

## Memorandum 78-43

Subject: Study F-30.300 - Guardianship-Conservatorship Revision  
(Review of Redrafted Statute)

BACKGROUND

Attached is the final redraft of the proposed Guardianship-Conservatorship Law. The draft is complete except for three portions (noted below) which are still under study by the Commission. We do not plan to reproduce another version of the proposed legislation. We will supplement this version with revisions of individual sections should that be necessary. Accordingly, we are giving you this last chance to suggest your substantive revisions at the September meeting and request that you mark your editorial revisions on the proposed legislation to turn in to the staff at the meeting so they can be taken into account when the proposed legislation is put together for sending to the Legislative Counsel and the printer. After the meeting, we will assemble a complete copy of the proposed legislation and send you a copy.

The proposed legislation is complete except for the following:

(1) The provisions relating to the effect of appointment of a conservator and the court determinations of the conservatee's capacity are not included. We are preparing a separate memorandum for the September meeting on this subject. Memorandum 78-56 will contain a draft of proposed legislation suggested by the staff on this subject. This draft will be revised to reflect the decisions at the September meeting and inserted in the proposed legislation. We will make the necessary conforming changes in the remainder of the proposed legislation to reflect the decisions at the September meeting on Memorandum 78-56.

(2) The special procedure for authorization for medical treatment of an adult not having a conservator of the person will also be the subject of a separate memorandum prepared for the September meeting. Memorandum 78-57 will discuss this problem and will include a staff draft of proposed provisions. We will make the changes in the proposed provisions to reflect decisions at the September meeting and insert them in the attached draft.

(3) The provisions relating to community and homestead property have been discussed by the Commission but these provisions will be presented in a separate memorandum prepared for the September meeting--

Memorandum 78-58--which will have this portion of the proposed legislation attached. This portion too will be revised to reflect decisions at the September meeting and inserted in the attached draft.

We are hopeful that the entire draft statute, including the three portions referred to above, can be covered and necessary decisions made at the September meeting so that only those individual sections, if any, requiring further review will need to be considered by the Commission before we print our report. The Commission will, of course, give further consideration to the proposed legislation when it reviews the comments we hope to receive on our printed report.

We expect to be able to provide you with a draft of the preliminary portion of the recommendation for review at the October meeting. We are hopeful that the printed report will be available early in January so that it can be distributed for review before the proposed legislation is considered by legislative committees.

We also hope to be able to provide you with the entire draft of the conforming revisions (in draft form prepared by the Legislative Counsel) in time for the November meeting so that any needed changes can be made before the conforming revisions bill is introduced and the report printed.

#### STAFF COMMENTS ON ATTACHED DRAFT

We note below various matters for your special attention. We have not noted every editorial or technical revision we have made. We are hopeful that you will take this one last opportunity (before we send the material to the printer) to review the entire attached draft.

In preparing the report for the printer, we plan to delete some discussion in the Comments to the new sections which explains why certain provisions of existing law have not been continued. We will insert these deleted portions in the Comments to the repealed sections. We do not plan to delete portions of Comments to new sections that are useful in determining the source of the new section or in determining the meaning of the new section.

#### § 1424. Interested person

This is a new section. The substance of this section was approved at the last meeting. The Comment is new.

§ 1452. Trial by jury

In response to a question on a draft turned in at the last meeting, we added a paragraph to the Comment to Section 1452 stating that there is no constitutional right to a jury trial in probate proceedings, including guardianship and conservatorship proceedings. This is based on case holdings and a recent law review article. However, after further consideration, we would like to omit this discussion of the constitutional issue. We cannot predict what the courts will hold in the future, and the discussion is not essential to the section.

§ 1501. Nomination of guardian as to particular property

This section has been substantially revised as a result of the discussion at the last meeting. The Comment should be read as well as the text of the section.

§ 1512. Amendment of petition to disclose newly discovered proceeding affecting custody

This section has been revised along the lines suggested at the last meeting.

§ 1513. Investigation and report by court-designated officer

The last sentence of this section has been revised to insert ", held after such notice as the court may require,".

The staff suggests that subdivision (c) be revised to substitute "the court may make an order" for "the court shall make an order".

§ 1821. Contents of petition

This section will require adjustment to reflect the decisions made in connection with Section 1835 (determination of extent of capacity of conservatee).

Paragraph (3) of subdivision (f) has been revised and should be reviewed in connection with revised Section 2355.

Paragraph (g) has been revised to add the portion after "is not willing to attend the hearing on the petition,".

§ 1825. Attendance of proposed conservatee at hearing

Paragraph (3) of subdivision (a) has been revised to reflect the discussion at the last meeting and should be read with care.

§ 1826. Information to proposed conservatee by court investigator;  
investigation and report

Subdivisions (g), (h), and (i) have been revised and should be read with care.

§ 1827. Law and procedure applicable to hearing

Subdivision (a) has been revised to make clear that a right to a jury trial exists on the matter "of the establishment of the conservatorship." Subdivision (a) does not apply to the determination of the person who is to be appointed as conservator or to the determination of the capacity of the conservatee if the jury determines that the proposed conservatee is a person for whom a conservatorship can be established.

Subdivision (b) is new and is taken from Assemblyman Lanterman's bill. We are not sure how the provision will work and it merits discussion by the Commission.

§ 1828. Information to proposed conservatee by court

We have deleted references to the conservatee's capacity to make a conveyance or contract or give consent to medical treatment from paragraph (2) of subdivision (a) and have added paragraph (4) which is new.

In subdivision (b) we have revised the language to substitute the language which appears in the subdivision for the former language "the proposed conservatee's opinion concerning the appointment."

§ 1835. Determining extent of conservatee's capacity

We plan to prepare a separate memorandum on the problems presented by this section.

We have, however, revised subdivision (b) to reflect decisions made at the last meeting.

§ 1850. Court review of conservatorship

Subdivision (b) has been added to this section by the staff. In view of Section 1851 (visitation and findings by court investigator), the staff does not believe that this chapter is workable as a practical matter in the cases described in subdivision (b).

§ 1851. Visitation and findings by court investigator

The last sentence of subdivision (a) has been added pursuant to the Commission decision at the July meeting.

In response to a suggestion by Commissioner Miller, we have added the last sentence to subdivision (b). Should copies of the report be available to other persons in addition to the conservator?



§ 1852. Notification of counsel; representation of conservatee at hearing

The staff has retained this section because it adds something to Section 1471 (mandatory appointment of legal counsel), and we believe the section is better located here than compiled in Section 1471. However, this is a decision that should be reviewed by the Commission.

§ 1853. Failure to locate conservatee; removal of conservator on failure to produce conservatee; petition to appoint new conservator

We have added the last sentence to subdivision (b).

§ 1860. When conservatorship terminates

Subdivision (b) is added to Section 1860 to reflect the decision made at the July meeting. However, having given the matter further consideration, the staff recommends that this subdivision be deleted and instead Section 1860 be revised to read:

1860. (a) A conservatorship continues until terminated by the death of the conservatee or by order of the court.

(b) If a conservatorship is established for the person of a married minor, the conservatorship does not terminate if the marriage is dissolved or is adjudged a nullity.

The staff makes this recommended change because we believe it will be waste of court time and unnecessary expense to terminate the existing conservatorship, establish a guardianship for the remainder of the minority of the former conservatee, and then have to go through the procedure of again establishing a conservatorship. We believe that any lack of consistency of concepts in the draft with respect to retaining a conservatorship for a married minor whose marriage is adjudged a nullity (but not permitting the establishment of a conservatorship for such a minor--See Section 1800) is far offset by the practical benefits of the staff proposal.

§ 1863. Hearing and judgment

We have added "other interested person" to subdivision (a).

§ 2101. Relationship confidential and subject to law of trusts

The Comment to this section has been expanded.

§ 2103. Effect of court authorization, approval, or confirmation

The second sentence of this section has been revised to reflect the Commission decision at the last meeting.

§ 2108. Additional powers and duties granted guardian nominated by will

This section has been revised to reflect the change from the existing appointment scheme to the new nomination scheme for guardians. The Commission previously determined that this section should apply only to a guardian appointed in a will.

Should the will also be permitted to dispense with the requirement that the guardian make periodic accountings to the court?

This section and the Comment should be studied with care.

§ 2109. Powers and duties of guardian as to particular property; allocation of duties between guardians; instructions from court

This is basically a new section. The section and Comment should be studied with care. Subdivision (a) is a new proposal by the staff and is drawn from subdivision (b) of Section 2107 (powers and duties of guardian of nonresident). We believe that this subdivision is useful and should be included in the proposed statute. Subdivision (b) reflects the decisions made at the July meeting.

§ 2111. Transfer of conveyance of property pursuant to court order

This is a new section which generalizes specific provisions of the prior draft. Read the section and Comment with care.

§ 2250. Appointment

We have added a requirement of "five days" notice and required that notice be "personally delivered" for the former requirement that "notice shall be given".

§ 2252. Powers and duties

The introductory portion of this section formerly included the phrase "subject to Sections 2253 and 2254." We have deleted this phrase and have replaced it by a new subdivision (b) which we believe states the intent of the former language in a clearer manner.

§ 2253. Change of conservatee's residence generally

We have redrafted this section in accord with decisions made at the last meeting. The significant revisions are found in subdivisions (d) and (e).

