shares shall be deemed to be the record owners thereof.

Comment. Section 605 is amended to add the reference to conservators in paragraph (3) of subdivision (a).

28771

Penal Code § 1074 (amended)

SEC. ____ . Section 1074 of the Penal Code is amended to read:

1074. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

2. Standing in the relation of guardian and ward, conservator and conservatee, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages.

3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information.

5. Having served on a trial jury which has tried another person for the offense charged.

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it.

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

8. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

Comment. Section 1074 is amended to add the reference to conservator and conservatee in subdivision 2.

09931

Financial Code § 764 (amended)

SEC. ____ . Section 764 of the Financial Code is amended to read:

764. Any court having jurisdiction of any estate in process of administration or of any other proceeding on application of any person interested therein and after a hearing on such notice as the court may direct or without notice if all parties in interest consent thereto, may order any executor, administrator, guardian, conservator, assignee, receiver, depository, or trustee, whether such officer or trustee has qualified as such or not, to deposit with any bank or trust company any money then in his hands or under his control or which may thereafter come into his hands until the further order of the court. Upon such deposit being made and while such moneys remain on deposit with such bank or trust company, the officer or trustee making the deposit shall be relieved of all responsibility therefor, and the court by order shall

reduce the bond to be given or theretofore given by such officer or trustee so as to cover only the estate remaining in his hands. The money so deposited shall be held by the bank or trust company under the direction of the court and shall be repaid only on order of the court. If the amount sought to be deposited in any one bank does not exceed the amount which will be covered by insurance of the Federal Deposit Insurance Corporation an order for deposit hereunder may be made ex parte without notice or hearing.

Comment. Section 764 is amended to add the reference to conservator.

09932

Financial Code § 2057 (amended)

SEC. ____ . Section 2057 of the Financial Code is amended to read:

2057. Upon the approval by the superintendent of an agreement of purchase and sale he shall fix a time when such approval shall be effective and at such time the purchasing bank or trust company ipso facto and by operation of law and without further transfer, substitution, act, or deed succeeds to all rights, obligations, properties, assets, investments, deposits, demands, and agreements covered by the agreement, and to all trusts of the selling bank or of the business or branch sold or of the branch business sold and to all properties, assets, investments, agreements, rights, and obligations of the selling bank or trust company under all trusts, executorships, administrations, guardianships, conservatorships, agencies, and all other fiduciary or representative capacities to the same extent as though it had originally assumed, acquired, or owned the same and succeeds to and is entitled to take and execute the appointment of all executorships, trusteeships, guardianships, conservatorships, and other fiduciary and representative capacities to which the selling bank or trust company may be named or is thereafter named in wills, whenever probated, or to which it is or may be named or appointed by any other instrument.

Comment. Section 2057 is amended to add the references to conservatorships.

Financial Code § 2073 (amended)

SEC. ____ . Section 2073 of the Financial Code is amended to read:

2073. Whenever any bank qualified to do a trust business or any trust company has been merged into a bank or trust company, the surviving bank or trust company ipso facto and by operation of law and without further transfer, substitution, act, or deed succeeds to the rights, properties, assets, investments, deposits, demands, agreements, and trusts of the constituent bank or trust company under all trusts, executorships, administrations, guardianships, conservatorships, agencies, and all other fiduciary or representative capacities to the same extent as though it had originally assumed the same and succeeds to and is entitled to take and execute the appointment to all executorships, trusteeships, guardianships, conservatorships, and other fiduciary and representative capacities to which the constituent corporation may be named or is thereafter named in wills, whenever probated, or to which it is or may be named or appointed by any other instrument.

Comment. Section 2073 is amended to add the references to conservatorships.

Financial Code § 2095 (amended)

SEC. ____ . Section 2095 of the Financial Code is amended to read:

2095. Whenever: (a) a national banking association authorized and qualified to conduct a trust business in this ~~State~~ state has been heretofore or is hereafter created by the conversion of a state bank likewise authorized and qualified; or (b) a state bank likewise authorized and qualified has been heretofore or is hereafter created by the conversion of a national banking association likewise authorized and qualified; or (c) one or more national banks likewise authorized and qualified has been heretofore or is hereafter merged or consolidated with one or more other national banking associations likewise authorized and qualified; or (d) one or more state banks likewise authorized and qualified consolidate with or merge into one or more national banking associations likewise authorized and qualified; or (e) one or more national

banking associations likewise authorized and qualified consolidate with or merge into one or more state banks likewise authorized and qualified, or (f) a national banking association authorized and qualified to conduct a trust business in this State ~~state~~ purchases or has purchased the trust business and assets of another national banking association or of a bank organized under the laws of this State, ~~state~~, the resulting or surviving state bank or national banking association, or the purchasing national banking association, as the case may be, ipso facto and by operation of law and without further transfer, substitution, act, or deed succeeds to the rights, obligations, properties, assets, investments, deposits, demands, agreements, and trusts of the former or selling state bank or national banking association under all trusts, executorships, administrations, guardianships, conservatorships, agencies, and under all other fiduciary or representative capacities to the same extent as though it had originally assumed the same and succeeds to and is entitled to take and execute the appointment to all executorships, trusteeships, guardianships, conservatorships, and other fiduciary or representative capacities to which the former or selling state bank or national banking association, as the case may be, is or may be named in wills, whenever probated, or to which the former or selling state bank or national banking association is or may be named or appointed by any other instrument.

Comment. Section 2095 is amended to add the references to conservatorships.

(19945

Financial Code § 3137 (amended)

SEC. ____ . Section 3137 of the Financial Code is amended to read:

3137. Persons holding stock as executors, administrators, guardians, conservators, or trustees, shall not be personally subject to any liabilities as stockholders, but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be if living and competent to act and hold the stock in his own name.

Comment. Section 3137 is amended to add the reference to conservators.

Financial Code § 6408.5 (technical amendment)

SEC. ____ . Section 6408.5 of the Financial Code is amended to read:

6408.5. Any court having jurisdiction of any estate in process of administration or of any other proceeding on application of any person interested therein and after a hearing on such notice as the court may direct or without notice if all parties in interest consent thereto, may order any executor, administrator, guardian, conservator of a natural person, assignee, receiver, depository, or trustee, whether such officer or trustee has qualified as such or not, to invest in an account in an insured savings and loan association any money then in his hands or under his control or which may thereafter come into his hands until the further order of the court. Upon such investment being made and while such moneys remain invested with such association, the officer or trustee making such investment shall be relieved of all responsibility therefor, and the court by order shall reduce the bond to be given or theretofore given by such officer or trustee so as to cover only the estate remaining in his hands. The money so invested shall be held by the association under the direction of the court and shall be repaid only on order of the court. If the amount sought to be invested in any one association does not exceed the amount which will be covered by insurance of the Federal Savings and Loan Insurance Corporation an order for investment hereunder may be made ex parte without notice or hearing. The term "account in an insured savings and loan association" used in this section has the same meaning as in Section ~~1431~~ 1510 of the Probate Code.

Comment. Section 6408.5 is amended to correct the cross-reference to the Probate Code section where "account in an insured savings and loan association" is defined.

Financial Code § 7605 (amended)

SEC. ____ . Section 7605 of the Financial Code is amended to read:

7605. Associations may issue shares and investment certificates to any person as ~~trustee or guardian~~ trustee, guardian, or conservator.

The association is not liable to beneficiaries or wards for money paid to their ~~trustees or guardians~~ trustees, guardians, or conservators on account of such shares or certificates.

Comment. Section 7605 is amended to add the references to conservator.

09948

Financial Code § 7606 (amended)

SEC. ____ . Section 7606 of the Financial Code is amended to read:

7606. When a person holding shares or investment certificates as ~~trustee or guardian~~ trustee, guardian, or conservator dies and no notice of the terms, revocation, or termination of the ~~trust or guardianship~~ trust, guardianship, or conservatorship is given in writing to the association, the withdrawal or other value of the shares or investment certificates or any part thereof may be paid to the beneficiary or ward. If no beneficiary or ward has been designated in writing to the association, the withdrawal or other value or any part thereof may be paid to the ~~trustee's or guardian's~~ executor or administrator, administrator of the trustee, guardian, or conservator. Such payment by any association is a valid and sufficient release and discharge of the association for the payment whether or not such payment is made to a minor.

Comment. Section 7606 is amended to add the references to conservator and conservatorship.

09949

Financial Code § 8452 (amended)

SEC. ____ . Section 8452 of the Financial Code is amended to read:

8452. Persons holding stock as executors, administrators, guardians, conservators, or trustees are not personally subject to any liabilities as stockholders, but the estates and funds in their hands are liable to the same extent as the testator, intestate, ward, or person interested in such trust funds would be if living and competent to act and hold such stock in his own name.

Comment. Section 8452 is amended to add the reference to conservators.

Financial Code § 11207 (amended)

SEC. ____ . Section 11207 of the Financial Code is amended to read:

11207. All shares issued by any duly chartered federal savings and loan association which is an "insured institution" as defined in Title IV of the National Housing Act, are legal investments for the funds of executors, administrators, guardians, conservators, trustees of every kind and nature, insurance companies, cemetery associations, and savings banks and are acceptable and may be used as security for the faithful performance of any public or private trust or obligation.

The provisions of this section are supplemental to any and all other acts regulating, relating to, or declaring what shall be legal investments for the funds of executors, administrators, guardians, conservators, receivers, trustees, or insurance companies, or for any of the other funds referred to therein.

Comment. Section 11207 is amended to add the references to conservators.

Government Code § 6102 (amended)

SEC. ____ . Section 6102 of the Government Code is amended to read:

6102. No fee shall be charged in proceedings for the appointment of a guardian or conservator for any persons receiving charity or relief under the laws of ~~the State~~ this state.

Comment. Section 6102 is amended to add the reference to conservator.

Government Code § 6107 (amended)

SEC. ____ . Section 6107 of the Government Code is amended to read:

6107. Neither the ~~State~~ state nor any county, or city, nor any public officer or body acting in his official capacity on behalf of the ~~State~~, state, any county, or city, including notaries public, shall demand or receive any fee or compensation for:

(a) Recording or indexing any discharge, certificate of service, certificate of satisfactory service, notice of separation or report of separation of any member of the armed forces of the United States.

(b) Issuing certified copies of such discharges, certificates of service, certificates of satisfactory service, reports of separation or notices of separation.

(c) Any service whatever rendered in the matter of a pension claim, application, affidavit, voucher, or any claim to be presented to the Administrator of Veterans' Affairs under the World War Veterans' Act, 1924.

(d) Furnishing a certified copy of any public record, or making the search for it, when it is to be used in a claim for pension, or a claim for allotment, allowance, compensation, insurance, automatic insurance, or otherwise under the World War Veterans' Act, 1924, or under any other act of Congress for service in the armed forces of the United States, or a claim for veterans' benefits under any law of this ~~State~~ state.

The services specified in this section shall be rendered on the request of a United States official, a claimant, or his ~~guardian~~ guardian, conservator, or attorney. An officer is liable on his official bond for every failure or refusal to render the services.

Comment. Section 6107 is amended to add the reference to conservator.

10030

Government Code § 6606 (amended).

SEC. ____ . Section 6606 of the Government Code is amended to read:

6606. The superintendent or warden may deposit any funds of inmates in his possession in any bank in the ~~State~~ state. With the consent of the owners of the funds or their guardians or conservators he may deposit the interest accruing on the funds in a special fund designated the "benefit fund" or "post fund."

Comment. Section 6606 is amended to add the reference to conservators.

Government Code § 6860 (amended)

SEC. ____ . Section 6860 of the Government Code is amended to read:

6860. Notwithstanding any restrictions on investments contained in any laws, farm loan bonds, consolidated farm loan bonds, collateral trust debentures, consolidated debentures, or other obligations issued under the Federal Farm Loan Act approved July 17, 1916, as amended (Title 12 U.S.C. Sections 636 to 1012 inclusive, and Sections 1021 to 1129 inclusive), the Farm Credit Act of 1933, as amended (Title 12 U.S.C. Sections 1131 to 1138f inclusive), and the Farm Credit Act of 1971 (Title 12 U.S.C. Sections 2001 to 2259 inclusive), are a lawful investment for all public funds, including but not limited to all funds of the state and of every local agency as defined by Section 53600 of this code, and for the funds of savings banks, insurance companies, executors, administrators, guardians, conservators, receivers, and trustees of every kind and nature. Whenever any bonds may by law be used as security for the performance of any act, such bonds and debentures may be so used. This section applies to farm loan bonds and consolidated farm loan bonds issued by federal land banks, consolidated collateral trust debentures and all other debentures issued by federal intermediate credit banks, debentures issued by the Central Bank for Cooperatives and consolidated debentures issued by banks for cooperatives. It is the purpose of this section to authorize any person, political subdivision, body, or officer, public or private, to use any funds owned or controlled by him or it, including sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any such bonds, debentures, or other obligations. Nothing in this section relieves any person from any duty of exercising reasonable care in selecting securities.

Comment. Section 6860 is amended to add the reference to conservators.

Government Code § 21382 (amended)

SEC. ____ . Section 21382 of the Government Code is amended to read:

21382. If the death benefit provided by Section 21361 is payable on account of a member's death which occurs under circumstances other than those described in subdivision (a)(5) of Section 21360, or if an allowance under Section 21365.5 is payable, (a) the surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 18 years of age, or are incapacitated because of disability which began before and has continued without interruption after attainment of such age, or if there is no such spouse, then (b) the guardian or conservator of surviving unmarried children, including stepchildren, of the member who are under 18 years of age or so incapacitated, if any, or (c) the surviving wife or surviving husband of the member, who does not qualify under (a) of this subdivision, if any, or if no such children under (b) or such spouse under (c), then (d) each surviving parent of the member, shall be paid regardless of the benefit provided by Section 21361, and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21365.5, the following applicable survivor allowance, under the conditions stated and from contributions of the state:

(1) A widow or a widower who was married to such member prior to the occurrence of the injury or onset of the illness which resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member under 18 years of age or so incapacitated, shall be paid three hundred sixty dollars (\$360) if there is one such child, or four hundred thirty dollars (\$430) per month if there are two or more such children. If there also are such children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, which is in excess of one hundred eighty dollars (\$180) per month, shall be divided equally among all such children and payments made to the spouse and other children, as the case may be.

(2) If there is no such surviving spouse, or if such surviving spouse dies or remarries, and if there are unmarried children, including stepchildren, of the deceased member under 18 years of age, or if there are such children not in the care of such spouse, such children shall be paid an allowance as follows:

(a) If there is only one such child, such child shall be paid one hundred eighty dollars (\$180) per month;

(b) If there are two such children, such children shall be paid three hundred sixty dollars (\$360) per month divided equally between them; and

(c) If there are three or more such children, such children shall be paid four hundred thirty dollars (\$430) per month divided equally among them.