§ 2254. Removal of conservatee from residence in case of emergency or with conservatee's consent for medical treatment

The standard for what constitutes a medical emergency in this section is far too limiting. The section precludes removal from the place of residence unless the conservatee "has a medical condition which presents an immediate threat to the temporary conservatee's physical survival." It should be noted that if the case does not satisfy this requirement there will be a delay of seven days under Section 2253 before an order is obtained permitting the removal for medical treatment.

The staff suggests that Section 2254 be revised to adopt language found in Senate Bill 734 (defining "emergency medical care" for the purpose of providing protection from liability to persons providing services in a general acute care hospital emergency department.

We suggest that the second sentence of subdivision (a) of Section 2254 be revised to read:

For the purposes of this section, an emergency exists if the temporary conservatee's place of residence is unfit for habitation or if the temporary conservatee has a medical condition which presents an immediate threat to the temporary conservatee's physical survival, if not immediately diagnosed and treated, would lead to serious physical or mental disability or death.

The staff suggests that the same language be used uniformly throughout the statute to describe emergency medical care. The change made in existing law by Senate Bill 734 is to substitute "would" for "could", thus greatly strengthening the protection the language gives the temporary conservatee if it is adopted for use in the statute.

§ 2257. Termination

In paragraph (1) of subdivision (a), we have added "the temporary guardian or conservator acquires notice that".

§ 2321. Waiver of bond by conservatee

We have added ", having sufficient capacity to do so,".

§ 2324. Nominated guardian

We have revised this section to reflect the change from the appointment to the nomination system for guardians. Note that the person

making the nomination must waive the filing of the bond whereas under the former provision no bond was required for an appointed guardian. Section 2324 is similar in concept to Section 2321 (waiver of bond by conservatee).

§ 2334. Insufficiency of sureties; order for further security or new bond

In subdivision (e) we have substituted "the petition alleges facts showing that the guardian or conservator is failing to use ordinary care and diligence in the management of the estate" for "it is alleged on oath, that the guardian or conservator is wasting the property of the estate."

§ 2352. Residence and domicile of ward or conservatee

We have added "and domicile" in subdivision (a) and subdivision (b) to pick up amendments to be made by Assemblyman Lanterman's bill. We assume the effect of these amendments is that the ward or conservatee can be taken out of state so long as there is no change of domicile.

§ 2355. Medical treatment of conservatee adjudicated to lack capacity to give informed consent

This section has been revised to reflect decisions made at the last meeting. Note that the Comment states that subdivision (b) does not limit the authority of the court under Section 2357.

§ 2356. Involuntary civil mental health treatment; Natural Death Act

We have revised this section to pick up the amendments proposed by Assemblyman Lanterman's bill. An important policy issue is presented: Should subdivision (a) also apply to a ward and, if so, what age should be the breaking point for application of the subdivision?" The last sentence of subdivision (a) is new from the Lanterman bill. Note that there is no requirement that "involuntary civil mental health treatment" be defined by regulation and the meaning of that term is uncertain.

§ 2357. Court ordered medical treatment

This section has been revised to reflect decisions at the last meeting. We have added a reference to Section 2252 (temporary guardian or conservator) in subdivision (b).

§ 2401. Duty to manage estate using ordinary care and diligence

We have added a sentence to the Comment indicating that a professional guardian or conservator is held to a greater standard of care than a lay guardian or conservator.

§ 2403. Instructions from or approval by court

Note the last sentence of the Comment.

§ 2405. Submitting disputed claim to commissioner, judge pro tempore, or probate judge for summary determination

Section 2405 is a new provision, based on Section 718, which the Commission at the July meeting requested the staff to draft for inclusion in the statute. Section 2405 picks up what the staff believes is the portion of Section 718 that is useful in the case of a guardianship or conservatorship.

§ 2406. Submitting dispute to arbitration

Section 2406 is a new provision suggested by the staff and not previously considered by the Commission. Should there be a provision requiring a petition for approval and notice thereof in this section?

§ 2420. Support, maintenance, and education

In subdivision (c), the staff has substituted ", and the payments are supported by proper vouchers or other proof satisfactory to the court," for ", and it is made to appear to the satisfaction of the court by proper vouchers or other proof,".

The staff strongly urges the Commission to delete the reference to Section 2230 of the Civil Code from subdivision (d). The reason for the inclusion of this reference is indicated in the last paragraph of the Comment. However, the requirement of fair dealing is a general requirement and we do not believe that subdivision (d) should be singled out as a provision in which to insert a special reference to Civil Code Section 2230. We would prefer to treat the matter in the Comment to Section 2101 (relationship confidential and subject to law of trusts) and have included the substance of the last paragraph of the Comment to Section 2420 in the Comment to Section 2101. Accordingly, the staff suggests that the reference to Section 2230 be deleted from the text of Section 2420 and that the last paragraph of the Comment to Section 2420 also be deleted.

§ 2422. Order authorizing support notwithstanding third party liable

Subdivision (b) has been added to this section by the staff.

§ 2450. Extent of court supervision

The second paragraph of the Comment is added.

§ 2455. Deposit of securities in securities depository

The Commission requested further information concerning securities deposits. This information is provided in Exhibit 1 attached.

§ 2459. Life insurance; medical, retirement, and other plans and benefits

The staff has revised this section to limit subdivision (b) to a conservatorship and to add subdivision (e). Subdivision (e) is explained in the Comment to the section.

§ 2462. Representation in actions and proceedings

Commissioner Miller suggested revision of Section 2462 somewhat along the following lines but the staff has not included this revision in the redrafted statute:

2462. (a) Subject to Section 2463, unless another person is appointed for that purpose, the guardian or conservator may:

(1) Institute and maintain actions and proceedings for the benefit of the ward or conservatee or the estate.

(2) Defend actions and proceedings against the ward or conservatee or the estate.

(3) Intervene or otherwise appear in actions and proceedings to protect the interests of the ward or conservatee or estate.

(b) Nothing in this section prevents the guardian or conservator, with court approval, from appearing in any action or proceeding where another person has been appointed for the purpose of bringing the action or proceeding if the court in which the guardianship or conservatorship of the estate proceeding is pending determines that such appearance is necessary to protect the interest of the ward or conservatee or the estate.

The staff does not consider paragraph (3) of subdivision (a) to be necessary and believes that it is bad policy to permit, as permitted by subdivision (b), the estate to support two different persons bringing or defending an action.

§§ 2500 et seq.--Compromise of Claims and Actions

We have retained the word "approval" in connection with the compromise of claims and actions and extension, renewal, or modification of obligations. "Approval" of compromises is traditional and permits the compromise to be executed subject to court approval.

§§ 2520-2528. Conveyance or Transfer of Property Claimed to Belong to Ward or Conservatee or Other Person

We have collected in these provisions the provisions relating to conveyances or transfers of property claimed to belong to the ward or conservatee or another. We have expanded existing law to include the situation where the ward or conservatee claims property held by another. Note the various procedural protections provided in Sections 2524, 2525, and 2526. We have extended these protections to the case where the petition requests an order authorizing or requiring a conveyance or transfer to complete a contract. These provisions are new and should be read with care.

§ 2570. Authority to invest generally; petition; hearing; order

We have consolidated two of the sections of the former draft in this one section to simplify the chapter.

§ 2571. Purchase of home for ward or conservatee or dependents

We have added "under Section 2570" to pick up the notice requirement of Section 2570 and the procedure specified in that section.

§ 2580. Petition for approval of proposed action

At the last meeting, several expert advisers suggested that the inability to change the conservatee's will would prevent proper estate planning. The staff and members of the Commission resisted any grant of authority to change the conservatee's will on the ground that such a proposal would not be acceptable to the Legislature and would present practical problems of proof of a will executed by the conservator on behalf of the conservatee.

The staff has given this matter further consideration. We have noted that the statutory provisions governing inter vivos and testamentary trusts provide authority for modifying a trust instrument (including a will) in order to qualify the decedent's estate for the charitable estate tax deduction permitted by federal law. See Probate Code Section 1138.1(13). "Trust" is defined in Section 1138 to mean "a written voluntary express trust, with additions thereto, whether created by will or other than by will which is entirely administered or to be administered in this state."

The staff is not expert on tax law, but we suggest for consideration of the Commission and our expert advisers that the following subdivision be added to Section 2580:

(c) A petition filed under this article may include a request for an order of the court authorizing or directing the conservator to execute on behalf of the conservatee an instrument modifying the will of the conservatee in the manner required to qualify the estate upon the death of the conservatee for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service, in any case in which all persons in being who may take under the will or their guardians or conservators have submitted written agreement to the proposed modification. Upon execution of the instrument as authorized or directed by the court, the conservatee's will is modified to the extent provided in the instrument.

Comment. Subdivision (c) is included to permit modification of the conservatee's will in connection with an estate plan under this article in order to qualify the estate upon the death of the conservatee for the charitable estate tax deduction permitted by federal law. The subdivision is analogous to paragraph (13) of subdivision (a) of Section 1138 (inter vivos and other trusts).

§ 2583. Circumstances considered in determining whether to approve proposed action

Subdivision (f) should be examined to determine that it is satisfactory.

§ 2586. Production of conservatee's will and other relevant estate plan documents

This section has been redrafted to make it easier to understand. The definition in subdivision (a) is comparable to subdivision (f) of Section 2583.

Special attention should be given to the last two paragraphs of the Comment which are new.

§ 2595. Effect of article

Note the last sentence of the Comment.

§ 2610. Filing inventory and appraisal

This section has been substantially revised to reflect the suggestions made at the last meeting.



§ 2614. Objections to appraisals

This section requires only 10 days of notice of objections to appraisals. However, this time appears adequate under the circumstances. Giving greater notice would cause additional delay in hearing objections to the inventory and appraisalment.

§ 2620. Presentation of account for settlement and allowance

This section is revised to reflect decisions made at the last meeting.

§ 2622. Objections to account

Section 2622 does not specify the time for filing objections. Existing practice is that the objections may be filed at or before the hearing on the account. Likewise, Section 2622 does not specify the manner of notice or the extent to which notice of objections is required. Existing practice is to give notice to the petitioner (the guardian or conservator). The staff does not recommend any changes in Section 2622, but we note these matters for your consideration.

§ 2623. Compensation and expenses of guardian or conservator

We have substituted "incurred in the exercise of the powers and the performance of the duties of the guardian or conservator" for "incurred in the execution of the trust." The Commission wanted something substituted for the latter language. Is the substitution satisfactory? In this connection, see the last portion of the Comment to the section.

§ 2625. Review of sales, purchases, and other transactions

As the Commission directed at the last meeting, the staff has revised the proposed legislation to insert, where appropriate, the requirement "when authorized by order of the court." There will be cases where the required advance authorization for a transaction is not approved and the statute, like existing law, is silent on this matter. Accordingly, we propose to add the second paragraph to the Comment to Section 2625 to point out that a court may approve and confirm a transaction that required court authorization which was not obtained. We consider this Comment important and suggest that you read it with care.

§ 2640. Petition by guardian or conservator of estate

Note the second paragraph of the Comment to this section. Reference is made to this portion of the Comment in other Comments where appropriate.

§ 2643. Order authorizing periodic payments of compensation to guardian or conservator or attorney

You should read with care the second paragraph of the Comment to this section. The staff has removed the limitation that periodic payments could not be made to the attorney for the guardian or conservator of the person. Upon further consideration, we conclude that the limitation complicates the section and might preclude periodic payments that would be justified in a case where periodic services are rendered. We believe that the court can be relied on not to make an order under this section in a case where the order would not be appropriate.

§ 2644. Contingent fee contract with attorney

Should this section permit execution of the contract by the guardian or conservator and the attorney and then presentation of the contract for court "approval"?

§ 2654. Surrender of estate and suspension of powers pending hearing

The staff has added subdivision (b) to this section. If this provision is approved, the staff plans to add a similar provision to subdivision (e) of Section 2334. Perhaps a general provision along these lines should be added to the provisions relating to temporary guardians and conservators and the specific ones omitted.

§ 2660. Resignation of guardian or conservator

This section has been revised along the lines suggested at the last meeting.

§ 2700. Request for special notice

We believe this section and the Comment are in good shape. However, you should study the section and the Comment to determine if it is satisfactory. See the second paragraph of the Comment.

As requested at the last meeting, we have combined the request for notice of the filing of the inventory and appraisement with the other matters listed in Section 2700 and eliminated the special section that formerly dealt with the inventory and appraisement.

§ 2750. Appealable orders

We believe this section and the Comment are in good shape. However, you should study the section and Comment to determine if it is satisfactory.

§ 2803. Contents of petition

At the last meeting, it was suggested that the petition might be required to list all claims against the guardian or conservator, the ward or conservatee or the estate. Note that subdivision (j) requires only a statement whether there is any pending action in this state. The provisions of Section 2803 are drawn from the transfer-of-trust-assets-out-of-state provisions. Note that Section 2804 requires notice of hearing to be given to each person required to be listed in the petition. Section 2805 permits a creditor to object to the transfer if he acquires knowledge of it. We believe it might be quite burdensome to require a listing of all creditors and a notice to each, but this is a policy issue for determination by the Commission. The existing law governing transfer of proceedings out of the state requires notice only to the foreign guardian or conservator, the ward or conservatee, the California guardian or conservator, and the spouse and relatives of the ward or conservatee.

§ 3700 et seq. Personal Property of Absentees

At the last meeting, the Commission directed the staff to raise the amount that may be set aside to the family of the absentee from \$5,000 to \$20,000. The draft has been revised to make this change. Note that under Section 3705 no bond can be required. The amount set aside can be expended by the family for shelter, food, health care, education, transportation, or the maintenance of a reasonable and adequate standard of living for the family of the absentee. The amount set aside apparently is in addition to any amounts the absentee had designated be paid to his family by the government while he was out of the country. The staff believes that \$20,000 is excessive under these circumstances. We fear the absentee will return to find his entire savings expended in a case where the moneys were not in a joint account or otherwise subject to withdrawal and expenditure without the need to resort to the court procedure. We doubt that there is any real need for the chapter under present conditions. In the rare case where such need exists, we believe that an ordinary conservatorship provides better protection to the absentee and should be used. Accordingly, we suggest that the \$5,000 limit be retained.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

EXHIBIT 1

**PACIFIC SECURITIES  
DEPOSITORY TRUST**  
COMPANY INCORPORATED

July 17, 1978

Mr. G. Sinclair Price  
Regional Trust  
United California Bank  
405 Montgomery Street M2-0  
San Francisco, California 94104

Dear Mr. Price:

I hope the following paragraph answers the questions you asked about the Pacific Securities Depository. I've kept it as brief as possible; however, I'll be glad to expand the statement if it is not suitable.

The main function of a securities depository is to immobilize stock certificates in a secure environment. All necessary movements of security positions and all necessary services required for the maintenance of those positions can be accomplished without having to move certificates out of the depository's control. The Pacific Securities Depository is monitored by the Federal Reserve, the California State Banking Department, the Securities and Exchange Commission, an external audit firm and an independent internal audit group.

I am enclosing a brochure that explains the various services provided by the Pacific Securities Depository. I would also like to extend an invitation to you to tour our facility. If I can be of further assistance, please call.

Very truly yours,

*Sharon S. Noordewier*  
Sharon S. Noordewier  
Vice President

SSN/ds  
enclosure

RECORDED  
JUL 20 1978  
UNITED CALIFORNIA BANK  
G. S. PRICE

MEMBER FEDERAL RESERVE SYSTEM



## **National Clearing and Depository System**

## **PSDTC Eligible Securities**

## **One Account Clearing**

## **Automatic Allocation and Automatic Release-To-Nets**

**The Pacific Clearing and Depository System** is the western link to the National Clearance and Settlement System mandated by the Securities and Exchange Commission in the Securities Reform Act of 1975. In accordance with the guidelines set forth by the SEC, the three major clearance and settlement facilities in this country are electronically linked to afford the Participant a more efficient form of clearance, settlement and safeguarding of securities.

**Currently, over 15,000 issues are eligible** for Depository entry. Those issues deemed eligible include listed and OTC securities, registered corporate bonds and U.S. Government securities. The eligibility of U.S. Government securities should be of particular interest to non-Fed member banks for it affords them access to the Fed through the Pacific Securities Depository as contrasted to employing a correspondent bank to trade government issues in their behalf. The PSDTC Eligibility List is reviewed regularly and new securities are added based on PSDTC eligibility standards and Participant request.

**The Pacific Clearing and Depository System** offers one facility for the clearance, settlement and custody of all securities transactions. With the presence of interfaces linking the major clearing and depository facilities, the marketplace in which the trade is executed is of no consequence to Participants. A net-by-net settlement system is employed by the Pacific Clearing Corporation where brokers and institutions have only one net transaction with PCC rather than many individual settlements with various brokers. Daily trade activity is consolidated on a net settlement sheet which provides the Participant with one record to facilitate reconciliation.

**The interface between Pacific Clearing Corporation (PCC) and the Pacific Securities Depository Trust Company (PSDTC)** allows Participants to move securities by book-entry between accounts at PCC and PSDTC for net-by-net settlement of all securities transactions. A Participant has the option to request automatic bookkeeping movements between PCC and PSDTC whereby an Automatic Allocation will move securities purchased into the PSDTC account for safekeeping and an Automatic Release-to-Nets will release securities from PSDTC to PCC for securities sold. In each case, these automatic movements preclude the Participant from having to manually submit entries to PCC or PSDTC, or physically handle any securities.

## **Institutional Clearing Program**

**The Institutional Clearing Program (ICP)** was developed by the Pacific Clearing Corporation to permit institutional participation in the net clearing system. This program allows an institution to compare and settle all its trades at PCC, effectively eliminating the necessity for an institution to look to its executing brokers for settlement. As a result, fails and late settlements are practically eliminated. In ICP, an institution can clear trades, regardless of origin, and with depository participation, can effectively immobilize certificates by taking advantage of bookkeeping entries for settlement.

## **Third Party Pledge System**

**The Pacific Securities Depository**, working in conjunction with the Options Clearing Corporation (OCC), allows PSDTC Participants the opportunity to satisfy margin requirements in listed call options transactions through the use of the Third Party Pledge System. A PSDTC Participant acting as a third party may pledge securities to collateralize an OCC Clearing Member's short call option position. Whether the third party Participant be a bank, a non-OCC member or a clearing member of OCC, the procedures employed are basically the same. This system has proven to be an effective method of breaching the problems inherent in the use of Escrow Receipts as collateral against short positions created via the selling of listed call options. Additionally, the OCC rules governing the issuance of Escrow Receipts are relieved in the following ways: a) a bank is not required to have a minimum stockholder's equity of \$20 million, and b) there is no limitation as to the amount of stock that can be deposited in PSDTC for the purpose of margining a call option.