(3) A widow or widower who has attained or attains the age of 62 years, and, with respect to both widow and widower, who was married to such member prior to the occurrence of the injury or onset of the illness which resulted in death, and has not remarried subsequent to the member's death, shall be paid one hundred eighty dollars (\$180) per month. No allowance shall be paid under this subdivision, while the surviving spouse is receiving an allowance under subdivision (1) of this section, or while an allowance is being paid under subdivision (2)(c) of this section. The allowance paid under this subdivision shall be seventy dollars (\$70) per month while an allowance is being paid under subdivision (2)(b) of this section.

(4) If there is no surviving spouse, or surviving children who qualify for a survivor allowance, or if such surviving spouse dies or remarries, or if such children reach age 18 or die or marry prior thereto, each of the member's dependent mother and father who has attained or attains the age of 62, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid one hundred eighty dollars (\$180) per month.

"Stepchildren", for purposes of this section, shall include only stepchildren of the member living with him in a regular parent-child relationship at the time of his death.

The amendments to this section enacted at the 1971 Regular Session shall apply only to survivor allowances payable for time commencing on the operative date of such amendments.

Comment. Section 21382 is amended to add the reference to conservator.

19036

Government Code § 21382.2 (amended)

SEC. ____ . Section 21382.2 of the Government Code is amended to read:

21382.2. If the death benefit provided by Section 21361 is payable on account of a state member's death which occurs under circumstances other than those described in subdivision (a)(5) of Section 21360, or if an allowance under Section 21365.5 is payable, (a) the surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 18 years of age, or are incapacitated because of disability which began before and has continued without interruption after attainment of such age, or if there is no such spouse, then (b) the guardian or conservator of surviving unmarried children, including stepchildren, of the member who are under 18 years of age or so incapacitated, if any, or (c) the surviving wife or surviving husband of the member, who does not qualify under (a) of this subdivision, if any, or if no such children under (b) or such spouse under (c), then (d) each surviving parent of the member, shall be paid regardless of the benefit provided by Section 21361, and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21365.5, the following applicable survivor allowance, under the conditions stated and from contributions of the state:

(1) A widow or a widower who was married to such member prior to the occurrence of the injury or onset of the illness which resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member under 18 years of age or so incapacitated, shall be paid four hundred fifty dollars (\$450) if there is one such child, or five hundred thirty-eight dollars (\$538) per month if there are two or more such children. If there also are such children who are not in the

care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, which is in excess of two hundred twenty-five dollars (\$225) per month, shall be divided equally among all such children and payments made to the spouse and other children, as the case may be.

(2) If there is no such surviving spouse, or if such surviving spouse dies or remarries, and if there are unmarried children, including stepchildren, of the deceased member under 18 years of age, or if there are such children not in the care of such spouse, such children shall be paid an allowance as follows:

(a) If there is only one such child, such child shall be paid two hundred twenty-five dollars (\$225) per month;

(b) if there are two such children, such children shall be paid four hundred fifty dollars (\$450) per month divided equally between them; and

(c) If there are three or more such children, such children shall be paid five hundred thirty-eight dollars (\$538) per month divided equally among them.

(3) A widow who has attained or attains the age of 62 years, or a widower who has attained or attains the age of 65 years, and, with respect to both widow and widower, who was married to such member prior to the occurrence of the injury or onset of the illness which resulted in death, and has not remarried subsequent to the member's death, shall be paid two hundred twenty-five dollars (\$225) per month. No allowance shall be paid under this subdivision, while the surviving spouse is receiving an allowance under subdivision (1) of this section, or while an allowance is being paid under subdivision (2)(c) of this section. The allowance paid under this subdivision shall be eighty-eight dollars (\$88) per month while an allowance is being paid under subdivision (2)(b) of this section.

(4) If there is no surviving spouse, or surviving children who qualify for a survivor allowance, or if such surviving spouse dies or remarries, or if such children reach age 18 or die or marry prior thereto, each of the member's dependent mother and father who has attained or attains the age of 62 or 65 years respectively, and who received at

least one-half of his support from the member at the time of the member's death, shall be paid two hundred twenty-five dollars (\$225) per month.

"Stepchildren", for purposes of this section, shall include only stepchildren of the member living with him in a regular parent-child relationship at the time of his death.

This section shall apply to beneficiaries receiving allowances on July 1, 1975, as well as to beneficiaries with respect to the death of a state member occurring on or after July 1, 1975.

Notwithstanding Section 20019.1, this section shall not apply to school members.

Comment. Section 21382.2 is amended to add the reference to conservator.

10039

Government Code § 39585 (amended)

SEC. ____ . Section 39585 of the Government Code is amended to read:

39585. The legislative body may order refunded all or part of a tax paid pursuant to this article if it finds that all or part of the tax has been erroneously levied. A tax or part shall not be refunded unless a claim is filed with the clerk of the legislative body on or before November 1st after the tax became due and payable. The claim shall be verified by the person who paid the tax, or ~~his~~ the person's guardian, conservator, executor, or administrator.

Comment. Section 39585 is amended to add the reference to conservator.

10040

Government Code § 56050 (amended)

SEC. ____ . Section 56050 of the Government Code is amended to read:

56050. "Legal representative" means: an officer of a corporation duly authorized, by the bylaws or a resolution of the board of directors of such corporation, to sign for and on behalf of the corporation; and a guardian, conservator, executor, administrator or other person holding

property in a trust capacity under appointment of court, when authorized by an order of court, which order may be made without notice.

Comment. Section 56050 is amended to add the reference to conservator.

10041

Government Code § 69649 (amended)

SEC. ____ . Section 69649 of the Government Code is amended to read:

69649. When a majority of the judges of the superior court deem it necessary or advisable, by order filed with the county clerk and published as they may prescribe, they may direct that a session of the court be held at least once a week at any designated place in a district, not less than 30 miles distant from the nearest regular location of the sessions of the superior court in that district, measured by airline. The majority of the judges may limit the type of judicial proceedings which may be heard by the court at such place to probate, ~~guardianship~~ guardianship, conservatorship, and domestic relations matters, including but not limited to orders to show cause proceedings in domestic relations matters.

Comment. Section 69649 is amended to add the reference to conservatorship.

10042

Government Code § 70015 (amended)

SEC. ____ . Section 70015 of the Government Code is amended to read:

70015. In addition to a fee or fees required by any other law or laws, a fee of thirteen dollars (\$13) shall be paid to the county clerk of such a county by each party, or jointly by parties appearing jointly in each of the following instances:

(a) Where Section 26821.2 of the Government Code requires such party or parties to pay the court clerk a fee for the filing of the first paper in a civil action or in a special proceeding, except in an appeal from an inferior court.

(b) Where Sections 26822 to 26825, inclusive, of the Government Code require such party or parties to pay the county clerk a fee for

filing papers transmitted from another court on the transfer of a civil action or special proceeding from another court, except in an appeal from an inferior court.

(c) Where Section 26826.2 of the Government Code requires such party or parties to pay the county clerk a fee for the appearance in a civil action or special proceeding of a defendant, intervenor, respondent, ~~correspondent~~ correspondent or adverse party, except in an appeal from an inferior court; provided, however, if any of the parties named in this paragraph shall appear jointly they shall pay but such additional fee of thirteen dollars (\$13) as in this section provided.

(d) Where Section 26827.2 of the Government Code requires such party or parties to pay the county clerk a fee for the filing of a petition or other paper in a ~~probate or guardianship~~ probate, guardianship, or conservatorship matter.

Comment. Section 70015 is amended to add the reference to conservatorship in subdivision (d).

Note. Section 70015 was last amended in 1970 to put in subdivision (d) the reference to Section 26827.2. At the time of that amendment, Section 26827.2 referred (as it does now) to the filing fee for "letters of guardianship, or letters of conservatorship." Thus, it is possible that the omission in Section 70015 of any reference to a "conservatorship matter" was intentional.

10043

Government Code § 70053 (amended)

SEC. ____ . Section 70053 of the Government Code is amended to read:

70053. In addition to fees required by other laws, each party shall, or the parties appearing jointly shall jointly, pay the county clerk of the county the fee specified in Sections 70054 to 70059, inclusive, in each of the following instances:

(a) Where Section 26821 requires the party or parties to pay the clerk a fee for the filing of the first paper in a civil action or in a special proceeding, except in an appeal from an inferior court.

(b) Where Sections 26822 to 26825, inclusive, require the party or parties to pay the clerk a fee for filing papers transmitted from another court on the transfer of a civil action or special proceeding from another court, except in an appeal from an inferior court. This subdivision does not apply to a county with a population of 70,000 or less by the 1940 census, or over 295,000 and under 500,000 by the 1950 census.

(c) Where Section 26822 requires the party or parties to pay the clerk a fee for filing papers transmitted from another court on the transfer of a civil action or special proceeding from another court, except in an appeal from an inferior court. This subdivision applies only to a county with a population of 70,000 or less by the 1940 federal census, or over 295,000 and under 500,000 by the 1950 federal census.

(d) Where Section 26826 requires the party or parties to pay the clerk a fee on the appearance in a civil action or special proceeding of a defendant, intervenor, respondent, correspondent, or adverse party, except in an appeal from an inferior court. If any of such parties appear jointly they shall pay but one such additional fee of three dollars (\$3), four dollars (\$4), five dollars (\$5), or six dollars and fifty cents (\$6.50) as determined by Sections 70054 to 70059, inclusive.

(e) Where Section 26827 requires the party or parties to pay the clerk a fee for the filing of a petition or other paper in a ~~probate~~ probate, guardianship, or conservatorship matter.

Comment. Section 70053 is amended to add the reference to conservatorship in subdivision (e).

Note. Section 70053 was last amended in 1955 prior to the enactment of the conservatorship statute. Thus, no inference may be drawn that the omission from subdivision (e) of any reference to conservatorship was intentional.

10165

Health & Safety Code § 416.23 (amended)

SEC. ____ . Section 416.23 of the Health and Safety Code is amended to read:

416.23. This article does not authorize the care, treatment, or supervision or any control over any developmentally disabled person without the written consent of ~~his parent or guardian~~ the person's parent, guardian, or conservator.

Comment. Section 416.23 is amended to add the reference to conservator.

Health & Safety Code § 1453 (amended)

SEC. ____ . Section 1453 of the Health and Safety Code is amended to read:

1453. The board of supervisors of any county in connection with the administration of any county hospital may establish in the county treasury a special fund to be known as the "patients' personal deposit fund." When such fund is established, any patient in such hospital may request the superintendent thereof to deposit in said fund any moneys belonging to such patient. Upon any such request by any patient any moneys belonging to him shall be deposited in the name of that patient in said patients' personal deposit fund, except that if a guardian or conservator of the estate is appointed for any such patient, then said guardian or conservator shall have the right to demand and receive such moneys or to withdraw either in whole or in part the moneys theretofore deposited in said fund in the name of any such patient. Any of the funds belonging to a patient deposited in the patients' personal deposit fund may be used for the purchase of personal incidentals for the patient or otherwise used for the personal needs and benefits of said patient upon his request. At the time of the discharge from the hospital of any patient there shall be refunded to him upon the order of the superintendent the balance of any moneys standing to the credit of such patient in said fund.

Prior to the time of the discharge of any patient, upon the demand of the patient there shall be refunded to him upon the order of the superintendent the whole or any portion of the balance of any moneys standing to the credit of such patient in said fund. Upon such demand of the patient, or upon the discharge of the patient from the hospital, or upon the demand of the guardian or conservator of the estate of the patient, the superintendent shall order the refund to the patient or the payment to such guardian or conservator as hereinbefore provided.

Comment. Section 1453 is amended to add the references to conservator.

Health & Safety Code § 2291.2 (amended)

SEC. _____. Section 2291.2 of the Health and Safety Code is amended to read:

2291.2. The district board may institute projects for single zones and joint projects for two or more zones, for the financing and execution of algae research, algae control, or algae monitoring projects of common benefit to such zone or participating zones. For the purpose of acquiring authority to proceed with any such project, the board shall adopt a resolution specifying its intention to undertake such project, together with estimates of the cost of same to be borne by the particular zone and in the case of participating zones the proportionate cost to be borne by each of the participating zones and fixing a time and place for public hearing of the resolution and which shall contain a general statement of the objectives of any research project and of the operation of any control or monitoring project. Notice of such hearing shall be given by publication once a week for two consecutive weeks prior to said hearing, the last publication of which notice shall be at least seven days before such hearing, in a newspaper of general circulation, circulated in such zone or each of the participating zones, if there be such newspaper, and if there be no such newspaper then by posting notice for two consecutive weeks prior to the hearing in five public places designated by the board, in such zone or in each of the participating zones. The notice shall designate a public place in such zone or in each of the participating zones where a copy or copies of the resolution may be seen by any interested person. The resolution shall be posted in each of such public places so designated in the notice at least two weeks prior to the hearing.

At the time and place fixed for the hearing, or any time to which the hearing may be continued, the board shall consider all written and oral objections to the proposed project. Upon the conclusion of the hearing, the board may abandon the proposed project or proceed with it, unless prior to the conclusion of the hearing a written protest against the proposed project signed by persons representing one-half or more of the assessed valuation of the property within such zone or within any of

the participating zones for which the project was initiated, is filed with the board. If such a written protest is filed with the board, further proceedings relating to such project shall be suspended for not less than six months following the date of the conclusion of the hearing, or the proceeding may be abandoned in the discretion of the board.

In all matters in this section referred to, the last equalized assessment roll of the county or counties within which a mosquito abatement district lies next preceding the filing of the protest shall be prime facie evidence as to the ownership of property, the names and number of the persons who are the holders of title or evidence of title, or assessable rights therein, and as to the assessed valuation of property within the zone or within any of the participating zones for which the project was initiated.

Executors, administrators, special administrators and guardians administrators, guardians, or conservators may sign the protest provided for in this section on behalf of the estate represented by them. If the property is assessed in the name of such representatives, the fact shall establish the right of such representatives to sign the protest. If it is assessed in the name of the decedent, minor or incompetent person, certified copies of the letters or such other evidence as may be satisfactory to the board shall be produced.

Where property appears to be owned in common or jointly or by a partnership, or where letters of representatives of decedents, ~~minors~~ or guardians minors, wards, or conservatees are joint, only one of the owners or representatives or partners may sign the protest for all joint owners or representatives or partners. The party claiming the right to protest for all shall produce the written consent of his coowners or representatives or partners so to do. Where however, property appears to be owned in common or jointly by husband and wife, either may sign the protest without the written consent of the other.

Where property is assessed in the name of a trustee or trustees, such trustee or trustees shall be deemed to be the person entitled to sign the protest. If it is assessed in the name of more than one trustee, the right to sign the protest shall be determined in like manner as above provided with respect to coowners.