## **Stock Loan**

**A PSDTC stock loan Participant** may loan securities on deposit with PSDTC to PCC where the loaned securities are used to settle a short-side fail to deliver. Each stock loan Participant is entitled to a percentage share of the total stock loans generated based on a periodic computer analysis of the stock loan formula. A daily record is maintained of the percent of total stock loan value available to each participant and the total value of the position out on loan.

## **Transfer Service**

**Pacific Clearing Corporation** provides Participants with complete transfer service. Transfers are centrally controlled and the physical handling of securities is greatly reduced. PCC will process transfers against long clearing positions, depository positions or physical securities delivered to PCC.

## **Underwriting Distribution**

In an underwriting distribution, the managing underwriter as a Participant in the Pacific Depository may directly deposit into PSDTC the stock/corporate bonds which are being offered. The issue is transferred into a jumbo certificate and several lower denominational certificates to accommodate physical distribution. Participating underwriters in the syndicate may receive their stocks/bonds through book entry movement within the Pacific Securities Depository environment.

## **Special Services**

A Participant in the Pacific Clearing and Depository System may take advantage of a number of Special Services including the processing of cash and stock dividends, proxies and reorganization functions including: name changes, reverse splits, security redemptions, tender offers, bankruptcy, corporate mergers, security conversions, corporate liquidations and subscriptions. By placing these responsibilities in a controlled environment, brokers and institutions can realize improved efficiency in terms of time and cost.

## **Transfer Agent Custodian**

The Transfer Agent Custodian (TAC) program provides for a participating bank to act as custodian for securities registered in PSDTC's nominee name, "Pacific & Co". Once a TAC agent receives the certificates for a TAC issue, he consolidates them into a jumbo certificate and maintains custody of the certificate. By allowing the TAC agent to retain custody, the time and expense involved in the transfer cycle can be reduced when physical delivery of the certificate is requested.

## **Pledgee Bank**

A bank, acting as pledgee, may extend credit to a PSDTC Participant when that Participant has deposited securities into the Pledge location within his Depository account. As the Pledgeholder, PSDTC generates a daily statement to both Pledgee and Pledgor Participant listing those securities which have been received or withdrawn from pledge for that day. This service can effectively expedite the securing of loans by Participant brokers from lending or pledgee banks.

## **Mail Clearing**

Participants who are not in close proximity to a Pacific Clearing Corporation Facility may clear through PCC by mail. To utilize this service, a Participant establishes a Los Angeles bank account for money settlement with the securities settled either by mail, courier or through the Participant's Depository account.



## **Securities Collection Division**

**Securities Collection Division (SCD)** is a service provided to Participants for the processing and delivery of securities shipped draft attached for collection throughout the nation. Through SCD, payment on drafts to cities with a PCC facility or agent, can normally be consummated in one day.

## **Participants' Fund**

**All PCC and PSDTC Participants** are required to contribute to the joint Clearing/Depository Participants Fund an amount related to their monthly activity at both facilities. The purpose of the Fund is to cover Participant Liabilities and, to date, no claim has been made against the Fund. The contribution is refundable upon termination of participation in the Pacific Clearing and Depository System.

## **Audit and Security Controls**

**The Pacific Securities Depository** maintains an internal Audit Department which works closely with PSDTC management, the independent auditors and regulatory agency examiners. They are responsible for conducting random counts of physical securities as well as performing regular cycle counts of all securities held at PSDTC. A regular systematic review, analysis and evaluation of PSDTC operations is conducted by the Audit Department as a means by which to assist management in the effective control of internal and operational procedures. Participants may also call on the PSDTC Audit Department to meet with their respective auditors to review and discuss audit procedures. Physical security measures include security guards strategically located in the vault and securities processing areas, television camera surveillance and access control and alarm systems within the vault.

## **PCC/PSDTC Facilities**

**With main offices in Los Angeles and San Francisco, and satellite offices in Portland, Denver and Seattle,** the Pacific Clearing and Depository System reaches the major metropolitan areas that comprise the Western Financial Community. This network of facilities affords Participants an expeditious means to enter the PCC/PSDTC System.

F-30.300

August 21, 1978

STATE OF CALIFORNIA  
CALIFORNIA LAW  
REVISION COMMISSION

STAFF REDRAFT

PROPOSED LEGISLATION

relating to

GUARDIANSHIP-CONSERVATORSHIP LAW

(Reflects decisions and suggestions made at July and  
August 1978 meetings of Law Revision Commission)

August 1978

CALIFORNIA LAW REVISION COMMISSION  
Stanford Law School  
Stanford, California 94305

## PROPOSED LEGISLATION

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

### I. GUARDIANSHIP-CONSERVATORSHIP LAW

#### OUTLINE OF PROVISIONS

Probate Code §§ 1400-1700 (repealed). Guardian and ward  
Probate Code §§ 1701-2207 (repealed). Conservatorship  
Probate Code §§ 1400-3803 (added). Guardianship, conservatorship, and other protective proceedings.

#### DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS

##### PART 1. DEFINITIONS AND GENERAL PROVISIONS

###### CHAPTER 1. DEFINITIONS

§ 1400. Application of definitions  
§§ 1401-1402. [Reserved]  
§ 1403. Absentee  
§§ 1404-1405. [Reserved]  
§ 1406. Account in an insured savings and loan association  
§§ 1407-1417. [Reserved]  
§ 1418. Court  
§ 1419. Court investigator  
§§ 1420-1423. [Reserved]  
§ 1424. Interested person  
§§ 1425-1429. [Reserved]  
§ 1430. Petition  
§§ 1431-1439. [Reserved]  
§ 1440. Secretary concerned  
§§ 1441-1442. [Reserved]  
§ 1443. Shares of an insured credit union  
§§ 1444-1445. [Reserved]  
§ 1446. Single-premium deferred annuity

###### CHAPTER 2. GENERAL PROVISIONS

§ 1450. Petitions, reports, and accounts to be verified  
§ 1451. Clerk to set matters for hearing  
§ 1452. Trial by jury  
§ 1453. When motion for new trial allowed  
§ 1454. Court investigator  
§ 1455. Guardian ad litem

###### CHAPTER 3. NOTICES

§ 1460. Notice of hearings generally  
§ 1461. Notice to Director of Mental Health or Director of Developmental Services  
§ 1462. Court may extend or shorten time for notice or require additional notice  
§ 1463. Postponement of hearings; notice  
§ 1464. Form of notice

- § 1465. Manner of mailing; when mailing complete
- § 1466. Personal delivery in lieu of mailing
- § 1467. When service by mail deemed complete
- § 1468. Proof of giving of notice
- § 1469. Application of Sections 1200 and 1201 to proceedings under this division

CHAPTER 4. APPOINTMENT OF LEGAL COUNSEL

- § 1470. Discretionary appointment of legal counsel
- § 1471. Mandatory appointment of legal counsel
- § 1472. Compensation of mandatory court-appointed counsel

CHAPTER 5. TRANSITIONAL PROVISIONS

- § 1480. Definitions
- § 1481. Effect on existing guardianships and conservatorships generally
- § 1482. Effect on bonds and security and existing liabilities
- § 1483. Appointments or confirmations made under prior law
- § 1484. Pending matters arising under prior law
- § 1485. Effect on guardianships of adults and married minors
- § 1486. Effect on conservatorship of person for whom guardian could have been appointed
- § 1487. Order to reflect lack of legal capacity of existing wards and conservatees
- § 1488. Effect on nomination by adult of guardian for such adult
- § 1489. Effect on appointment of guardian by parent or other person for a minor
- § 1490. References in statutes
- § 1491. Rules of Judicial Council

PART 2. GUARDIANSHIP

CHAPTER 1. ESTABLISHMENT OF GUARDIANSHIP

Article 1. Nomination of Guardian

- § 1500. Nomination of guardian of person or estate or both by parent
- § 1501. Nomination of guardian as to particular property
- § 1502. Manner of making nomination; when effective; effect of subsequent legal incapacity or death of nominator

Article 2. Appointment of Guardian Generally

- § 1510. Petition for appointment
- § 1511. Notice of hearing
- § 1512. Amendment of petition to disclose newly discovered proceeding affecting custody
- § 1513. Investigation and report by court-designated officer
- § 1514. Appointment of guardian
- § 1515. No guardian of person for married minor

Article 3. Nonrelative Guardianships

- § 1540. Application of article
- § 1541. Additional contents of petition for guardianship
- § 1542. Delivery of copy of petition to Director of Social Services
- § 1543. Report on suitability of guardian

CHAPTER 2. TERMINATION

- § 1600. Majority, death, or marriage of ward
- § 1601. Termination by court order

PART 3. CONSERVATORSHIP

CHAPTER 1. ESTABLISHMENT OF CONSERVATORSHIP

Article 1. Persons for Whom Conservator May Be Appointed

- § 1800. Conservatorships for adults or married minors
- § 1801. Showing required for appointment generally
- § 1802. Appointment upon request of proposed conservatee
- § 1803. Proposed conservatee an "absentee"

Article 2. Order of Preference for Appointment  
of Conservator

- § 1810. Nomination by proposed conservatee
- § 1811. Nomination by spouse or relative of proposed conservatee
- § 1812. Order of preference for appointment as conservator
- § 1813. Condition for appointment of absentee's spouse