The protest of any public or quasi-public corporation, private corporation or unincorporated association, may be signed by any person authorized by the board of directors or trustees or other managing body thereof, such authorization shall be in writing. A proxy executed by an officer or officers thereof, attested by its seal, shall constitute sufficient evidence of such authority, and shall be filed with the board.

The owner of any real property or interest therein, appearing upon the assessment roll, which has been assessed in the wrong name or to unknown owners, or which has passed from the owner appearing as such on the last equalized assessment roll, since the same was made, may sign the protest represented thereby, if he produces a proxy from such former owner, or furnishes evidence of his ownership by a conveyance duly acknowledged showing the title to be vested in the person claiming the right to sign the protest, accompanied by a certificate of a competent searcher of titles, certifying that a search of the official records of the county, since the date of the conveyance, discloses no conveyance or transfer out from the grantee or transferee named in the conveyance.

Where the real property has been contracted to be sold, the vendee may sign the protest, unless such real property is assessed in the name of the vendor, in which event the vendor may do so.

The board may inquire and take evidence for the purpose of identifying any person claiming the right to sign the protest as being the person shown on the assessment roll or otherwise as entitled thereto. Unless satisfactory evidence is furnished, the right to sign the protest may be denied.

Comment. Section 2291.2 is amended to add the references to conservators and conservatees.

10364

Health & Safety Code § 7151.5 (amended)

SEC. ____ Section 7151.5 of the Health and Safety Code is amended to read:

7151.5. Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death,

and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in Section 7153.5.

- (a) The spouse.
- (b) An adult son or daughter.
- (c) Either parent.
- (d) An adult brother or sister.
- (e) A guardian or conservator of the person of the decedent at the time of ~~his~~ the decedent's death.
- (f) Any other person authorized or under obligation to dispose of the body.

Comment. Section 7151.5 is amended to add the reference to conservator to subdivision (e).

10365

Health & Safety Code § 26668.3 (amended)

SEC. ____ . Section 26668.3 of the Health and Safety Code is amended to read:

26668.3. Prior to prescribing or administering an experimental drug, written consent to the use of the drug shall be obtained on forms which shall be prescribed by the department.

(a) An adult patient may provide such written consent if no ~~guardian of his person or~~ conservator of ~~his~~ the person has been appointed for ~~him pursuant to Division 4 (commencing with Section 1400) or the patient pursuant to Division 5 (commencing with Section 1701)~~ of the Probate Code and a physician and surgeon licensed to practice in this state, other than the practitioner proposing to prescribe the experimental drug, certifies that the patient is competent to give informed consent to the administration of the experimental drug.

(b) If the patient is not able to provide consent as specified in subdivision (a), such consent may be provided jointly by the ~~guardian or~~ conservator of the person of the patient and the closest available relative of the patient. If none of the persons specified in Section 26668.1 can be located after exercise of due diligence, the ~~guardian or~~ conservator may provide the written consent required by this section.

(c) If the patient is a minor, consent may be provided by a parent or the guardian or conservator of the patient.

Comment. Section 26668.3 is amended to delete the references to a guardian of an adult under Division 4 of the Probate Code since Division 4 is now limited to guardianship of a minor. See Prob. Code § 1451 and the Comment thereto. Reference to a conservator of a minor is added to subdivision (c) since a conservator may be appointed for a married minor. See Prob. Code § 1751.

10366

Health & Safety Code § 26668.6 (amended)

SEC. _____. Section 26668.6 of the Health and Safety Code is amended to read:

26668.6. Upon request, the practitioner supervising the administration of the experimental drug shall provide the patient, if ~~he~~ the patient is an adult, or a parent or the guardian or conservator of the patient, if ~~he~~ the patient is a minor, with an appraisal of the patient's condition and the effects of the experimental drug upon the subject. The practitioner supervising the administration of the experimental drug shall also provide such information, upon request, to the ~~guardian or~~ conservator of an adult patient and to any person having a relationship to an adult patient which is specified in subdivisions (a) to (e), inclusive, of Section 26668.1.

Comment. Section 26668.6 is amended to delete the reference to a guardian of an adult patient since Division 4 (guardian and ward) of the Probate Code is now limited to guardianships of minors. See Prob. Code § 1451 and the Comment thereto. Reference to a conservator of a minor is added since a conservator may be appointed for a married minor. See Prob. Code § 1751.

10368

Health & Safety Code § 33663 (amended)

SEC. _____. Section 33663 of the Health and Safety Code is amended to read:

33663. Notwithstanding any restrictions on investments contained in any laws, the ~~State~~ state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and

other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, conservators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by an agency. Such bonds and other obligations are authorized security for all public deposits. It is one of the purposes of this part to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public and private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations. This part does not relieve any person, firm, or corporation from any duty of exercising reasonable care in selecting securities.

Comment. Section 33663 is amended to add the reference to conservators.

10369

Health & Safety Code § 34369 (amended)

SEC. ____ . Section 34369 of the Health and Safety Code is amended to read:

34369. Notwithstanding any restrictions on investments contained in any laws of this State, state, the State, state, all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, conservators, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by an authority pursuant to this chapter, or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States Government or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits.

Comment. Section 34369 is amended to add the reference to conservators.

Insurance Code § 1686 (amended)

SEC. ____ . Section 1686 of the Insurance Code is amended to read:
 1686. To be eligible for an estate certificate of convenience, a person must be:

(a) The executor or administrator of the estate of a deceased insurance agent, insurance broker or life agent; or

(b) If no executor or administrator has been appointed, the surviving spouse or heir otherwise entitled to conduct the business of such deceased insurance agent, insurance broker or life agent; or

(c) The ~~guardian~~ conservator of the estate of an incompetent insurance agent, insurance broker or life agent.

Comment. Section 1686 is amended to substitute the reference to conservator for guardian in subdivision (c). A conservator instead of a guardian is appointed for an adult under the Probate Code. See Prob. Code §§ 1451, 1452, 1751.

Note. Under Section 1644 of the Insurance Code, "[a] minor is not eligible for a license to act as an insurance agent or broker." The section is silent, however, with respect to a life agent.

Insurance Code § 1693 (amended)

SEC. ____ . Section 1693 of the Insurance Code is amended to read:
 1693. An estate certificate of convenience expires upon the happening of any of the following events, whichever occurs first:

(a) Upon the filing with the commissioner of a certified copy of an order appointing an executor or administrator, if such certificate of convenience has been issued to a person other than the person so appointed executor or administrator.

(b) Upon the filing with the commissioner of a certified copy of an order appointing a new ~~guardian~~ conservator of the estate of an insurance agent, insurance broker or life agent who has been judicially declared incompetent.

(c) Upon the disposal of the business of the deceased or incompetent insurance agent, insurance broker or life agent.

(d) Upon the expiration of one year after the death of the deceased insurance agent, insurance broker or life agent; provided, however, that if during the said year the holder of such certificate of convenience

files an application for a license to act as an insurance agent, insurance broker or life agent in his individual capacity, then such certificate of convenience may remain in force until the holder thereof has been given an opportunity to take the qualifying examination for such license.

(e) Upon the restoration to competency of the insurance agent, insurance broker or life agent.

Comment. Section 1693 is amended to substitute the reference to conservator for guardian in subdivision (b). A conservator instead of a guardian is appointed for an adult under the Probate Code. See Prob. Code §§ 1451, 1452, 1751.

Note. Under Section 1644 of the Insurance Code, "[a] minor is not eligible for a license to act as an insurance agent or broker." The section is silent, however, with respect to a life agent.

10373

Insurance Code § 12392 (amended)

SEC. ____ . Section 12392 of the Insurance Code is amended to read:

12392. If a domestic incorporated title insurer is authorized by its articles of incorporation to act as executor, administrator, guardian, conservator, assignee, receiver, depository, agent or trustee, or to do a general trust business, and if such insurer has a capital paid in of not less than seven hundred thousand dollars (\$700,000) it may also do business as a trust company, and maintain a trust department as well as a title insurance department, on compliance with the conditions set forth in this article. Notwithstanding the above minimum paid-in capital requirements, a title insurer which was operating under a certificate of authority which was in effect on July 1, 1971, and which title insurer on such date had a paid-in capital of less than seven hundred thousand dollars (\$700,000), may engage in the activities permitted by this section upon compliance with the following paid-in capital requirements: (a) four hundred fifty thousand dollars (\$450,000) until July 1, 1974; (b) thereafter and until July 1, 1975, five hundred thousand dollars (\$500,000); (c) thereafter and until July 1, 1976, six hundred thousand dollars (\$600,000); and (d) after July 1, 1976, seven hundred thousand dollars (\$700,000).

Comment. Section 12392 is amended to add the reference to conservator.

Insurance Code § 12528 (amended)

SEC. _____. Section 12528 of the Insurance Code is amended to read:

12528. Mortgage participation certificates and securities guaranteed by mortgage policies issued in conformity with the provisions of this chapter shall be legal investments for all trust funds held by any executor, administrator, guardian, conservator, trustee or other person holding trust funds, and for the funds of insurers, banks, banking institutions and trust companies.

Comment. Section 12528 is amended to add the reference to conservator.

Insurance Code § 12629.47 (amended)

SEC. _____. Section 12629.47 of the Insurance Code is amended to read:

12629.47. Any executor, administrator, ~~guardian~~ guardian, conservator, or receiver, and any trustee of any kind or nature, and any insurer, bank, banking institution or trust company, and any officer of the State of California, holding any securities or certificates of a mortgage insurer as a legal investment or as a fund or deposit required by law to be made by the State of California, may, without the necessity of obtaining any specific court approval (a) consent to any plan which has been approved by the court pursuant to sections 12629.30 to 12629.38, inclusive; (b) exchange any mortgage participation certificates or other securities or rights or claims for certificates, amended certificates or securities issued pursuant to such plan, and (c) may continue to hold as a legal investment or as a fund or deposit required by law to be made with the State of California any certificates, amended certificates or securities so received.

Comment. Section 12629.47 is amended to add the reference to conservator.

Labor Code § 1700.20b (amended)

SEC. ____ . Section 1700.20b of the Labor Code is amended to read.

1700.20b. To be eligible for a certificate of convenience, a person shall be:

(a) The executor or administrator of the estate of a deceased person licensed to conduct the business of an artists' manager; or

(b) If no executor or administrator has been appointed, the widow or heir otherwise entitled to conduct the business of such deceased licensee; or

(c) The guardian or conservator of the estate of an ~~incompetent~~ a person licensed as an artists' manager, or the conservator appointed for the conservation of the estate of a person licensed to conduct the business of an artists' manager.

Such estate certificate of convenience shall continue in force for a period of not to exceed 90 days, and shall be renewable for such period as the Labor Commissioner may deem appropriate, pending the disposal of the artists' manager license or the procurement of a new license under the provisions of this chapter.

Comment. Section 1700.20b is amended to add the reference to a conservator of the estate of a licensee under this chapter.

Labor Code § 5408 (amended)

SEC. ____ . Section 5408 of the Labor Code is amended to read:

5408. If an injured employee or, in the case of ~~his~~ the employee's death, any of ~~his~~ the employee's dependents, is under 18 years of age or incompetent at any time when any right or privilege accrues to such employee or dependent under this division, a general ~~guardian;~~ guardian or conservator, appointed by the court, or a guardian ad litem or trustee appointed by the appeals board may, on behalf of the employee or dependent, claim and exercise any right or privilege with the same force and effect as if no disability existed.

No limitation of time provided by this division shall run against any person under 18 years of age or any incompetent unless and until a ~~guardian~~ guardian, conservator, or trustee is appointed. The appeals

board may determine the fact of the minority or incompetency of any injured employee and may appoint a trustee to receive and disburse compensation payments for the benefit of such minor or incompetent and ~~his family-~~ the family of such person.

Comment. Section 5408 is amended to add the references to conservator.

12757

Military & Veterans Code § 1046 (amended)

SEC. ____ . Section 1046 of the Military and Veterans Code is amended to read:

1046. If it appears necessary or proper that a guardian or conservator of the estate of a veteran be appointed, the court in its discretion may, upon application of the commandant, acting through his designated officer, appoint the home as guardian or conservator of such estate and cause letters of guardianship or conservatorship of such estate to be issued to the home.

For the purposes of this chapter, the home is made a corporation and, acting through an officer designated by the commandant, may act as guardian or conservator of estates, assignee, receiver, depository or trustee, under appointment of any court or by authority of any law of this State; state, and transact business in such capacity in like manner as an individual, and for this purpose may sue and be sued in any of the courts of this State- state.

The home shall be appointed as guardian, conservator, assignee, receiver, depository or trustee without bond. The officer designated by the commandant shall be required to give a surety bond in such amount as may be deemed necessary from time to time by the commandant, but in no event shall the initial bond be less than ten thousand dollars (\$10,000) which bond shall be for the joint benefit of the several estates, the commandant, and the State of California. The home shall receive such reasonable fees as shall be allowable for its expenses for filing fees, attorneys' fees, and bond premiums. The court shall allow to the home at the time of its appointment as guardian or conservator of an estate an amount which the court estimates would be the bond premium for the estate if a separate bond were required for the estate. The fees paid to the home may be used as a trust account from which may be drawn

expenses for filing fees, attorneys' fees and bond premiums in all estates it undertakes to administer. Whenever the balance remaining in such trust account shall exceed a sum deemed necessary by the commandant for the payment of the filing fees, attorneys' fees and bond premiums incurred in the various estates, such excess shall be paid annually into the post fund of the home.

The home when acting as guardian or conservator of a veteran may deposit the funds of the estate in the special deposit fund of the home, and may invest and reinvest such funds in securities which are legal investments for savings banks in this ~~State~~ state.

Comment. Section 1046 is amended to add the references to conservators and conservatorship.

Note. The Veterans' Home referred to in this section is for "aged and disabled persons." Mil. & Vet. Code § 1012.

Also, Section 1701 of the Probate Code should be reviewed for possible inclusion of the Veterans' Home as authorized to accept appointments as conservator.

29/349

Military & Veterans Code § 1219 (amended)

SEC. _____. Section 1219 of the Military and Veterans Code is amended to read:

1219. Whenever the bonds of a district have been investigated and certified by any officer of this ~~State~~ state authorized to make such investigation and certification, and by the authority of such certification have been declared to be legal for investment by savings banks of this ~~State~~ state, then such bonds may be lawfully purchased or received in pledge for loans by savings banks, building and loan associations, trust companies, insurance companies, guardians, conservators, executors, administrators, special administrators, or by any public officer within this ~~State~~ state holding funds which by law may be invested or loaned.

Comment. Section 1219 is amended to add the reference to conservators.

969/005

Probate Code § 1 (technical amendment)

SEC. _____. Section 1 of the Probate Code is amended to read:

1. This ~~act~~ code shall be known as the Probate Code and is composed of four divisions as follows:

Division

- 1- Wills-
- 2- Succession-
- 3- Administration of Estates of Decedents-
- 4- Guardian and Ward- Code.