Article 3. Establishment of Conservatorship

- § 1820. Filing of petition
- § 1821. Contents of petition
- § 1822. Notice of hearing
- § 1823. Citation to proposed conservatee
- § 1824. Service on proposed conservatee of citation and petition
- § 1825. Attendance of proposed conservatee at hearing
- § 1826. Information to proposed conservatee by court investigator; investigation and report
- § 1827. Law and procedure applicable to hearing
- § 1828. Information to proposed conservatee by court
- § 1829. Persons who may support or oppose petition
- § 1830. Order appointing conservator

Article 4. Determining Extent of Conservatee's Legal Capacity

- § 1835. Adjudication of conservatee's lack of legal capacity or lack of capacity to give informed medical consent; withdrawing power to enter into specified transactions
- § 1836. Effect of adjudication of lack of legal capacity

Article 5. Special Provisions Applicable Where Proposed  
Conservatee Is An Absentee

- § 1840. Procedure for appointment of conservator for absentee
- § 1841. Additional contents of petition
- § 1842. Notice of hearing
- § 1843. Citation to proposed conservatee not required
- § 1844. Proof of status of proposed conservatee; attendance at hearing not required

## CHAPTER 2. BIENNIAL REVIEW OF CONSERVATORSHIP

- § 1850. Court review of conservatorship
- § 1851. Visitation and findings by court investigator
- § 1852. Notification of counsel; representation of conservatee at hearing
- § 1853. Failure to locate conservatee; removal of conservator on failure to produce conservatee; petition to appoint new conservator

## CHAPTER 3. TERMINATION

- § 1860. When conservatorship terminates
- § 1861. Petition for termination of conservatorship
- § 1862. Notice of hearing
- § 1863. Hearing and judgment
- § 1864. Termination of conservatorship of "absentee"

## PART 4. PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIP

### CHAPTER 1. GENERAL PROVISIONS

- § 2100. Law governing guardianships and conservatorships
- § 2101. Relationship confidential and subject to law of trusts
- § 2102. Control by court
- § 2103. Effect of court authorization, approval, or confirmation
- § 2104. Nonprofit charitable corporation as guardian or conservator
- § 2105. Joint guardians or conservators
- § 2106. One guardian or conservator for several wards or conservatees
- § 2107. Powers and duties of guardian or conservator appointed in California for nonresident
- § 2108. Additional powers and duties granted guardian nominated by will
- § 2109. Powers and duties of guardian as to particular property; allocation of duties between guardians; instructions from court
- § 2110. Appointment to fill vacancy
- § 2111. Transfer or conveyance of property pursuant to court order

### CHAPTER 2. JURISDICTION AND VENUE

#### Article 1. Jurisdiction and Venue

- § 2200. Jurisdiction in superior court
- § 2201. Venue for residents
- § 2202. Venue for nonresidents
- § 2203. Court having priority where proceedings instituted in several counties

#### Article 2. Change of Venue

- § 2210. Definitions
- § 2211. Authority to transfer proceeding
- § 2212. Who may petition for transfer
- § 2213. Contents of petition
- § 2214. Notice of hearing
- § 2215. Hearing and order
- § 2216. Transfer

### CHAPTER 3. TEMPORARY GUARDIANS AND CONSERVATORS

- § 2250. Appointment
- § 2251. Issuance of letters

- § 2252. Powers and duties
- § 2253. Change of conservatee's residence generally
- § 2254. Removal of conservatee from residence in case of emergency or with conservatee's consent for medical treatment
- § 2255. Inventory and appraisal of estate
- § 2256. Accounts
- § 2257. Termination
- § 2258. Suspension, removal, resignation, and discharge

#### CHAPTER 4. OATH, LETTERS, AND BOND

##### Article 1. Requirement of Oath and Bond

- § 2300. Oath and bond required before appointment effective

##### Article 2. Letters

- § 2310. Issuance of letters
- § 2311. Form of letters
- § 2312. Notice to ward or conservatee

##### Article 3. Bonds of Guardians and Conservators

- § 2320. General requirement of bond; amount
- § 2321. Waiver of bond by conservatee
- § 2322. Guardian or conservator of person only
- § 2323. Estate consisting entirely of public benefits
- § 2324. Nominated guardian
- § 2325. Bond of nonprofit charitable corporation
- § 2326. Joint guardians or conservators
- § 2327. Several wards or conservatees
- § 2328. Deposit of money or other property subject to court control
- § 2329. Reduction of amount of bond
- § 2330. Additional bond on real property transactions
- § 2331. Deposit in place of surety bond
- § 2332. Filing and preservation of bond
- § 2333. Suit against sureties on bond; limitation period
- § 2334. Insufficiency of sureties; order for further security or new bond
- § 2335. Substitution of surety
- § 2336. Release of surety

#### CHAPTER 5. POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE PERSON

- § 2350. Definitions
- § 2351. Care, custody, control, and education
- § 2352. Residence and domicile of ward or conservatee
- § 2353. Medical treatment of ward
- § 2354. Medical treatment of conservatee not adjudicated to lack capacity to give informed consent
- § 2355. Medical treatment of conservatee adjudicated to lack capacity to give informed consent
- § 2356. Involuntary civil mental health treatment; Natural Death Act
- § 2357. Court ordered medical treatment
- § 2358. Additional conditions in order of appointment
- § 2359. Instructions from or approval by court

CHAPTER 6. POWERS AND DUTIES OF GUARDIAN OR  
CONSERVATOR OF THE ESTATE

Article 1. Definitions and General Provisions

- § 2400. Definitions
- § 2401. Duty to manage estate using ordinary care and diligence
- § 2402. Additional conditions in order of appointment
- § 2403. Instructions from or approval by court
- § 2404. Order compelling guardian or conservator to pay support or debts
- § 2405. Submitting disputed claim to commissioner, judge pro tempore, or probate judge for summary determination
- § 2406. Submitting dispute to arbitration
- § 2407. Application of chapter to community and homestead property

Article 2. Support and Maintenance of Ward or  
Conservatee and Dependents

- § 2420. Support, maintenance, and education
- § 2421. Allowance for ward or conservatee
- § 2422. Order authorizing support notwithstanding third party liable
- § 2423. Payment of surplus income to relatives of conservatee

Article 3. Payment of Debts and Expenses

- § 2430. Payment of debts and expenses generally
- § 2431. Priority for wage claims

Article 4. Estate Management Powers Generally

- § 2450. Extent of court supervision
- § 2451. Collection of debts and benefits
- § 2452. Checks, warrants, and drafts
- § 2453. Bank and savings accounts
- § 2454. Deposit of personal property with trust company
- § 2455. Deposit of securities in securities depository
- § 2456. Accounts and deposits withdrawable only on court order
- § 2457. Maintaining home of ward or conservatee and dependents
- § 2458. Voting rights with respect to corporate shares or memberships or property
- § 2459. Life insurance; medical, retirement, and other plans and benefits
- § 2460. Liability and casualty insurance
- § 2461. Taxes and tax returns
- § 2462. Representation in actions and proceedings
- § 2463. Partition actions
- § 2464. Acceptance of deed in lieu of foreclosure
- § 2465. Abandonment of valueless property
- § 2466. Advances by guardian or conservator
- § 2467. Care of estate pending delivery to personal representative

Article 5. Compromise of Claims and Actions; Extension,  
Renewal, or Modification of Obligations

- § 2500. Authority to compromise claims and actions and to extend, renew, or modify obligations
- § 2501. Matters relating to real property
- § 2502. Compromise in excess of specified amounts



- § 2503. Compromise of claim of ward or conservatee against guardian or conservator
- § 2504. Support, wrongful death, and personal injury claims
- § 2505. Court authorized to approve transaction or matter
- § 2506. Petition for approval of court in guardianship or conservatorship proceeding
- § 2507. When another statute is controlling

Article 6. Conveyance or Transfer of Property Claimed  
to Belong to Ward or Conservatee or Other Person

- § 2520. Petition for order
- § 2521. Notice of hearing
- § 2522. Continuance for preparation for hearing
- § 2523. Filing of notice of lis pendens
- § 2524. Denial of petition if objection based on venue made
- § 2525. Abatement of petition if civil action pending
- § 2526. Denial of petition if matter should be determined by civil action
- § 2527. Order
- § 2528. Execution of conveyance or transfer; effect of order

Article 7. Sales

- § 2540. Extent of court supervision
- § 2541. Purposes for which sale may be made
- § 2542. Terms of sales
- § 2543. Manner of sale
- § 2544. Listed stocks, bonds, and securities; United States obligations
- § 2545. Sale or other disposition of tangible personal property
- § 2546. Mines and mining claims
- § 2547. Disposition of proceeds of sale
- § 2548. Limitation of action to recover property sold

Article 8. Notes, Mortgages, Leases,  
Conveyances, and Exchanges

- § 2550. Court supervision
- § 2551. Borrowing money and giving security therefor
- § 2552. Refinancing or improving or repairing property
- § 2553. Order authorizing lease required
- § 2554. Terms and conditions of leases
- § 2555. Leases permitted without court authorization
- § 2556. Dedication or conveyance of real property or easement with or without consideration
- § 2557. Exchange of property

Article 9. Investments and Purchase of Property

- § 2570. Authority to invest generally; petition; hearing; order
- § 2571. Purchase of home for ward or conservatee or dependents
- § 2572. Order authorizing purchase of real property
- § 2573. Order authorizing investment in governmental bonds
- § 2574. United States and State of California obligations; listed stocks, bonds, and other securities

Article 10. Substituted Judgment

- § 2580. Petition for approval of proposed action
- § 2581. Notice of hearing of petition
- § 2582. Adequate provision for conservatee and dependents required
- § 2583. Circumstances considered in determining whether to approve proposed action
- § 2584. Determination and order
- § 2585. No duty to propose action
- § 2586. Production of conservatee's will and other relevant estate plan documents

Article 11. Independent Exercise of Powers

- § 2590. Order granting authority for independent exercise of powers
- § 2591. Powers that may be granted
- § 2592. Petition
- § 2593. Withdrawal or subsequent limitation of powers
- § 2594. Contents of letters; when new letters required
- § 2595. Effect of article

CHAPTER 7. INVENTORY AND ACCOUNTS

Article 1. Definitions and General Provisions

- § 2600. Definitions
- § 2601. Wages of ward or conservatee

Article 2. Inventory and Appraisalment of Estate

- § 2610. Filing inventory and appraisalment
- § 2611. Sending copy to Director of Mental Health or Director of Developmental Services
- § 2612. Sending copy to county assessor
- § 2613. Subsequently discovered or acquired property; supplemental inventory and appraisalment
- § 2614. Objections to appraisals
- § 2615. Consequences of failure to file inventory
- § 2616. Examination concerning assets of estate

Article 3. Accounts

- § 2620. Presentation of account for settlement and allowance
- § 2621. Notice of hearing
- § 2622. Objections to account
- § 2623. Compensation and expenses of guardian or conservator
- § 2624. Investment of funds
- § 2625. Review of sales, purchases, and other transactions
- § 2626. Termination of proceeding upon exhaustion of estate
- § 2627. Settlement of accounts and release by ward; discharge of guardian

Article 4. Accounts on Termination of Relationship

- § 2630. Continuing jurisdiction of court
- § 2631. Death of ward or conservatee; disposition of assets
- § 2632. Account of dead or incompetent guardian or conservator

CHAPTER 8. COMPENSATION OF GUARDIAN, CONSERVATOR, AND ATTORNEY

- § 2640. Petition by guardian or conservator of estate
- § 2641. Petition by guardian or conservator of person
- § 2642. Petition by attorney
- § 2643. Order authorizing periodic payments of compensation to guardian or conservator or attorney
- § 2644. Contingent fee contract with attorney

CHAPTER 9. REMOVAL OR RESIGNATION

Article 1. Removal of Guardian or Conservator

- § 2650. Causes for removal
- § 2651. Petition for removal
- § 2652. Notice of hearing
- § 2653. Hearing and judgment
- § 2654. Surrender of estate and suspension of powers pending hearing

Article 2. Resignation of Guardian or Conservator

- § 2660. Resignation of guardian or conservator

CHAPTER 10. REQUESTS FOR SPECIAL NOTICE

- § 2700. Request for special notice
- § 2701. Modification or withdrawal of request; new request
- § 2702. Petitioner required to give requested special notice
- § 2703. Proof of giving of notice

CHAPTER 11. APPEALS

- § 2750. Appealable orders
- § 2751. Stay
- § 2752. Reversal of order appointing guardian or conservator

CHAPTER 12. TRANSFER OF ASSETS OUT OF STATE

- § 2800. "Foreign guardian or conservator" defined
- § 2801. Order for transfer of assets out of state
- § 2802. Who may petition for transfer
- § 2803. Contents of petition
- § 2804. Notice of hearing
- § 2805. Opposition to petition
- § 2806. Order for transfer
- § 2807. Manner of transfer; conditions
- § 2808. Termination of guardianship or conservatorship

PART 5. UNIFORM VETERANS' GUARDIANSHIP ACT

- § 2900. Short title
- § 2901. Definitions
- § 2902. Manner of appointment of guardian
- § 2903. Petition; filing; contents
- § 2904. Evidence of necessity for guardian of minor
- § 2905. Evidence of necessity for guardian for incompetent
- § 2906. Notice

- § 2907. Fitness of appointee; bond
- § 2908. Petitions and accounts; notices and hearings
- § 2909. Penalty for failure to account
- § 2910. Compensation of guardians
- § 2911. Investments
- § 2912. Maintenance and support of person other than ward
- § 2913. Purchase of home for ward
- § 2914. Furnishing copies of record without charge
- § 2915. Certificate of majority or competency; discharge of guardian and release of sureties
- § 2916. Application of part
- § 2917. Law applicable to exercise of powers and duties of guardian
- § 2918. Uniform law; effectuation of uniformity

PART 6. MANAGEMENT OR DISPOSITION OF COMMUNITY OR HOMESTEAD  
PROPERTY WHERE SPOUSE LACKS LEGAL CAPACITY

[This part will be supplied later.]

PART 7. AUTHORIZATION OF MEDICAL TREATMENT OF ADULT  
WITHOUT CONSERVATORSHIP

[This part will be supplied later.]

PART 8. OTHER PROTECTIVE PROCEEDINGS

CHAPTER 1. GENERAL PROVISIONS

- § 3300. Parent must account to minor for money received
- § 3301. Consent of court to permit hospital or medical care or enlistment in armed forces
- § 3302. Approval of contract for attorney's fees for minor; fees in absence of contract

CHAPTER 2. MONEY OR PROPERTY BELONGING TO MINOR

Article 1. Total Estate Not in Excess of \$5,000

- § 3400. "Total estate of the minor" defined
- § 3401. Delivery of money or property to parent
- § 3402. Effect of written receipt of parent

Article 2. Property in the Form of Money

- § 3410. Application of article; computing "money belonging to the minor"
- § 3411. Filing of petition
- § 3412. Order of court where guardianship of estate
- § 3413. Order of court where no guardianship of estate

CHAPTER 3. COMPROMISE BY PARENT OF MINOR'S DISPUTED CLAIM

- § 3500. Parent's right to compromise minor's claim

CHAPTER 4. PAYMENT OR DELIVERY OF PROPERTY PURSUANT TO  
COMPROMISE OR JUDGMENT FOR MINOR OR INCOMPETENT

Article 1. General Provisions

- § 3600. Application of article
- § 3601. Order directing payment of expenses, costs, and fees
- § 3602. Disposition of remaining balance

Article 2. Disposition of Money or Other Property  
Where No Guardianship or Conservatorship

- § 3610. Disposition of remaining balance
- § 3611. Order of court
- § 3612. Reservation of jurisdiction where minor

CHAPTER 5. PERSONAL PROPERTY OF ABSENTEES

- § 3700. Definitions
- § 3701. Setting aside personal property of absentee
- § 3702. Who may petition
- § 3703. Contents of petition
- § 3704. Notice of hearing
- § 3705. Hearing and order
- § 3706. Jurisdiction of court not affected by size of absentee's estate
- § 3707. Joint tenancy property
- § 3708. Accounting

CHAPTER 6. REMOVAL OF PROPERTY OF NONRESIDENT

- § 3800. Petition for removal
- § 3801. Notice
- § 3802. Certificate of nonresident fiduciary
- § 3803. Order for removal

OPERATIVE DATE

- § 4. Operative date

NO LOCAL REIMBURSEMENT

- § 5. No local reimbursement

II. RULES OF CONSTRUCTION FOR THE PROBATE CODE

- Probate Code § 6 (added). Construction of code
- Probate Code § 7 (added). References to statutes
- Probate Code § 8 (added). "Division," "part," "chapter," "article," "section," "subdivision," and "paragraph"
- Probate Code § 9 (added). Tenses
- Probate Code § 10 (added). Construction of singular and plural
- Probate Code § 11 (added). Constitutionality

An act to add Division 4 (commencing with Section 1400) to, and to repeal Division 4 (commencing with Section 1400) and Division 5 (commencing with Section 1701) of, the Probate Code, relating to guardianship, conservatorship, and other protective proceedings.

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

Probate Code §§ 1400-1700 (repealed). Guardian and ward

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

Comment. Former Division 4 (Guardian and Ward) (former Sections 1400-1700) is replaced by new Division 4 (Guardianship and Conservatorship). The disposition of each repealed section of the former law is indicated in the Comment to the repealed section. See Appendix to Recommendation Relating to Guardianship-Conservatorship Law, 14 Cal. L. Revision Comm'n Reports 501 (1978).

Probate Code §§ 1701-2207 (repealed). Conservatorship

SEC. 2. Division 5 (commencing with Section 1701) of the Probate Code is repealed.

Comment. Former Division 5 (Conservatorship) (former Sections 1701-2207) is replaced by new Division 4 (Guardianship and Conservatorship). The disposition of each repealed section of the former law is indicated in the Comment to the repealed section. See Appendix to Recommendation Relating to Guardianship-Conservatorship Law, 14 Cal. L. Revision Comm'n Reports 501 (1978).

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Probate Code §§ 1400-3803 (added). Guardianship, conservatorship, and other protective proceedings

SEC. 3. Division 4 (commencing with Section 1400) is added to the Probate Code, to read:

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER  
PROTECTIVE PROCEEDINGS

PART 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

§ 1400. Application of definitions

1400. Unless the context otherwise requires, the words and phrases defined in this chapter govern the construction of this division.

Comment. Section 1400 is new.