Comment. Section 1 is amended to delete the obsolete reference to four divisions of the Probate Code.

08/367

Public Utilities Code § 22707 (amended)

SEC. _____. Section 22707 of the Public Utilities Code is amended to read:

22707. When bonds issued pursuant to this part have been investigated and certified by any authorized officer of the ~~State~~ state and are declared to be legal investments for savings banks, they may be purchased or received in pledge for loans by savings banks, building and loan companies, trust companies, insurance companies, guardians, conser-
vators, executors, administrators, and special administrators, or by any public officer of the ~~State~~ state or of any county or other municipal or corporate body in the ~~State~~ state having or holding funds which they may legally invest or loan.

Comment. Section 22707 is amended to add the reference to conser-
vators.

08/366

Revenue & Taxation Code § 612 (amended)

SEC. _____. Section 612 of the Revenue and Taxation Code is amended to read:

612. When a person is assessed as agent, trustee, bailee, guard-
ian, conservator, executor, or administrator, his representative design-
ation shall be added to his name, and the assessment entered separately
from his individual assessment.

Comment. Section 612 is amended to add the reference to conserva-
tor.

08/364

Revenue & Taxation Code § 982 (amended)

SEC. _____. Section 982 of the Revenue and Taxation Code is amended to read:

982. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, conservators, executors, or administrators. A payment of taxes by any one of them binds each of the other parties in interest for his proportionate share.

Comment. Section 982 is amended to add the reference to conservators.

08/362

Revenue & Taxation Code § 5140 (amended)

SEC. _____. Section 5140 of the Revenue and Taxation Code is amended to read:

5140. The person who paid the tax, ~~his guardian~~, the guardian or conservator, the executor of ~~his~~ the will, or the administrator of ~~his~~ the estate of the person may bring an action in the superior court against a county or a city to recover a tax which the board of supervisors of the county or the city council of the city has refused to refund on a claim filed pursuant to Article 1 (commencing with Section 5096) of this chapter. No other person may bring such an action; but if another should do so, judgment shall not be rendered for the plaintiff.

Comment. Section 5140 is amended to add the reference to conservator.

12769

Revenue & Taxation Code § 18403 (amended)

SEC. _____. Section 18403 of the Revenue and Taxation Code is amended to read:

18403. If the taxpayer is unable to make his or her own return (including the return required by Sections 18414, 18414.5, and 18415), the return shall be made by a duly authorized agent or by the ~~guardian~~ guardian, conservator, or other person charged with the care of the person or property of the taxpayer.

Comment. Section 18403 is amended to add the reference to conservator.

Water Code § 9403 (amended)

SEC. ____ . Section 9403 of the Water Code is amended to read:

9403. The bonds of the drainage district issued pursuant to this part which are investigated and approved by any commission or officer authorized by any law of this ~~State~~ state to conduct the investigation and give the approval and by authority of which approval the bonds are declared to be legal investments for savings banks, may be lawfully purchased or received in pledge for loans by any of the following who hold funds which they are permitted by law to invest or loan:

- (a) Banks.
- (b) Trust companies.
- (c) Insurance companies.
- (d) ~~Guardians~~ Guardians and conservators.
- (e) Executors.
- (f) Administrators and special administrators.

(g) Any public officer or officers of this ~~State~~ state or of any county, city, or city and county, or other municipality or corporate body within this ~~State~~ state.

Comment. Section 9403 is amended to add the reference to conservators in subdivision (d).

Water Code § 20527.5 (amended)

SEC. ____ . Section 20527.5 of the Water Code is amended to read:

20527.5. Notwithstanding Section 20527, or any other provision of law to the contrary, in the Jackson Valley Irrigation District every owner of real property within the district, but no others, may vote at elections for directors or otherwise. Such owners need not be residents of the district in order to qualify as voters. The last equalized assessment book of the district is conclusive evidence of ownership of the real property so owned, except that in the event that an assessment for a district shall not have been made and levied for the year in which the election is held or an equalized assessment book prepared, the last equalized county assessment roll shall be used in lieu of the assessment book of the district. Where land is owned in joint tenancy, tenancy in

common, or any other multiple ownership, the owners of such land shall designate in writing which one of the owners shall be deemed the owner of such land for purposes of qualifying as a voter.

The legal representative of a corporation or estate owning real property may vote on behalf of such corporation or estate. As used in this section, legal representative means an official of a corporation owning real property, and means a guardian, conservator, executor, or administrator of the estate of the holder of title to real property who:

(a) Is appointed under the laws of this state.

(b) Is entitled to the possession of the estate's real property.

(c) Is authorized by the appointing court to exercise the particular right, privilege, or immunity ~~which he seeks to exercise~~ sought to be exercised.

Before a legal representative votes at a district election ~~he~~ the legal representative shall present to the precinct board a certified copy of his or her authority which shall be kept and filed with the returns of the election.

Comment. Section 20527.5 is amended to add the reference to conservator.

12333

Water Code § 20527.6 (amended)

SEC. ____ . Section 20527.6 of the Water Code is amended to read:

20527.6. Notwithstanding Section 20527, or any other provision of law to the contrary, in the Camp Far West Irrigation District in Placer and Yuba Counties "elector" and "voter" shall mean a person, corporation, or other entity owning land within the district. At any district election in the Camp Far West Irrigation District, only landowners may vote, and they need not be residents of the district in order to qualify as voters. Each landowner shall have one vote for each dollar's worth of land to which ~~he~~ the landowner holds title. The last equalized assessment book of the district shall be conclusive evidence of ownership and of the value of the land so owned, except that in the event that an assessment for the district shall not have been made and levied for the year in which the election is held, the last equalized assessment roll of the county in which the land is located shall be used in

lieu of the assessment book of the district. Where land is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of such land may designate in writing which one of the owners shall be deemed the owner of such land for purposes of qualifying as a voter. In the absence of such designation each owner shall be entitled to vote his or her pro rata share of the total value of the land in such multiple ownership.

Every landowner, or the legal representative of a corporation, estate or trust owning land within the district, may vote at any district election, either in person or by a person duly appointed as his proxy.

As used in this section, "legal representative" means any of the following:

(a) An authorized official of a corporation owning land in the district.

(b) The trustees of an express trust which owns land in the district.

(c) The executor, ~~administrator or guardian~~ administrator, guardian, or conservator of the estate of a holder of title to land in the district who is appointed under the laws of this state, is entitled to possession of such land, and who is authorized by the appointing court to vote in the election.

Before a legal representative votes at a district election, he the legal representative shall present to the precinct board a certified copy of his or her authority, which shall be kept and filed with the returns of the election. No appointment of a proxy shall be valid, accepted or vote allowed thereon at any district election unless it meets all of the following requirements:

(a) It is in writing.

(b) It is executed by the person or legal representative of the person who is entitled to the votes for which the proxy is given.

(c) It is acknowledged.

(d) It specifies the election at which it is to be used. An appointment of a proxy shall be used only at the election specified.

Every appointment of a proxy is revocable at the pleasure of the person executing it at any time before the person appointed as proxy shall have cast a ballot representing the votes for which the appointment was given.

Comment. Section 20527.6 is amended to add the reference to conservator in subdivision (c).

12337

Water Code § 20527.7 (amended)

SEC. ____ . Section 20527.7 of the Water Code is amended to read:

20527.7. Notwithstanding Section 20527, or any other provision of law, in the Montague Water Conservation District in Siskiyou County every owner of real property within the district, but no others, may vote at elections for directors or otherwise. Such owners need not be residents of the district in order to qualify as voters. The last equalized county assessment role is conclusive evidence of ownership of the real property so owned. Where land is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of such land shall designate in writing which one of the owners shall be deemed the owner of such land for purposes of qualifying as a voter.

The legal representative of a corporation or estate owning real property may vote on behalf of such corporation or estate. As used in this section, legal representative means an official of a corporation owning real property or a guardian, conservator, executor, or administrator of the estate of the holder of title to real property who:

- (a) Is appointed under the laws of this state.
- (b) Is entitled to the possession of the estate's real property.

(c) Is authorized by the appointing court to exercise the particular right, privilege, or immunity ~~which he seeks to exercise~~ sought to be exercised. Before a legal representative votes at a district election, ~~he~~ the legal representative shall present to the precinct board a certified copy of his or her authority which shall be kept and filed with the returns of the election.

Every vote, or ~~his~~ the voter's legal representative, may vote at any district election either in person or by a person duly appointed as ~~his~~ proxy, but shall be entitled to cast only one vote. The appointment of a proxy shall be as provided in Section 35005.

Notwithstanding Section 21100 or any other provision of law, any voter as defined in this section is eligible to be a member of the Board of Directors of the Montague Water Conservation District.

Comment. Section 20527.7 is amended to add the reference to conservator.

Water Code § 20527.8 (amended)

SEC. ____ . Section 20527.8 of the Water Code is amended to read:

20527.8. Notwithstanding Section 20527, or any other provision of law, in the Cordua Irrigation District every owner of land within the district, but no others, may vote at elections for directors or otherwise. Such owners need not be residents of the district in order to qualify as voters. Each voter shall be entitled to cast one vote for each one hundred dollars (\$100) of assessed valuation of land to which ~~he~~ the voter has title. The last equalized county assessment role is conclusive evidence of ownership and of the value of the land so owned. Where land is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of such land shall designate in writing which one of the owners shall be deemed the owner of such land for purposes of qualifying as a voter.

The legal representative of a corporation or estate owning real property may vote on behalf of such corporation or estate. As used in this section, legal representative means an official of a corporation owning real property or a guardian, conservator, executor, or administrator of the estate of the holder of title to real property who:

- (a) Is appointed under the laws of this state.
- (b) Is entitled to the possession of the estate's real property.
- (c) Is authorized by the appointing court to exercise the particular right, privilege, or immunity ~~which he seeks to exercise~~ sought to be exercised. Before a legal representative votes at a district election, ~~he~~ the legal representative shall present to the precinct board a certified copy of his or her authority which shall be kept and filed with the returns of the election.

Every voter, or ~~his~~ the voter's legal representative, may vote at any district election either in person or by a person duly appointed as ~~his~~ proxy. The appointment of a proxy shall be as provided in Section 35005.

Notwithstanding Section 21100 or any other provision of law, any voter as defined in this section is eligible to be a member of the Board of Directors of the Cordua Irrigation District or to serve as an elective officer of the district.

Comment. Section 20527.8 is amended to add the reference to conservator.

Water Code § 20527.9 (amended)

SEC. ____ . Section 20527.9 of the Water Code is amended to read:

20527.9. Notwithstanding Section 20527, or any other provision of law, in the Provident Irrigation District in Glenn and Colusa Counties every owner of real property within the district, but no others, may vote at elections for directors or otherwise. Such owners need not be residents of the district in order to qualify as voters. The last equalized county assessment role is conclusive evidence of ownership of the real property so owned. Where land is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of such land shall designate in writing which one of the owners shall be deemed the owner of such land for purposes of qualifying as a voter.

The legal representative of a corporation or estate owning real property may vote on behalf of such corporation or estate. As used in this section, legal representative means an official of a corporation owning real property or a guardian, conservator, executor, or administrator of the estate of the holder of title to real property who:

(a) Is appointed under the laws of this state.

(b) Is entitled to the possession of the estate's real property.

(c) Is authorized by the appointing court to exercise the particular right, privilege, or immunity ~~which he seeks to exercise~~ sought to be exercised. Before a legal representative votes at a district election, ~~he~~ the legal representative shall present to the precinct board a certified copy of his or her authority which shall be kept and filed with the returns of the election.

Every voter, or ~~his~~ the voter's legal representative, may vote at any district election either in person or by a person duly appointed as ~~his~~ proxy, but shall be entitled to cast only one vote. The appointment of a proxy shall be as provided in Section 35005.

Notwithstanding Section 21100 or any other provision of law, any voter as defined in this section is eligible to be a member of the Board of Directors of the Provident Irrigation District.

Comment. Section 20527.9 is amended to add the reference to conservator.

Water Code § 20566 (amended)

SEC. ____ . Section 20566 of the Water Code is amended to read:

20566. A guardian, conservator, executor, administrator, or other person holding property in a trust capacity under appointment of court may sign any petition provided for in this division, when authorized by an order of court, which order may be made without notice.

Comment. Section 20566 is amended to add the reference to conservator.

12813

Water Code § 39055 (amended)

SEC. ____ . Section 39055 of the Water Code is amended to read:

39055. Guardians, conservators, personal representatives, and other persons holding land in a trust capacity under appointment of court may sign any petition and may vote at any election in behalf of the estate represented by them without obtaining special authority.

Comment. Section 39055 is amended to add the reference to conservators.

12814

Water Code § 39058 (amended)

SEC. ____ . Section 39058 of the Water Code is amended to read:

39058. As to any land belonging to a person under guardianship or conservatorship or comprised in the undistributed estate of a decedent, the guardian or conservator of such person or executor or administrator of such estate shall be deemed the holder of title for the purpose of representing the same in all proceedings under this division, and has the right to sign all petitions or protests provided for in this division, and to vote at all district elections, without any order of court authorizing him or her so to do.

Comment. Section 39058 is amended to add the references to conservator and conservatorship.

12815

Water Code § 41003 (amended)

SEC. ____ . Section 41003 of the Water Code is amended to read:

41003. Any guardian, conservator, administrator, or executor, of a person or estate owning land within the district shall be considered the

holder of title to land for the purposes of this division, where the owner in fee is not entitled to vote.

Comment. Section 41003 is amended to add the reference to conservator.

12816

Water Code § 52228 (amended)

SEC. ____ Section 52228 of the Water Code is amended to read:

52228. Bonds issued pursuant to this chapter which have been investigated and certified by any officer of this ~~State~~ state authorized to make such investigation and certification, and declared to be legal for investments by savings banks of the ~~State,~~ state, may be purchased, or received in pledge for loans by savings banks, trust companies, insurance companies, guardians, conservators, executors, administrators and special administrators, or by any public officer or officers of this ~~State~~ state or of any county, city, or other municipal or corporate body within this ~~State~~ state having or holding funds which they are authorized to invest or loan.

Comment. Section 52228 is amended to add the reference to conservators.

12817

Welfare & Institutions Code § 6000 (amended)

SEC. ____ Section 6000 of the Welfare and Institutions Code is amended to read:

6000. Pursuant to rules and regulations established by the State Department of Health, the medical director of a state hospital for the mentally disordered or mentally retarded may receive in such hospital, as a boarder and patient, any person who is a suitable person for care and treatment in such hospital, upon receipt of a written application for the admission of the person into the hospital for care and treatment made in accordance with the following requirements:

(a) In the case of an adult person, the application shall be made voluntarily by the person, at a time when he is in such condition of mind as to render him competent to make it or, if he is a conservatee with a conservator of the person or persons and estate who was appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5

with the right as specified by court order under Section 5328 to place his conservatee in a state hospital, by his conservator.

(b) In the case of a minor person, the application shall be made by ~~his parents,~~ the parents of the minor or by the parent, guardian, conservator, or other person entitled to ~~his~~ the custody of the minor to any of such mental hospitals as may be designated by the Director of Health to admit minors on voluntary applications. If the minor has a conservator of the person, or the person and the estate, appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, with the right as specified by court order under Section 5328 to place the conservatee in a state hospital the application for the minor shall be made by ~~his conservator,~~ the conservator of the minor.

Any such person received in a state hospital shall be deemed a voluntary patient.

Upon the admission of a voluntary patient to a state hospital the medical director shall immediately forward to the office of the State Department of Health the record of such voluntary patient, showing the name, residence, age, sex, place of birth, occupation, civil condition, date of admission of such patient to such hospital, and such other information as is required by the rules and regulations of the department.

The charges for the care and keeping of a mentally disordered person in a state hospital shall be governed by the provisions of Article 4 (commencing with Section 7275) of Chapter 3 of Part 4 relating to the charges for the care and keeping of mentally disordered persons in state hospitals.

A voluntary adult patient may leave the hospital or institution at any time by giving notice of his or her desire to leave to any member of the hospital staff and completing normal hospitalization departure procedures. A conservatee may leave in a like manner if notice is given by ~~his~~ the conservator.

A minor person who is a voluntary patient may leave the hospital or institution after completing normal hospitalization departure procedures after notice is given to the superintendent or person in charge by the parents, or the parent, guardian, conservator, or other person entitled to the custody of the minor, of their desire to remove ~~him~~ the minor from the hospital.

No person received into a state hospital, private mental institution, or county psychiatric hospital as a voluntary patient during his minority shall be detained therein after ~~he reaches~~ reaching the age of majority, but any such person, after attaining the age of majority, may apply for admission into the hospital or institution for care and treatment in the manner prescribed in this section for applications by adult persons.

The State Department of Health shall establish such rules and regulations as are necessary to carry out properly the provisions of this section.

Comment. Section 6000 is amended to refer to a conservator of a minor since a conservator may be appointed for a married minor. See Prob. Code § 1751.

12819

Welfare & Institutions Code § 7254 (amended)

SEC. ____ . Section 7254 of the Welfare and Institutions Code is amended to read:

7254. The provisions of this section apply to any person who has been lawfully committed or admitted to any state hospital for the mentally disordered or mentally retarded and who is afflicted with, or suffers from, any of the following conditions:

(a) Mental disease which may have been inherited and is likely to be transmitted to decendants.

(b) Mental retardation, in any of its various grades.

(c) Marked departures from normal mentality.

The State Department of Health, upon compliance with the provisions of this section, may cause any such person to be sterilized by the operation of vasectomy upon the patient if a male and of salpingectomy if a female or any other operation or treatment that will permanently sterilize but not unsex the patient. When the superintendent of the state hospital or state home is of the opinion that a patient who is afflicted with or suffering from any of the conditions specified in this section should be sterilized, ~~he~~ the superintendent shall certify such opinion to the Director of Health and shall at the same time give written notice of such certification to the patient and to ~~his~~ the known parents, spouse, adult children, ~~or~~ guardian, or conservator of the

patient, if any, by registered mail to their last known address. If the patient has no known relatives or guardian, such notice shall be given to the person who petitioned for the patient's commitment. Such notice shall further state that written objection or written consent to the proposed sterilization, should be filed with the Director of Health at ~~his~~ the office of the Director of Health in Sacramento within 30 days by the patient, spouse, next of kin ~~or guardian~~, kin, guardian, or conservator.

When a written consent is filed, or if no objection is filed within the 30 days, the Director of Health, if satisfied that the sterilization will not unduly endanger the patient's health and that it is a proper case for sterilization, may authorize the superintendent to proceed with the sterilization of the patient. The director may cause such examination of the patient and other inquiry to be made as ~~he~~ the director deems advisable before issuing the authorization to the superintendent.

If a written objection is filed within the 30 days by the patient, ~~his~~ or the spouse, next of kin, or guardian, or conservator of the patient, and in those cases where the patient has no known relatives or guardian, the proposed sterilization shall not be authorized or performed until the Director of Health has determined the matter. ~~He~~ The Director of Health shall make full inquiry into the case, and may hold a hearing at the institution at which hearing the patient shall be present, and the objecting party and others interested on behalf of the patient may be heard. If the decision of the director is that the patient shall not be sterilized, ~~he~~ the director shall so order and notify the superintendent, the patient and the objecting party. If the decision of the director is that the patient should be sterilized, ~~he~~ the director shall send notice of such decision to the patient, ~~his~~ and to the known parents, spouse, adult children, and guardian, or conservator of the patient, if any, and the objecting party, by registered mail to their last known address. Such notice shall further state that any such party has the right within 30 days to petition the superior court of the county in which the institution is situated or of the county of the patient's residence for a review of the decision.

If such petition is filed within 30 days, and a true copy thereof is served upon the Director of Health, the patient shall not be sterilized unless and until the court, after hearing, issues an order authorizing the sterilization of the patient in accordance with the provisions

of this section. If such petition is not filed in court within 30 days, the director may authorize the superintendent to proceed with such sterilization. The sterilization of a patient in accordance with the provisions of this section, whether performed with or without the consent of the patient, shall be lawful and shall not render the department, its officers or employees, or any person participating in the operation liable either civilly or criminally.

Comment. Section 7254 is amended to add the references to conservator.

14911

Welfare & Institutions Code § 7275 (amended)

SEC. ____ . Section 7275 of the Welfare and Institutions Code is amended to read:

7275. The husband, wife, father, mother, or children of a patient in a state hospital for the mentally disordered, the estates of such persons, and the guardian or conservator and administrator of the estate of such patient shall cause ~~him~~ the patient to be properly and suitably cared for and maintained, and shall pay the costs and charges of ~~his~~ the patient's transportation to a state institution. The husband, wife, father, mother, or children of a patient in a state hospital for the mentally disordered and the administrators of their estates, and the estate of such person shall be liable for ~~his~~ the care, support, and maintenance of the patient in a state institution of which he or she is a patient. The liability of such persons and estates shall be a joint and several liability, and such liability shall exist whether the person has become a patient of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code.

This section does not impose liability for the care of mentally retarded persons in state hospitals.

Comment. Section 7275 is amended to add the reference to conservator.

14914

Welfare & Institutions Code § 7279 (amended)

SEC. ____ . Section 7279 of the Welfare and Institutions Code is amended to read:

7279. If any person committed to a state mental hospital has sufficient estate for the purpose, the guardian or conservator of ~~his~~ the estate shall pay for ~~his~~ the care, support, maintenance, and necessary expenses of the person at the mental hospital to the extent of the estate. Such payment may be enforced by the order of the judge of the superior court where the guardianship or conservatorship proceedings are pending. On the filing of a petition therein by the department showing that the guardian or conservator has failed, refused, or neglected to pay for such care, support, maintenance, and expenses, the court, by order, shall direct the payment by the ~~guardian~~ guardian or conserva- tor. Such order may be enforced in the same manner as are other orders of the court.

If at any time there is not sufficient money on hand in the estate of a committed person to pay the claim of a state mental hospital for ~~his~~ the care, support, maintenance, and expenses of the person therein, the court may, on petition of the guardian or conservator of the estate, or if the guardian or conservator fails, refuses, or neglects to apply, on the petition of the department, make an order directing the guardian or conservator to sell so much of the other personal or real property or both, of the person as is necessary to pay for the care, support, maintenance, and expenses of the person at the mental hospital. From the proceeds of such sale, the guardian or conservator shall pay the amount due for the care, support, maintenance, and expenses at the mental hospital, and also such other charges as are allowed by law.

Payment for the care, support, maintenance, and expenses of a person at a state hospital shall not be exacted, however, if there is likelihood of the patient's recovery or release from the hospital and payment will reduce ~~his~~ the patient's estate to such an extent that ~~he~~ the patient is likely to become a burden on the community in the event of ~~his~~ the patient's discharge from the hospital. If a certificate from the medical superintendent of the state hospital in which the person is confined as a patient is filed in the office of the county clerk with the papers in the guardianship or conservatorship proceedings of the patient, in which certificate the medical superintendent states that the patient is suffering from a chronic form of mental disorder and that in

~~His~~ the medical superintendent's opinion a recovery is beyond reasonable hope and that the patient will in all probability continue to be a charge in a state hospital until death, such certificate shall be prima facie evidence that the patient is not likely to recover or to be released from the hospital, and the guardian or conservator shall pay the amount due for ~~His~~ the care, support, maintenance, and expenses of the patient at the hospital and such other charges as are allowed by law out of any moneys of the estate in ~~His~~ the guardian's or conservator's possession.

Comment. Section 7279 is amended to add the references to conservator and conservatorship.

14916

Welfare & Institutions Code § 7282 (amended)

SEC. ____ . Section 7282 of the Welfare and Institutions Code is amended to read:

7282. The State Department of Health may in its own name bring an action to enforce payment for the cost and charges of transportation of a person to a state hospital against any person, ~~guardian~~ guardian, conservator, or relative liable for such transportation. The department also may in its own name bring an action to recover for the use and benefit of any state hospital or for the state the amount due for the care, support, maintenance, and expenses of any patient therein, against any county, or officer thereof, or against any person, guardian, conservator, or relative, liable for such care, support, maintenance, or expenses.

Comment. Section 7282 is amended to add the references to conservator.

14917

Welfare & Institutions Code § 7284 (amended)

SEC. ____ . Section 7284 of the Welfare and Institutions Code is amended to read:

7284. If any incompetent person, who has no guardian or conservator and who has been admitted or committed to the State Department of Health for placement in any state hospital for the mentally disordered or the mentally retarded is the owner of any property, the State Department of Health, acting through its designated officer, may apply to a

court of competent jurisdiction for its appointment as guardian or con-
servator of the estate of such incompetent person.

For the purposes of this section, the State Department of Health is hereby made a corporation and may act as executor, administrator, guardian guardian, or conservator of estates, assignee, receiver, depository or trustee, under appointment of any court or by authority of any law of this state, and may transact business in such capacity in like manner as an individual, and for this purpose may sue and be sued in any of the courts of this state.

If a person admitted or committed to the State Department of Health dies, leaving any estate, and having no relatives at the time residing within this state, the State Department of Health may apply for letters of administration of ~~his~~ the estate, and, in the discretion of the court, letters of administration may be issued to the department. When the State Department of Health is appointed as guardian guardian, con-
servator, or administrator, the department shall be appointed as guard-
ian guardian, conservator, or administrator without bond. The officer designated by the department shall be required to give a surety bond in such amount as may be deemed necessary from time to time by the director, but in no event shall the initial bond be less than ten thousand dollars (\$10,000), which bond shall be for the joint benefit of the several estates and the State of California. The State Department of Health shall receive such reasonable fees for its services as such guardian guardian, conservator, or administrator as the court allows. The fees paid to the State Department of Health for its services as guardian guardian, conservator, or administrator of the various estates may be used as a trust account from which may be drawn expenses for filing fees, bond premiums, court costs, and other expenses required in the administration of the various estates. Whenever the balance remaining in such trust fund account shall exceed a sum deemed necessary by the department for the payment of said expenses, such excess shall be paid quarterly by the department into the State Treasury to the credit of the General Fund.

Comment. Section 7284 is amended to add the references to conser-
vator.

Welfare & Institutions Code § 7285 (amended)

SEC. ____ . Section 7285 of the Welfare and Institutions Code is amended to read:

7285. The State Department of Health may invest funds held as executor, administrator, guardian guardian, or conservator of estates, or trustee, in bonds or obligations issued or guaranteed by the United States or the State of California. Such investments may be made and such bonds or obligations may be sold or exchanged for similar bonds or obligations without notice or court authorization.

Comment. Section 7285 is amended to add the reference to conservator.

405/450

Welfare & Institutions Code § 7286 (amended)

SEC. ____ . Section 7286 of the Welfare and Institutions Code is amended to read:

7286. The State Department of Health may establish one or more common trusts or investment of funds held as executor, administrator, guardian guardian, or conservator of estates, or trustee and may designate from time to time the amount of participation of each estate in such trusts. The funds in such trusts may be invested only in bonds or obligations issued or guaranteed by the United States or the State of California.

The income and profits of each trust shall be the property of the estates participating and shall be distributed, when received, in proportion to the amount of participation of each estate in such trust. The losses of each trust shall be the losses of the estates participating and shall be apportioned, as the same occur, upon the same basis as income and profits.

Comment. Section 7286 is amended to add the reference to conservator.

405/453

Welfare & Institutions Code § 7287 (amended)

SEC. ____ . Section 7287 of the Welfare and Institutions Code is amended to read:

7287. Upon the death of an incompetent person over whom the State Department of Health has obtained jurisdiction pursuant to Section 7284, the department may make proper disposition of the remains, and pay for the disposition of the remains together with any indebtedness existing at the time of the death of such person from the assets of the guardianship or conservatorship estate, and thereupon it shall file its final account with the court or otherwise close its administration of the estate of such person.

Comment. Section 7287 is amended to add the reference to conservatorship.

405/454

Welfare & Institutions Code § 7288 (amended)

SEC. ____ . Section 7288 of the Welfare and Institutions Code is amended to read:

7288. Whenever it appears that a person who has been admitted to a state institution and remains under the jurisdiction of the State Department of Health does not have a guardian or conservator and owns personal property which requires safekeeping for the benefit of the patient, the State Department of Health may remove or cause to be removed such personal property from wherever located to a place of safekeeping.

Whenever it appears that such patient does not own property of a value which would warrant guardianship or conservatorship proceedings, the expenses of such removal and safekeeping shall be paid from funds appropriated for the support of the institution in which the patient is receiving care and treatment; provided, however, that if the sum on deposit to the credit of such patient in the patients' personal deposit fund exceeds the sum of three hundred dollars (\$300), the excess may be applied to the payment of such expenses of removal and safekeeping.

When it is determined by the superintendent at any time after the removal for safekeeping of such personal property, that the patient is incurable or is likely to remain in a state institution indefinitely, then any of those articles of personal property which cannot be used by the patient at the institution may be sold at public auction and the proceeds therefrom shall first be applied in reimbursement of the expenses so incurred and the balance shall be deposited to the patient's

credit in the patients' personal deposit fund. All moneys so received as reimbursement shall be deposited in the State Treasury in augmentation of the appropriation from which the expenses were paid.

Comment. Section 7288 is amended to add the references to conservator and conservatorship.