§§ 1401-1402. [Reserved]

§ 1403. Absentee

1403. "Absentee" means either of the following:

(a) A member of a uniformed service covered by United States Code, Title 37, Chapter 10, who is determined thereunder by the secretary concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

(b) An employee of the United States government or an agency thereof covered by United States Code, Title 5, Chapter 55, Subchapter VII, who is determined thereunder by the head of the department or agency concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

Comment. Section 1403 continues the definition of "absentee" contained in former Section 1751.5. "Secretary concerned" is defined in Section 1440.

Note. The term "absentee" is used in Sections 1803, 1813, 1840-1844, 1864, and 3700-3708. See also Section 1490.

§§ 1404-1405. [Reserved]

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§ 1406. Account in an insured savings and loan association

1406. "Account in an insured savings and loan association" means any of the following:

(a) Shares issued by a federal savings and loan association.

(b) Investment certificates issued by a state-chartered building and loan association or savings and loan association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act.

(c) Shares issued by a state-chartered building and loan association or savings and loan association doing business in this state which

does not issue investment certificates and which is an "insured institution" as defined in Title IV of the National Housing Act.

Comment. Section 1406 continues the substance of the fourth paragraph of former Section 1510.

Note. The phrase "account in an insured savings and loan association" is used in Sections 2328, 2331, 2453, 2456, 2911, 3412, 3413, 3500, 3602, and 3611. See also Section 1490.

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§§ 1407-1417. [Reserved]

§ 1418. Court

1418. "Court," when used in connection with matters in the guardianship or conservatorship proceeding, means the court in which such proceeding is pending.

Comment. Section 1418 is new. This definition does not apply where the context otherwise requires. See Section 1400. For examples of where the context otherwise requires, see Sections 1455, 2216, 2803, and 2903.

29/104

§ 1419. Court investigator

1419. "Court investigator" means the person referred to in Section 1454.

Comment. Section 1419 is new.

§§ 1420-1423. [Reserved]

38/674

§ 1424. Interested person

1424. "Interested person" includes, but is not limited to:

- (a) Any interested state, local, or federal entity or agency.
- (b) Any interested public officer or employee of this state or of a local public entity of this state or of the federal government.

Comment. Section 1424 is new. It makes clear that a public officer or employee or a public entity may be an interested person for the purposes of this division. The section is consistent with provisions of prior law. See, e.g., former Section 1600 (request for special notice in guardianship proceeding); former Section 2002 (request for special notice in conservatorship proceeding). See also Section 1461 (notice to Director of Mental Health of Director of Developmental Services) and the Comment to that section.



§§ 1425-1429. [Reserved]

29/105

§ 1430. Petition

1430. "Petition" includes an application or request in the nature of a petition.

Comment. Section 1430 is new.

§§ 1431-1439. [Reserved]

29186

§ 1440. Secretary concerned

1440. "Secretary concerned" has the same meaning as defined in United States Code, Title 37, Section 101.

Comment. Section 1440 continues the substance of subdivision (b) of former Section 1751.5.

Note. The phrase "secretary concerned" is used in Sections 1403, 1842, 3700, 3704, and 3708. See also Section 1490.

§§ 1441-1442. [Reserved]

§ 1443. Shares of an insured credit union

1443. "Shares of an insured credit union" means shares issued by a credit union, either federally chartered or state licensed, which are insured under Title II of the Federal Credit Union Act.

Comment. Section 1443 continues the substance of the fifth paragraph of former Section 1510.

Note. The phrase "shares of an insured credit union" is used in Sections 2453, 2456, 3412, 3413, 3500, 3602, and 3611. See also Section 1490.

§§ 1444-1445. [Reserved]

26962

§ 1446. Single-premium deferred annuity

1446. "Single-premium deferred annuity" means an annuity offered by an admitted life insurer for the payment of a one-time lump-sum premium and for which the insurer neither assesses any initial charges

or administrative fees against the premium paid nor exacts or assesses any penalty for withdrawal of any funds by the annuitant after a period of five years.

Comment. Section 1446 continues the substance of the sixth paragraph of former Section 1510.

Note. The phrase "single-premium deferred annuity" is used in Sections 2456, 3412, 3413, 3500, 3602, and 3611. See also Section 1490.

405/802

CHAPTER 2. GENERAL PROVISIONS

§ 1450. Petitions, reports, and accounts to be verified

1450. Except as otherwise specifically provided, a petition, report, or account filed pursuant to this division shall be verified.

Comment. Section 1450 is new. It establishes a general requirement that supersedes references to verification in individual sections of the former guardianship and conservatorship statutes. "Petition" includes applications and requests in the nature of a petition. See Section 1430. For an exception to Section 1450, see Section 2642.

CROSS-REFERENCES

Inventory and appraisement, oath, § 2610

29188

§ 1451. Clerk to set matters for hearing

1451. When a petition, report, or account which requires a hearing is filed with the clerk of the court pursuant to this division, the clerk shall set the matter for hearing.

Comment. Section 1451 is based on a portion of Section 1200, which was made applicable to guardianship and conservatorship proceedings by former Sections 1606 and 1702. Section 1451 supersedes comparable provisions in various sections of the former guardianship and conservatorship statutes and establishes a general requirement that the clerk of the court set petitions filed under this division for hearing. The requirement of some provisions of the former statutes that petitions be set for hearing "by the court" has not been continued. Although ordinarily petitions will be heard by the court, in some cases the right to a jury trial exists unless waived. See the Comment to Section 1452.

CROSS-REFERENCES

Definitions

Court, § 1418

Petition, § 1430

Notice of hearing generally, §§ 1460-1469

§ 1452. Trial by jury

1452. Except as otherwise specifically provided in this division, there is no right to trial by jury in proceedings under this division.

Comment. Section 1452 is new and eliminates the ambiguity under former law as to whether there was a right to jury trial when the statute was silent on the question. See, e.g., *Budde v. Superior Court*, 97 Cal. App.2d 615, 218 P.2d 103 (1950) (guardianship of incompetent adult); W. Johnstone & G. Zillgitt, *California Conservatorships* § 2.26, at 44 (Cal. Cont. Ed. Bar 1968). As under prior law, the right to jury trial is continued in a hearing on a petition for establishment of a conservatorship (see Section 1827) or for termination of conservatorship (see Section 1863). However, this division does not continue that portion of former law which apparently granted a right to jury trial on a petition for removal of the conservator. See former Section 1951; W. Johnstone & G. Zillgitt, *supra* § 7.8, at 264. Nor does this division provide for a jury trial on a petition to transfer the conservatorship proceeding to another county. For discussion of former law, see W. Johnstone & G. Zillgitt, *supra* § 2.26, at 44.

Section 3143 grants a right to trial by jury on the issue of alleged lack of legal capacity in a proceeding for court approval of a single transaction affecting community or homestead property. The former statute did not contain a comparable provision.

A right to jury trial exists in probate proceedings, including proceedings under this division, only where expressly granted by statute. There is no constitutional right to a jury trial in probate proceedings. See Kane, Civil Jury Trial: The Case for Reasoned Iconoclasm, 28 *Hastings L.J.* 1, 19 n.70 (1976). For example, there was no constitutional right under prior law to a jury trial on the establishment of a guardianship for an incompetent. *In re Bundy*, 44 Cal. App. 466, 186 P. 811 (1920). The right to jury trial existed under prior law on the establishment of a guardianship of an incompetent because it was expressly provided by former Section 1606.5.

§ 1453. When motion for new trial allowed

1453. A motion for a new trial may be made only in cases in which, under the provisions of this division, a right to jury trial is expressly granted, whether or not the case was tried by a jury.

Comment. Section 1453 is new. However, it continues the principle that applied under former law that there is no authority to grant a new trial unless there is a right to a jury trial. See former Sections 1606 and 1702, incorporating the relevant parts of Section 1231 (motion for new trial in probate proceedings generally). Cf. *Estate of Van Deusen*, 30 Cal.2d 285, 182 P.2d 565 (1947) (petition for instructions to trustee).

CROSS-REFERENCES

- Appeals, § 2750
- Jury trial generally, § 1452
- Jury trial granted
  - Community or homestead property, incompetent spouse, § 3143
  - Establishment of conservatorship, § 1827
  - Termination of conservatorship, § 1863

29/106

§ 1454. Court investigator

1454. A person appointed as the court investigator for the purposes of a proceeding under this division shall be a person trained in law who is an officer or special appointee of the court with no personal or other beneficial interest in the proceeding.

Comment. Section 1454 continues the substance of the seventh paragraph of former Section 1754.

26/751

§ 1455. Guardian ad litem

1455. 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 person.

Comment. Section 1455 continues the substance of former Section 1607, but the reference to "any minor or insane or incompetent person in an action or proceeding therein" has been omitted as unnecessary.

CROSS-REFERENCES

Guardian ad litem, generally, Code Civ. Proc. §§ 372-373.5

29/107

CHAPTER 3. NOTICES

§ 1460. Notice of hearings generally

1460. (a) Subject to Section 1462, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing shall be given at least 15 days before the day of the hearing as provided in this section.

(b) The petitioner (which includes for the purposes of this section a person filing a petition, report, or account) shall cause the notice of hearing to be mailed to each of the following persons (other than the petitioner or persons joining in the petition):

- (1) The guardian or conservator.
  - (2) The ward if 14 years of age or older or the conservatee, unless the court for good cause dispenses with such notice.
  - (3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse, unless the court for good cause dispenses with such notice.
  - (4) Any interested person who has appeared, or has served and filed notice of appearance, in the particular matter to which the hearing relates, unless the court for good cause dispenses with such notice.
- (c) The clerk of the court shall cause the notice of the hearing to be posted at the courthouse of the county where the proceedings are pending if such posting is required by subdivision (c) of Section 2543 (sales).
- (d) Nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Chapter 10 (commencing with Section 2700) of Part 4.