405/763

Welfare & Institutions Code § 7289 (amended)

SEC. ____ . Section 7289 of the Welfare and Institutions Code is amended to read:

7289. When a person who is a patient of a state hospital in the State Department of Health has no guardian or conservator and has money due or owing to him, the total amount of which does not exceed the sum of three thousand dollars (\$3,000), the superintendent of the institution of which the person is a patient may collect any money so due or owing upon furnishing to the person, representative, officer, body or corporation in possession of or owing any such sums, an affidavit executed by the superintendent or acting superintendent. The affidavit shall contain the name of the institution of which the person is a patient, and the statement that the total amount of such sums known to be due to the person does not exceed the sum of three thousand dollars (\$3,000). Payments from retirement systems and annuity plans which are due or owing to such patients may also be collected by the superintendent of the institution of which the person is a patient, upon the furnishing of an affidavit executed by the superintendent or acting superintendent, containing the name of the institution of which the person is a patient and the statement that such person is entitled to receive such payments. Such sums shall be delivered to the superintendent and shall be deposited by him in the patients' personal deposit fund as provided in Section ~~7281~~ of this code- 7281.

The receipt of such superintendent shall constitute sufficient acquittance for any payment of money made pursuant to the provisions of this section and shall fully discharge such person, representative, officer, body or corporation from any further liability with reference to the amount of money so paid.

The superintendent of each institution shall render such reports and accounts annually or more often as may be required by the State Department of Health or the Department of Finance of all moneys of patients deposited in the patients' personal deposit accounts of the institution.

Comment. Section 7289 is amended to add the reference to conservator.

405/465

Welfare & Institutions Code § 7290 (amended)

SEC. ____ . Section 7290 of the Welfare and Institutions Code is amended to read:

7290. The State Department of Health may enter into a special agreement, secured by a property executed bond, with the relatives, guardian, conservator, or friend of any patient therein, for ~~his~~ the care, support, maintenance, or other expenses of the patient at the institution. Such agreement and bond shall be to the people of the State of California and action to enforce the same may be brought thereon by the department. All charges due under the provisions of this section, including the monthly rate for the patient's care and treatment as established by or pursuant to law, shall be collected monthly. No patient, however, shall be permitted to occupy more than one room in any state institution.

Comment. Section 7290 is amended to add the reference to conservator.

405/467

Welfare & Institutions Code § 7514 (amended)

SEC. ____ . Section 7514 of the Welfare and Institutions Code is amended to read:

7514. The State Department of Health may transfer any patient of a state hospital for the mentally retarded to another state hospital for the mentally retarded, at any time and from time to time, upon the application of the parent, guardian, conservator, or other person charged with the support of such patient, if the expenses of the transfer are paid by the applicant. The liability of any estate, person, or

county for the care, support and maintenance of such patient in the institution to which ~~he~~ the patient is transferred shall be the same as if ~~he~~ the patient had originally been committed to such institution.

Comment. Section 7514 is amended to add the reference to conservator.

405/468

Welfare & Institutions Code § 8006 (technical amendment)

SEC. ____ . Section 8006 of the Welfare and Institutions Code is amended to read:

8006. Any such public guardian may apply to a court of competent jurisdiction for appointment as guardian or conservator of the person and estate or person or estate of any person in the county or in a county-owned facility in another county who is a patient under the provisions hereof, or of any person in the county who is a recipient of aid under any of the provisions of this code where it appears that such person requires a guardian or conservator, or of any person in the county who requires a guardian or conservator and for whom there is no person or corporation qualified and willing to act in such capacity. Any such public guardian may act as guardian or conservator of any person and estate ordered into ~~his~~ the public guardian's hands by the court. Where the public guardian has so applied for appointment as guardian or conservator, or the guardianship or conservatorship of a person and estate has been ordered into ~~his~~ the public guardian's hands by the court, letters of guardianship or conservatorship shall be procured, in like manner and on like proceedings as letters of guardianship or conservatorship are issued to other persons. ~~His~~ The public guardian's official bond and oath are in lieu of the guardian's or conservator's bond and oath on the grant of ~~special or general~~ temporary letters of guardianship or letters of guardianship or temporary letters of conservatorship or letters of conservatorship. The public guardian may take immediate charge of the property within ~~his~~ the public guardian's county of persons referred to him for guardianship or conservatorship when such property is being wasted, uncared for, or lost.

Comment. Section 8006 is amended to conform to the terminology of the Guardianship Law. See Prob. Code § 1400.

Welfare & Institutions Code § 8102 (amended)

SEC. ____ . Section 8102 of the Welfare and Institutions Code is amended to read:

8102. Whenever a person who has been detained or apprehended for examination of his mental condition, or who is a mental patient in any hospital or institution or who is on leave of absence from such hospital or institution, is found to own, have in his or her possession or under his or her control, any firearm whatsoever, said firearm shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of said firearm until the release without commitment of the person or the restoration to capacity of the person, or until the appointment of a guardian or conservator for the person, or shall make such other disposition of the firearm as ordered by the court.

Comment. Section 8102 is amended to add the reference to conservator.

Welfare & Institutions Code § 17007 (amended)

SEC. ____ . Section 17007 of the Welfare and Institutions Code is amended to read:

17007. No fee shall be charged by any public officer for filing any petition for guardianship or conservatorship under the provisions of Section 17403, or for any official act done or necessary in the course thereof, except that a county employee acting as such guardian or conservator shall be entitled to such costs therefor as will reimburse ~~him~~ the employee in full for moneys advanced by ~~him~~ the employee in such ~~guardianship~~ guardianship or conservatorship.

Where a county officer or employee is appointed and acts as such ~~guardian~~ guardian or conservator, the board of supervisors may, by resolution, order that expenses necessary in the conduct of the guardianship or conservatorship and any necessary premiums on the bond of the guardian or conservator be advanced by the county to such ~~guardian~~ guardian or conservator, and such expenses shall be a charge against the county, but the county shall be reimbursed out of the funds or property of the estate of the ~~ward~~ ward or conservatee.

Comment. Section 17007 is amended to add the references to conservator, conservatee, and conservatorship.

Welfare & Institutions Code § 17403 (amended)

SEC. ____ . Section 17403 of the Welfare and Institutions Code is amended to read:

17403. If a person for the support of whom public moneys have been expended acquires property, the county shall have a claim against ~~him~~ the person to the amount of a reasonable charge for moneys so expended, and such claim shall be enforced by action against ~~him~~ the person by the district attorney of the county on request of the board of supervisors. In a proper case therefor, the district attorney shall apply to the proper court for the appointment of a guardian or conservator of the person or estate, or both, of the indigent. The support of such indigent from public funds shall be deemed a ground for sale or encumbrance of ~~his~~ the person's property under the provisions of Section 1530 of the Probate Code.

Comment. Section 17403 is amended to add the reference to conservator.

Welfare & Institutions Code § 19451 (amended)

SEC. ____ . Section 19451 of the Welfare and Institutions Code is amended to read:

19451. This article does not authorize the care, treatment, or supervision or any control over any mentally retarded person without the written consent of ~~his parent or guardian.~~ the parent, guardian, or conservator of the mentally retarded person.

Comment. Section 19451 is amended to add the reference to conservator.

APPENDIX

DISPOSITION OF SECTIONS OF REPEALED CHAPTERS OF
DIVISIONS 4 AND 5 OF THE PROBATE CODECHAPTER 1. THE RELATIONSHIP AND RULES
GOVERNING ITS CREATION

Note. Former Chapter 1 (commencing with Section 1400) of Division 4 of the Probate Code is repealed. The text of each section of the former chapter is set out below. The disposition of the provisions of each section is indicated in the Comment that follows the text of the section.

§ 1400 (repealed)

1400. A guardian is a person appointed to take care of the person or property of another. The latter is called the ward of the guardian. Both a natural person and a nonprofit charitable corporation, incorporated in this state, whose articles of incorporation specifically authorize it to accept appointments as guardians of minors or of incompetents, and which has been providing care or counseling or financial assistance to the proposed ward under the supervision of a registered social worker certified by the Board of Behavioral Science Examiners of this state, are eligible for appointment as guardian of the person and estate or of either; a trust company as defined in Section 107 of the Financial Code, is eligible for appointment as guardian of the estate only. The petition of a nonprofit charitable corporation shall include in the caption the name of a responsible corporate officer; if for any reason such officer should cease to act as the responsible officer hereunder, the corporation shall file with the court a notice of the name of the successor responsible officer and his date of succession. The relation of guardian and ward is confidential, and is subject to the provisions of law relating to trusts. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

Comment. The first two sentences of former Section 1400 are continued in Section 1400 (definitions). The third sentence is continued

in Section 1454 (who may be appointed guardian). The fourth sentence is continued in Section 1440(b) (contents of petition). The fifth sentence is continued in Section 1401 (confidentiality of relationship). The sixth sentence is continued in Section 1402 (control of guardian by court).

07/443

§ 1401 (repealed)

1401. Guardians are either general or special. A general guardian is a guardian of the person or of the general estate of the ward within this state, or of both. Every other is a special guardian.

Comment. Former Section 1401 is superseded by subdivisions (a), (d), and (e) of Section 1400.

07/444

§ 1402 (repealed)

1402. A parent may appoint a guardian by will or by deed for the property of any child of such parent, living or likely to be born, which such child may take from such parent by will or succession, and any person may in a will appoint a guardian for the property of any minor, living or likely to be born, which such minor may take from such person by such will.

Comment. The substance of former Section 1402 is superseded by Section 1437.

07/445

§ 1403 (repealed)

1403. Either parent of a child living or likely to be born, may appoint a guardian of the person and estate, or person or estate of such child, by will or by deed, to take effect upon the death of the parent appointing, with the written consent of the other parent if the other parent's consent would be required for an adoption of such child, unless the other parent is dead or incapable of consent.

Comment. The substance of former Section 1403 is continued in Section 1436.

§ 1404 (repealed)

1404. Either parent of an unmarried incompetent person may appoint a guardian of the person and estate, or person or estate, of such person, by will or by deed, to take effect upon the death of the parent appointing, with the written consent of the other parent, or if the other parent is dead or incapable of consent. If the incompetent person is married, such appointment may be made by the spouse.

Comment. Former Section 1404 is not continued. Part 1 of Division 4 applies only to guardianship of a minor. Although Division 5 (conservatorship) makes no provision for testamentary appointment of a conservator, preferences for selection are given to the parent of the person to be placed under conservatorship, his or her spouse, or the nominee of the parent or spouse. See Section 1753.

§ 1405 (repealed)

1405. The superior court shall appoint a general guardian of the person and estate, or person or estate, of minors and incompetent persons, whenever necessary or convenient, and when no guardian has been appointed for the purpose by will or by deed. The court, in its discretion, may appoint more than one guardian and shall require either a separate bond from each or a joint and several bond. Where two or more guardians are appointed as coguardians, each shall be governed and liable in all respects as a sole guardian. If the estate does not exceed ten thousand dollars (\$10,000), the court may require that the money in the estate be deposited in a bank or trust company or be invested in an account in an insured savings and loan association subject to withdrawal only upon the order of the court in which case no bond be required of the guardian. The court shall also confirm an appointment made by will or by deed, whenever requested, upon the same procedure and notice as in the case of appointment by the court.

Comment. The portion of the first sentence of former Section 1405 relating to guardianship of minors is superseded by Sections 1451(a) and 1452(b); the portion relating to guardianship of incompetent persons is

superseded by Division 5 (conservatorship). The portion of the second sentence that related to appointment of coguardians is continued in Section 1454(a); the portion that related to the bond of coguardians is continued in Section 1480(c). The third sentence is continued in Section 1454(b). The fourth sentence is continued in Section 1482.1(c). The fifth sentence is continued in Sections 1451 (guardianship of person) and 1452 (guardianship of property).

07/449

§ 1405.1 (repealed)

1405.1. Notwithstanding the provisions of Section 1405, in any proceedings for the determination of the amount of bond to be required of a guardian (whether at the time of appointment or subsequently), when it appears that the estate of the ward includes money or securities which have been, or will be, deposited in a bank or banks in this State or in a trust company authorized to transact a trust business in this State or money which has been, or will be, invested in an account or accounts in an insured savings and loan association or associations upon condition that such money or securities will not be withdrawn except on authorization of the court, the court may, in its discretion, order such money or securities so deposited or such money so invested and may exclude such deposited property from the computation of the amount of such bond or reduce the amount of bond to be required in respect of such money or securities to such an amount as it may deem reasonable.

The petitioner for letters of guardianship may deliver to any such bank or trust company any such money or securities in his possession or may deliver to any such association any such money in his possession or may allow such bank or trust company to retain any such money or securities already in its possession or may allow such association to retain any such money already invested with it; and, in either event, the petitioner shall secure and file with the court a written receipt including the agreement of the bank or trust company or association that such money or securities shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money or securities, the bank or trust company or association shall be protected

to the same extent as though it had received the same from a person to whom letters of guardianship had been issued.

The term "account in an insured savings and loan association" used in this section has the same meaning as in Section 1431 of the Probate Code.

Comment. The substance of former Section 1405.1 is continued in Section 1402.

08/150

§ 1406 (repealed)

1406. In appointing a general guardian of a minor, the court is to be guided by what appears to be for the best interest of the child in respect to its temporal and mental and moral welfare; and if the child is of sufficient age to form an intelligent preference, the court may consider that preference in determining the question. If the child resides in this state and is over fourteen years of age, he may nominate his own guardian, either of his own accord or within ten days after being duly cited by the court; and such nominee must be appointed if approved by the court. When a guardian has been appointed for a minor under fourteen years of age, the minor, at any time after he attains that age, may nominate his own guardian, subject to the approval of the court.

Comment. The first sentence of former Section 1406 is superseded by Sections 1451(a) (guardianship of person) and 1452(b) (guardianship of estate).

The last two sentences of former Section 1406, relating to nomination of a guardian by a minor over 14 years of age, are not continued. A minor 14 years of age or older has standing as a party in a guardianship proceeding to petition for appointment of his or her own guardian. Section 1440(a). In the case of a guardianship of the person, the court is required by Civil Code Section 4600 to consider and give due weight to the minor's wishes. See Section 1451(a). In the case of a guardianship of the estate, Section 1452 permits the court to give consideration to the minor's preference. See Section 1452(b) and Comment thereto.

§ 1406.5 (repealed)

1406.5. The right of a minor to nominate a guardian is subject to the provisions of Section 1402 of this code.

Comment. Former Section 1406.5 is superseded by Section 1452(a).

§ 1407 (repealed)

1407. Of persons equally entitled in other respects to the guardianship of a minor, preference is to be given as follows:

- (1) To a parent;
- (2) To one who was indicated by the wishes of a deceased parent;
- (3) To one who already stands in the position of a trustee of a fund to be applied to the child's support;
- (4) To a relative;
- (5) If the child has already been declared to be a ward or dependent child of the juvenile court, to the probation officer of said court.

Comment. Former Section 1407 is superseded by Sections 1451(a) (guardianship of person) and 1452(b) (guardianship of estate). The order of preference of former Section 1407 related primarily to guardianship of the person or of the person and estate of a minor, rather than to guardianship of the estate alone. Estate of Rosin, 226 Cal. App.2d 166, 170, 37 Cal. Rptr. 830, ____ (1964). Under Section 1451(a), the order of preference for appointment as guardian of the person of a minor is determined by Section 4600 of the Civil Code (Family Law Act).

§ 1408 (repealed)

1408. As between parents claiming the guardianship adversely to each other, neither is entitled to priority.

Comment. Former Section 1408 is superseded by Sections 1451(a) (guardianship of person) and 1452(b) (guardianship of estate). Under Section 1451(a), the order of preference for appointment as guardian of the person of a minor is determined under Section 4600 of the Civil Code

(Family Law Act). Section 4600 gives first preference to "either parent according to the best interests of the child." Where a guardianship of the estate is concerned, neither parent is entitled to preference over the other unless preferred by a minor of sufficient age to form an intelligent preference. See Section 1452(b) and paragraph (2) thereof.

08/155

§ 1409 (repealed)

1409. A parent who knowingly or wilfully abandons or, having the ability so to do, fails to maintain his minor child under fourteen years of age, forfeits all right to the guardianship of such child; and a parent or guardian who knowingly permits his child or ward to remain for one year in an orphan asylum where the child is supported by charity, without notifying the managers or officers of the asylum that he is such parent or guardian, abandons and forever forfeits all right to the guardianship of the child. The officers and managers of any orphan asylum having such abandoned child in its care have the preferred right to the guardianship of the child.

Comment. Former Section 1409 is superseded by Sections 1451 (guardianship of person) and 1452 (guardianship of property), which prescribe standards for selection of a guardian. If a parent or guardian has abandoned or failed to support a child, that will be a factor in selection of a guardian, as will the fact that the officers and managers of an orphan asylum have an abandoned child in their care. See Civil Code Section 4600 (incorporated by Section 1451) and Section 1452 (guardianship of estate).

08/156

§ 1410 (repealed)

1410. The authority of a guardian is not extinguished or affected by the marriage of the guardian.

Comment. Former Section 1410 is continued in Section 1521.

CHAPTER 2A. MANAGEMENT, CONTROL, AND DISPOSITION
OF COMMUNITY PROPERTY AND HOMESTEAD
PROPERTY OF INCOMPETENT PERSONS

Note. Former Chapter 2A (commencing with Section 1435.1) of Division 4 of the Probate Code is repealed. The text of each section of the former chapter is set out below. The disposition of the provisions of each section is indicated in the following table.

<u>Former Section</u>	<u>Comparable Provision of Chapter 12</u>
§ 1435.1	§§ 2250(b), 2251
§ 1435.2	§ 2250(a)
§ 1435.3	§ 2255
§ 1435.4	§§ 2256, 2258
§ 1435.5	
First paragraph, first sentence	§§ 2260, 2261
First paragraph, second sentence	Not continued
First paragraph, third sentence	§ 2261(c), first sentence
Second paragraph	§ 2261(c), second sentence
Third paragraph	§ 2262(a)
Fourth paragraph, first sentence	§ 2261(b)
Fourth paragraph, second sentence	§ 2265(a)
Fifth paragraph	§ 2262(b)
Sixth paragraph, first sentence	§§ 2262(c), 2265(a)
Sixth paragraph, second sentence	§ 2265(c)
§ 1435.6	§ 2257
§ 1435.7	
First paragraph	§ 2266
Second paragraph	§ 2265(b), (c)
§ 1435.8	§ 2267
§ 1435.9	
First sentence	§ 2270
Second sentence	§§ 2271, 2272
Third sentence	§ 2273
Fourth sentence	§§ 2270, 2272
§ 1435.10	
First sentence	§ 2275(a), (b)
Second sentence	§ 2276
§ 1435.11	§ 2277
§ 1435.12	
First paragraph	§ 2275(c)
Second paragraph	§ 2278

§ 1435.13	§ 2268
§ 1435.14	§§ 2280-2283
§ 1435.15	§§ 2291, 2292
§ 1435.16	
Subdivision (a)	§§ 2293, 2294, 2295, 2297
Subdivision (b)	§§ 2293, 2295, 2297
Subdivision (c), first sentence	§§ 2293, 2296(a), (b), 2297
Subdivision (c), second sentence	§ 2296(a), (c)
Last paragraph, first sentence	§ 2298(b)
Last paragraph, second sentence	§ 2278(c)
§ 1435.17	
Subdivision (a), first sentence	§ 2294
Subdivision (a), second sentence	§ 2297
Subdivision (b)	§§ 2293, 2294, 2297
Subdivision (c)	§§ 2293, 2294, 2295(b), 2297
Last paragraph	§ 2298(a)
§ 1435.18	Not continued

999/330

§ 1435.1 (repealed)

1435.1. Where real or personal property or any interest therein or lien or encumbrance thereon is owned by husband and wife as community property or as community property or separate property subject to a homestead, and one or both of the spouses is incompetent, such property, interest, lien, or encumbrance may be sold and conveyed, assigned, transferred or exchanged, conveyed pursuant to any preexisting contract, encumbered by pledge, deed of trust or mortgage, leased, including a lease for the exploration for and production of oil, gas, minerals or other substances, or unitized or pooled with other property for or in connection with such exploration and production, or assigned, transferred or conveyed, in whole or in part, in compromise, composition or settlement of any indebtedness, demand, or proceeding to which such property may be subject, or any easement therein or thereover conveyed or dedicated, with or without consideration, to the State or any county or municipal corporation or any district or to any person, firm, association, or public or private corporation; all in the manner provided in this chapter, notwithstanding the provisions of Section 1242, 1243, or 5127 of the Civil Code. Nothing herein is intended to or shall affect the husband's management and control of community personal property unless he is incompetent as hereinafter defined.

§ 1435.2 (repealed)

1435.2. As used in this chapter the word incompetent shall mean a legal, not a medical disability and shall be measured by functional incapacities. It shall be construed to mean or refer to any adult person who, in the case of a guardianship of the person, is unable properly to provide for his own personal needs for physical health, food, clothing or shelter, and, in the case of a guardianship of the estate, is substantially unable to manage his own financial resources. "Substantial inability" shall not be evidenced solely by isolated instances of negligence or improvidence.

§ 1435.3. (repealed)

1435.3. The spouse not incompetent, or the guardian of the estate of either incompetent spouse, as such guardian, may petition the court for an order under this chapter. If one spouse is incompetent, proceedings may be taken under this chapter by the competent spouse, as petitioner, without the necessity of appointing a guardian for the incompetent spouse.

§ 1435.4 (repealed)

1435.4. The petition shall be verified and filed in the superior court of the county in which the real property, or some part thereof, or which is subject to the lien or encumbrance affected, is situated, or, if the proceeding affects only personal property other than a lien or encumbrance on real property, in the superior court of the county in which the spouses or either of them reside or in which a guardian for either spouse has been appointed; and shall set forth the following:

(a) The name, age, and residence of both spouses and, if one or both of them has been adjudged incompetent, the fact of such adjudication, otherwise the facts establishing incompetency.

(b) The name of the guardian, if any, and the county in which the guardianship proceeding is pending, and the court number of said proceeding.

(c) The names and addresses of the adult relatives of the incompetent person or persons within the second degree residing in this State, other than a spouse, if such names and addresses are known to the petitioner.

(d) An allegation as to the status of the property described in the petition, whether homestead or community or both.

(e) The estimated value of the property.

(f) A sufficient legal description of the property.

(g) The terms and conditions of the proposed transaction, including the names of all parties thereto.

(h) Such facts, in addition to the incompetency of the spouse or spouses, as may be relied upon to show that the order sought is for the advantage, benefit, or best interests of the spouses or their estates; or for the care and support of either of them, or of their minor child or children, or of such members of their families as either of them may be legally obligated to support; or to pay taxes, interest or other encumbrances and charges for the protection and preservation of the homestead or the community property.

08929

§ 1435.5 (repealed)

1435.5. Upon the filing of the petition the clerk shall set the petition for hearing by the court and, except as later in this section provided, shall issue a citation directed to the spouse or spouses not petitioning, setting forth the time and place of such hearing. Notice of the hearing shall be given as hereinafter provided. The citation and a copy of the petition shall be served on the spouse or spouses not petitioning, whether within or without the state, in the manner provided by law for the service of a summons in a civil action, other than by publication, at least 10 days before the hearing if served within the state, otherwise three weeks before the hearing.

In the event the citation and copy of the petition cannot, with reasonable diligence, be so served on a spouse, service of the citation may be made by publication pursuant to Section 415.50 of the Code of Civil Procedure. No copy of the petition need then be served on such spouse.

Notice of the hearing of the petition shall give the name or names of the incompetent persons, the name of the petitioner and the purpose for which the order is sought, referring to the petition for further particulars, and notifying all interested persons to appear at the time and place mentioned in the notice and show cause, if any they have, why the order should not be made.

If there is a guardian of the estate of a spouse, no citation to such spouse need be issued if a copy of the notice and of the petition be served upon such guardian in the manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court at least 10 days before the hearing. It shall be the duty of such guardian so served to appear and represent the interests of his ward.

A copy of the notice and petition shall be mailed, by the petitioner, by prepaid, first-class mail, at least 10 days before the hearing, to the adult relatives named in the petition at their addresses set forth in the petition.

If there is no guardian of the estate of the incompetent spouse to whom the citation is issued or if such guardian cannot be served as otherwise provided for in this section, a copy of such notice and petition shall be served personally upon the public guardian or public administrator of the county in which the petition was filed or upon his deputy or assistant in the manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or subdivision (a) of Section 415.20 of the Code of Civil Procedure at least 10 days prior to the hearing and it shall be the duty of such public guardian or administrator to appear and represent the interests of such incompetent spouse. For all such services rendered by the public guardian or administrator he may be allowed a reasonable fee, to be fixed by the court, which fee shall be paid out of the cash proceeds of the transaction or otherwise as the court shall direct.

08931

§ 1435.6 (repealed)

1435.6. If the alleged incompetent person is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Health, the petition shall set forth the name of

such institution, and a copy of such notice and petition shall be mailed to the Director of Health at his office in Sacramento at least 10 days prior to the hearing, and the director may appear and represent the interests of such incompetent spouse.

§ 1435.7 (repealed)

1435.7. If a spouse alleged in the petition to be incompetent has not been so found in proceedings under Division 4 or Division 5, or thereafter has been restored to capacity as in this code provided, such spouse, if able to attend, must be produced at the hearing. If such spouse is not able to attend by reason of mental or physical condition, the affidavit or certificate of a duly licensed physician, surgeon, or other medical practitioner, or the certificate of the medical superintendent or acting medical superintendent of a state hospital in this State in which such spouse is a patient, shall be prima facie evidence of the facts therein stated as to the inability of the spouse to attend.

If such spouse is not represented at the hearing by his guardian, or by the public guardian or public administrator or his deputy or assistant, or by the Director of the State Department of Health, the court may, in its discretion, appoint a guardian ad litem to represent the interests of such spouse, and he may be allowed a reasonable fee to be fixed by the court and paid out of the cash proceeds of the transaction or otherwise as the court shall direct.

§ 1435.8 (repealed)

1435.8. If it appears to the court that said property is the homestead or community property of the spouses, and if it also appears that a spouse is or the spouses are then incompetent or has or have been so found under Division 4 or Division 5 of this code and has not or have not been restored to capacity, it shall so adjudge. If it further appears to the court that the petition should be granted it may then so order and authorize the petitioner to do and perform all acts and execute and deliver all papers, documents, and instruments necessary to effectuate the same.

§ 1435.9 (repealed)

1435.9. The court shall require the petitioner to give a bond conditioned on the duty of the petitioner to account for and apply the proceeds of the transaction to be received by him only as the court may by its order or any subsequent order direct. Such bond, with two or more persons or an authorized surety company as surety, to be approved by the judge if the surety is not an authorized surety company, shall be in such sum as the court shall order, which sum shall be not less than twice the value of the personal property, including cash and any note or notes, to be received by said petitioner as determined by the court or, when the bond is given by an authorized surety company, not less than the value of such personal property as so determined. The provisions of Sections 1483, 1483.1, 1483.2, 1483.3, 1488, 1489, and 1490 of this code relating to guardians and the bonds thereof are hereby made applicable to petitioners and the bonds thereof under the provisions of this chapter. The court in its order may, however, for cause shown, reduce or dispense with such bond.

§ 1435.10 (repealed)

1435.10. The petitioner shall, upon receipt of the consideration therefor execute, acknowledge, and deliver any necessary instruments or documents as directed, setting forth therein that they are made by authority of the order, and a certified copy of the order must be recorded in the office of the recorder of each county in which is situated any land which, or an encumbrance on which, is affected thereby.

Any sale, conveyance, assignment, transfer, pledge, mortgage, lease, or deed of trust and any instrument or document made in pursuance of such order is as valid and effectual as if the property affected thereby was the sole and absolute property of the person making such sale or executing such instrument.

§ 1435.11 (repealed)

1435.11. Any note or notes, pledges, mortgages, leases or deeds of trust so executed by a petitioning guardian as such, shall create no personal liability against the guardian so signing, unless said guardian

is one of the spouses and then only to the extent that such personal liability would have resulted had both spouses been competent and joined in such execution.

08933

§ 1435.12 (repealed)

1435.12. If a sale is made upon a credit in pursuance of the order, the petitioner must take the note or notes of the person to whom the sale is made for the amount of the unpaid balance of the purchase money, with such security for payment thereof as the court shall be order approve. Such note or notes shall be made payable to the petitioner or if his petition was made as guardian, then made payable to him as such guardian.

The proceeds, rents, issues and profits of community property dealt with or disposed of under the provisions of this chapter, and any property taken in exchange therefor, shall be community property; and the proceeds of sale of homestead property and any property taken in exchange therefor, or acquired with such proceeds with court approval, shall enjoy the exemptions prescribed in Sections 1265 and 1265a of the Civil Code; provided, in the case of property so taken or acquired, the declaration required by said Section 1265a is made by the petitioner, with leave of court.

§ 1435.13 (repealed)

1435.13. If, after the authorization of any transaction under this chapter, any person to such transaction, other than the petitioner, neglects or refuses to consummate such transaction, the court, after such notice to such other party as the court on application of the petitioner shall direct, may vacate the order authorizing such transaction. In the event the original order provided for the sale or encumbering of any real or personal property, any other sale or encumbrance found by the court to be to the advantage, benefit or best interests of the spouses may be authorized by the court upon a verified supplemental petition copies of which shall have been served on the same persons and at the same time and in the same manner as the original application, except that no further citation need be issued.

§ 1435.14 (repealed)

1435.14. Any person who has been found to be incompetent in proceedings under this chapter and is not then the subject of pending proceedings under any other chapter of this code, or any relative or friend of such person, may at any time apply by a verified petition filed in the same proceeding to have the fact of his restoration to capacity judicially determined. Such petition shall allege that such person is then sane or competent. The court, in proceedings under this chapter, shall retain jurisdiction to hear and determine any such petition. The proceedings upon such petition shall be as prescribed in Sections 1471 and 1472 of this code. Any adjudication of restoration to capacity shall not prejudice or affect anything theretofore lawfully done pursuant to and in accordance with any prior order made under the provisions of this chapter.

§ 1435.15 (repealed)

1435.15. As an alternative to the procedure elsewhere in this chapter prescribed, where there is a guardian of the respective estates of one or both of the spouses, the court having jurisdiction of the or either such estate shall for the purposes of administration under Section 1435.16 or 1435.17 have jurisdiction to determine the validity of the homestead and whether or not specific property is in fact community property or the separate property of one or both of the spouses, and thereafter to authorize the guardian or guardians to deal with or dispose of such homestead or community property or consent to such dealing therewith or disposition thereof, in the manner hereinafter provided.

§ 1435.16 (repealed)

1435.16. (a) Where the homestead property is community property or the separate property of the husband of whose estate the guardian has been appointed and the wife, being competent, consents thereto in writing, such homestead property may be included in and dealt with and disposed of as a part of the guardianship estate, but the wife must join in any such dealing therewith or disposition thereof. Where there is a guardian of the estate of the wife, the husband, being competent, may

deal with or dispose of such homestead property, but the guardian of her estate must join therein, being first therunto duly authorized by an order of court under Section 1516 of this code.

(b) Where homestead property is the separate property of the wife and there is a guardian of the estate of the husband, the wife, being competent, may deal with or dispose of the homestead property as fully as though no homestead existed thereon provided the guardian of the estate of the husband join therein, being first thereunto duly authorized by order of court under Section 1516 of this code. Where there is a guardian of the estate of the wife, such homestead property may be included in and dealt with and disposed of a a part of the guardianship estate, but the husband, being competent, must join in any such dealing therewith or disposition thereof.

(c) Where there are guardians of the respective estates of both husband and wife, the homestead property, if community property or the separate property of the husband, may be included in a dealt with and disposed of as a part of his guardianship estate or, if the separate property of the wife, then as a part of her guardianship estate; but the guardian of the estate of the other spouse must join in any such dealing therewith or disposition thereof, being first thereunto duly authorized by an order of court under Section 1516 of this code. If the homestead property is the separate property of both spouses as joint tenants, tenants in common, or otherwise, the respective interests of each may be included in and dealt with or disposed of as a part of their respective guardianship estates but both guardians must concur therein under appropriate orders of court.

The court, on petition of the guardian of either estate or of the competent spouse, with such notice to the other as the court shall prescribe, may authorize the investment of the proceeds in another home for the spouses, to be held by the same tenure as the homestead property so sold or exchanged. The proceeds of the sale of homestead property and any property taken in exchange therfor or acquired with such proceeds shall enjoy the exemptions prescribed in Sections 1265 and 1265a of the Civil Code; provided, in the case of property so taken or acquired the declaration required by Section 1265a is made by the petitioner with leave of court.

§ 1435.17 (repealed)

1435.17. (a) Where there is a guardian of the estate of the husband, and the wife, being competent, consents thereto in writing, such community property may be included in and dealt with or disposed of as a part of the guardianship estate of the husband. The wife must join in any such dealing with or disposition of community real property.

(b) Where there is a guardian of the estate of the wife, the husband, being competent, has the management, control and disposition thereof but, in lieu of the joinder of the wife required by Section 172a of the Civil Code, the guardian of her estate must join therein, being first thereunto duly authorized by an order of court under Section 1516 of this code.

(c) Where there are guardians of the respective estates of both husband and wife, an undivided one-half interest in such community property may be included in and dealt with and disposed of as a part of the guardianship estate of the husband and an undivided one-half interest therein as a part of the guardianship estate of the wife, but both guardians must concur therein under appropriate orders of court.

Proceedings under this section shall not alter the character of the property or the proceeds, rents, issues or profits thereof, or the rights of the respective spouses therein save as herein expressly provided with respect to the procedure for the management and disposition thereof.

§ 1435.18 (repealed)

1435.18. Where in this chapter reference is made to a guardian, guardianship estate, or the court having jurisdiction of such estate, such reference shall be deemed to include a conservator, conservatorship estate, and the court having jurisdiction of the estate of the conservatee; and, in the event of a conservatorship, reference in Section 1435.16 or 1435.17 to Section 1516 of this code shall be deemed to refer to Section 1860 of this code.

CHAPTER 4. APPOINTMENT OF GUARDIANS FOR
INSANE OR INCOMPETENT PERSONS

Note. Former Chapter 4 (commencing with Section 1460) of Division 4 is repealed. Part 1 of Division 4 applies only to guardianship of a minor. See Sections 1451 (guardianship of person) and 1454 (guardianship of estate) and Comments thereto. Protective proceedings for an adult are brought under Division 5 (conservatorship).

The text of each section of former Chapter 4 is set out below. The following table indicates provisions of Division 5 comparable to the sections of the former chapter:

<u>Former Section</u>	<u>Comparable Provision of Division 5</u>
§ 1460	§ 1751
§§ 1461, 1461.1, 1461.3	§ 1754
§ 1461.5	§ 1754.1
§ 1462	
First sentence	§ 1751, first sentence
Second, third, fourth sentences	No comparable provision
Remainder	§ 1753
§ 1463	§ 1752, second sentence

08/937

§ 1460 (repealed)

1460. Any superior court to which application is made as herein-after provided may appoint a guardian for the person and estate or person or estate of an incompetent person, who is a resident of this state. As used in this division and Division 5 of this code, the phrase "incompetent person," "incompetent," or "conservatee" shall mean a legal, not a medical disability and shall be measured by functional incapacities. It shall be construed to mean or refer to any adult person who, in the case of a guardianship of the person, is unable properly to provide for his own personal needs for physical health, food, clothing or shelter, and, in the case of a guardianship of the estate, is substantially unable to manage his own financial resources. "Substantial inability" shall not be evidenced solely by isolated incidents of negligence or improvidence.

§ 1461 (repealed)

1461. Any relative or friend may file a verified petition alleging that a person is incompetent, and setting forth the names and residences, so far as they are known to the petitioner, of the relatives of the alleged incompetent person within the second degree residing within or without the state. The clerk shall set the petition for hearing by the court and issue a citation directed to the alleged incompetent person setting forth the time and place of hearing so fixed by him.

The citation shall include a specific delineation of the legal standards by which the need for a guardianship is adjudged as stated in Section 1460, and shall state that the alleged incompetent person may be adjudged incompetent and by reason thereof a guardian may be appointed for his person and estate or person or estate, that such adjudication may transfer his right to contract, manage and control his property, and to fix his residence to the appointed guardian, that the court or a court investigator will explain the nature, purpose and effect of the proceeding to the alleged incompetent person and answer questions concerning such explanation, that the alleged incompetent person shall have the right to appear at such hearing and oppose such petition, that he shall have the right to legal counsel of his own choosing, including the right to have legal counsel appointed for him by the court if he is unable to retain one, and that he has the right to a jury trial if he so desires.

The citation, and a copy of the petition, shall be served upon the alleged incompetent person in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court, at least 10 days before the time of the hearing.

Notice of the nature of the proceedings and of the time and place of the hearing shall be mailed by the petitioner to each of the relatives of the alleged incompetent person named in the petition at least 15 days before the time of hearing unless the time is shortened by the court for good cause shown. The court may order that similar notice be given to other persons in such manner as the court may direct. Any relative or friend of the alleged incompetent person or the alleged incompetent person himself may appear and oppose the petition.

If the alleged incompetent person is within the state and is able to attend, he shall be produced at the hearing, and if he is not able to attend by reason of medical inability, such inability shall be evidenced by the affidavit or certificate of a duly licensed medical practitioner, unless such alleged incompetent person is a patient at a county or state hospital in this state in which case the affidavit or certificate shall be by the medical director or medical superintendent or acting medical director or medical superintendent of such county or state hospital. If the proposed ward is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of such religion, an affidavit as to his or her medical inability to attend by the accredited practitioner shall be acceptable.

If the alleged incompetent person is not within the state and if the court determines that his attendance at the hearing is necessary in the interest of justice, the court may order him to be produced at the hearing upon penalty of dismissing the petition if he is not produced. If such an order is made and it is contended that the alleged incompetent person is not able to attend by reason of medical inability such inability shall be evidenced by the affidavit or certificate of a duly licensed medical practitioner.

Emotional or psychological instability shall not be considered good cause for the absence of the alleged incompetent person within the meaning of this section, unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the alleged incompetent person. The medical affidavit shall be evidence only of the alleged incompetent person's medical inability to attend the hearing and shall not be considered in determining the issue of incompetency.

999/337

§ 1461.1 (repealed)

1461.1. Upon receipt of the affidavit or certificate attesting to the proposed ward's inability to attend the hearing, the court shall appoint a court investigator to personally interview the proposed ward

and to inform him as to the contents of the citation, the nature, purpose and effect of the proceeding, and of his right to oppose the proceeding, attend the hearing, have the matter tried by jury and be represented by counsel. The investigator shall also determine whether it appears that the proposed ward is unable to attend the hearing, whether the proposed ward wishes to contest the establishment of the guardianship, whether the proposed ward wishes to be represented by counsel, and if so, whether the proposed ward has retained counsel, and if not, the name of an attorney the proposed ward wishes to retain.

If the proposed ward does not wish to contest the establishment of the guardianship, the investigator shall determine if the proposed ward objects to the proposed guardian, or if he prefers another person to act as guardian.

The court investigator shall report his findings, including the proposed ward's express statement concerning representation by counsel, in writing, to the court at least five days before the date set for hearing.

As used in this chapter, a "court investigator" or "investigator" is a person trained in law who is an officer or special appointee of the court with no personal or other beneficial interest in the proceedings.

08941

§ 1461.3 (repealed)

1461.3. If the alleged incompetent person is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Health and such fact is known to the petitioner, the petitioner shall name the institution in the petition, and shall give notice of the filing of the petition for appointment of a guardian and of the time and place of the hearing by mailing such notice and a copy of the petition to the Director of the State Department of Health at his office in Sacramento at least 15 days before the hearing unless the time is shortened by the court for good cause shown.

999/332

§ 1461.5 (repealed)

1461.5. Prior to the appointment of a guardian for the person and estate or person or estate of an incompetent person, the court shall

inform the alleged incompetent person as to the nature and purpose of the guardianship proceeding, that the appointment of a guardian for his person and estate or person or estate is a legal adjudication of his incompetence, the effect of such an adjudication on his basic rights the identity of the person who has been nominated as his guardian, that he has a right to oppose such proceeding, to have the matter tried by jury, and to be represented by legal counsel if he chooses. After communicating such information to the person and prior to the appointment of his guardian, the court shall consult the person to determine his opinion concerning the appointment. Any adult developmentally disabled person for whom guardianship of conservatorship is sought pursuant to this article shall be informed of his right to counsel by the court; and if he does not have an attorney for the proceedings the court shall immediately appoint the public defender or other attorney to represent him. The person shall pay the cost for such legal service if he is able.

If the alleged incompetent person is unable to attend the hearing and such inability has been medically certified pursuant to Section 1461, the provisions of this section shall not apply.

999/333

§ 1462 (repealed)

1462. If, upon the hearing, it appears to the court that the person in question is insane or incompetent, the court must appoint a guardian of his person and estate, or person or estate. In awarding letters of guardianship, the court shall give preference to such person as may have been designated by will or deed, unless good cause to the contrary is shown.

Before letters of guardianship may issue, a copy of the order appointing the guardian shall be served by mail upon the ward. The order shall contain the names, addresses, and telephone numbers of the guardian, the ward's attorney, if any, and the court investigator, if any.

The selection of a guardian of the person and estate or person or estate shall be solely in the discretion of the court. Among persons equally qualified in the opinion of the court to be appointed as guardian, preference is to be given as follows:

- (1) To the ward's nominee under Section 1463.
- (2) To the spouse of a married ward or the nominee of such spouse, unless an action for dissolution of marriage is pending;
- (3) To an adult child of the ward or the nominee of such child;
- (4) To a parent of the ward or the nominee of such parent;
- (5) To a brother or sister of the ward or the nominee of such brother or sister;
- (6) To any qualified person or corporation upon the appropriate petition to the court, or if there is no such person or corporation qualified and willing to act in such capacity, to the public guardian under Section 8006 of the Welfare and Institutions Code.

The preference for any nominee to appointment under subdivisions (3), (4), and (5) shall be subordinate to the preference for any other child, parent, brother or sister in such class.

999/334

§ 1463 (repealed)

1463. Any adult person may, at such time as he has sufficient capacity to form an intelligent preference, execute a written instrument in the same manner as the execution of a witnessed will nominating a person to be appointed as guardian of his person or estate or person and estate in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose estate, the guardian is to be appointed.

CHAPTER 5. RESTORATION TO CAPACITY

Note. Former Chapter 5 (commencing with Section 1470) of Division 4 is repealed. The text of each section is set out below.

§ 1470 (repealed)

1470. Any person who has been declared incompetent and for whom a guardian has been appointed as an incompetent person, or the guardian, or any relative or friend, may apply, by petition, to the superior court of the county in which such person was declared incompetent, or from which letters of guardianship were issued, to have the fact of his restoration to capacity judicially determined. The petition must be verified, and must state that such person is then competent.

§ 1471 (repealed)

1471. The clerk shall set the petition for hearing by the court. At the request of the person so declared incompetent the question of his restoration to capacity must be tried by a jury, which must be summoned and impaneled in the same manner as juries in civil actions. At least five days' notice of the trial or hearing must be given to the person so declared incompetent and to the guardian of such person, and to the person's spouse, if any, and to his or her father and mother, if in the state.

§ 1472 (repealed)

1472. On the trial or hearing, the person so declared incompetent and the guardian of such person, or any relative of such person, and, in the discretion of the court, any other person, may contest the right to the relief demanded. Witnesses may be required to appear and testify, as in civil cases, and may be called and examined by the court on its own motion. If it is found that the person in question is competent and capable of managing and taking care of himself and his property, his restoration to capacity must be adjudged and the guardianship of such person, if not a minor, must cease.

CHAPTER 10. APPLICATION OF UNIFORM VETERANS'
GUARDIANSHIP ACT

Note. Former Chapter 10 (commencing with Section 2151) of Division 5 is repealed. The text of the chapter is set out below.

§ 2151 (repealed)

2151. A conservator instead of a guardian may be appointed under the Uniform Veteran's Guardianship Act and in such case he shall have only the rights, powers, privileges and duties provided in, and he shall be in all respects, subject to Chapter 15 of Division 4 of this code. In such case the veteran shall be called a conservatee.