Comment. Section 1460 is based on portions of Section 1200 which under prior law was incorporated and made applicable to guardianship and conservatorship proceedings by various sections. Sections 1200 and 1201 do not apply to proceedings under this division. See Section 1469 and the Comment to that section.

The 10-day notice provision of Section 1200 is increased to 15 days in Section 1460.

Absent a request for special notice, the notice requirement under prior law apparently required notice only to the guardian or conservator. Under subdivision (b) of Section 1460, notice also is required to be given to the ward (if 14 years of age or older) or the conservatee and to the spouse of the ward or conservatee (if the ward or conservatee has a spouse). Paragraph (4) of subdivision (b) provides for notice to objectors and contestants who have already appeared or given notice of appearance in the particular matter. Any interested person may receive notice of certain specified matters by filing and serving a request for special notice under Section 2700.

The provision in Section 1200 for mailing of notice to the county seat when a mailing address is not known is not carried over into Section 1460; but, where the court determines that the notice otherwise required is insufficient under the particular circumstances, the court may require under subdivision (b) of Section 1462 that further or additional notice be given.

The court may dispense with the notice required by paragraphs (2), (3), and (4) of subdivision (b) where good cause is shown. This authority will permit the court to dispense with notice, for example, where the person specified to receive the notice is in such mental or physical condition that giving the person notice would be useless or detrimental to the person or where, after the exercise of reasonable diligence, the whereabouts of the person is unknown.

The court may for good cause shorten or lengthen the 15-day notice required by this section. Section 1462.

The posting requirement of Section 1200 that formerly applied in guardianship and conservatorship proceedings is continued in subdivision (c) of Section 1460 only in connection with certain sales. See Section 2543(c).

Subdivision (d) is included to make clear that the provisions of this section have no effect on the requirements for notice to a person who has requested special notice. Thus, although the court may have dispensed with notice to the ward or conservatee under Section 1460, the ward or conservatee may still request special notice under Chapter 10 (commencing with Section 2700) of Part 4 and is thereafter entitled to receive special notice. See Section 2700 and the Comment thereto.

Section 1460 does not deal with the effect of giving notice or the failure to receive notice. See Section 1468(b) (conclusiveness of order concerning notice) and Comment thereto. Proof of the giving of notice must be made at or before the hearing as provided in Section 1468.

CROSS-REFERENCES

Additional notice, § 1462

Definitions

Court, § 1418

Interested person, § 1424

Petition, § 1424

Form of notice, § 1464

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Notice to

Director of Developmental Services, §§ 1461, 2611, 2621

Director of Mental Health, §§ 1461, 2611, 2621

Director of Social Services, § 1542

Postponed hearing, notice, § 1463

Proof of giving of notice, § 1468

Shortening time, § 1462

404/991

§ 1461. Notice to Director of Mental Health or Director of Developmental Services

1461. (a) As used in this section, "director" means:

(1) The Director of Mental Health when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Mental Health.

(2) The Director of Developmental Services when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Developmental Services.

(b) Except where the petition, report, or account is filed by the director, notice of the time and place of hearing on the petition,

report, or account, and a copy of the petition, report, or account, shall be mailed to the director at the director's office in Sacramento at least 15 days before the hearing if both of the following conditions exist:

(1) The ward or conservatee is or has been during the guardianship or conservatorship proceeding a patient in or on leave from a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services.

(2) The petition, report, or account is filed under any one or more of the following provisions: Section 1510, 1820, 1861, 2211, 2403, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2580, 2592, 2620, or Chapter 3 (commencing with Section 3100) of Part 6.

(c) If the ward or conservatee has been discharged from the state hospital, the director, upon ascertaining the facts, may file with the court a certificate stating that the ward or conservatee is not indebted to the state and waive the giving of further notices under this section. Upon the filing of the certificate of the director, compliance with this section thereafter is not required unless the certificate is revoked by the director and notice of the revocation is filed with the court.

(d) The statute of limitations does not run against any claim of the State Department of Mental Health or the State Department of Developmental Services against the estate of the ward or conservatee for board, care, maintenance, or transportation with respect to an account that is settled without giving the notice required by this section.

Comment. Subdivision (b) of Section 1461 generalizes various provisions scattered throughout the former guardianship and conservatorship statutes. Subdivision (c) continues former Section 1554.1 and supersedes former Section 1906 but adds a provision for revoking the certificate and substitutes the "director" for the "Attorney General" as the one executing the certificate. Subdivision (d) continues the last sentence of former Section 1554 and supersedes the last sentence of former Section 1905.

The following provisions, listed in paragraph (2) of subdivision (b), require a notice in cases where the condition in paragraph (1) of subdivision (b) exists:

- Section 1510 (petition for appointment of guardian)
- Section 1820 (petition for appointment of conservator)
- Section 1861 (petition for termination of conservatorship)
- Section 2211 (petition for change of venue)

- Section 2403 (instructions to guardian or conservator of estate)
- Section 2423 (petition for payment of surplus income to next of kin of conservatee)
- Article 7 (commencing with Section 2540) of Chapter 6 of Part 4 (petitions for sales)
- Section 2580 (substituted judgment)
- Section 2592 (independent exercise of powers)
- Section 2620 (presentation of account for settlement and allowance)
- Chapter 3 (commencing with Section 3100) of Part 6 (special proceeding to authorize transaction involving community or homestead property)

For other provisions concerning notice to the Director of Mental Health or the Director of Developmental Services, see Sections 2611 (inventory and appraisal) and 2621 (hearing on accounts). See also Section 1542 (notice of petition for nonrelative guardianship to Director of Social Services). Where the Director of Mental Health or the Director of Developmental Services is an interested person (Section 1424), a request for special notice may be filed under Section 2700.

CROSS-REFERENCES

Definitions

- Court, § 1418
- Petition, § 1430
- Form of notice, § 1464

Mailing

- Manner of, § 1465
- Personal delivery in lieu of, § 1466
- When complete, § 1465
- Proof of giving of notice, § 1468

15349

§ 1462. Court may extend or shorten time for notice or require additional notice

1462. (a) Except for the notice required by Section 1511 or 1822, the court may for good cause shorten the time for giving any notice required by this division.

(b) Where the court determines that the notice otherwise required under this division is insufficient in the particular circumstances, the court may require that further or additional notice, including a longer period of notice, be given.

Comment. Section 1462 supersedes the last clause of former Section 2001 (conservatorship). The provision in subdivision (a) authorizing the court to shorten the time for any notice required by this division is based on Section 1005 of the Code of Civil Procedure and broadens the court's limited authority under prior law. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.8, at 30 (Cal. Cont. Ed. Bar 1968). The time for giving the notice required by Section 1511 (notice of hearing on petition for appointment or confirmation of



guardian) or Section 1822 (notice of hearing on petition for appointment of conservator) may not be shortened. Where necessary, a temporary guardian or conservator of the person or estate or both may be appointed to serve pending the determination of the petition for the appointment of the guardian or conservator. See Section 2250.

Subdivision (b) continues the last portion of the last clause of former Section 2001, with the addition of language adapted from Section 1204. Under subdivision (b), the court may, for example, require longer notice, an additional manner of giving notice, or notice to another person. The authority of the court to require a longer period of notice is made explicit in subdivision (b). This authority was implied under former law. See *W. Johnstone & G. Zillgitt, supra.*

The provision of former Section 2001 authorizing the court to dispense with notice is not continued in Section 1462. Under former Section 2001, it appears that the court's authority to dispense with or shorten time for notice was limited to cases in which notice was not prescribed directly by the conservatorship provisions. See *W. Johnstone & G. Zillgitt, supra.* For provisions authorizing the court to dispense with notice in particular situations, see, *e.g.*, Sections 1460(b)(2)-(4) (notice of hearings generally), 1862 (termination of conservatorship), 2250 (appointment of temporary guardian or conservator), 2257(b) (termination of powers of temporary guardian or conservator), 2572(b) (investments), and 2652(b) (removal of guardian or conservator).

CROSS-REFERENCES

Definition, court, § 1418  
 Notice of postponed hearing, § 1463  
 Proof of giving of notice, § 1468

29/118

§ 1463. Postponement of hearings; notice

1463. The court may continue or postpone any hearing, from time to time, in the interest of justice, and no further notice of the continued postponed hearing is required unless otherwise ordered by the court.

Comment. Section 1463 is drawn from Section 1205 (administrators and executors).

15643

§ 1464. Form of notice

1464. When notice of the time and place of hearing is required to be given by this chapter or by any other provision of this division, the notice shall be in the form prescribed by the Judicial Council or, if the Judicial Council has not prescribed an applicable form, in compliance with Section 1200.1.

Comment. Section 1464 is new and requires that the Judicial Council form of notice of hearing be used. Compare Section 1200.1 (form of

notice for cases in which no notice is otherwise prescribed). See also Cal. Const., Art. VI, § 6 (Judicial Council shall adopt rules for court administration, practice, and procedure, not inconsistent with statute); Govt. Code § 68511 (Judicial Council may prescribe by rule the form and content of forms used in the courts of this state).

CROSS-REFERENCES

Rules concerning orderly transition of pending proceedings, § 1491

29/119

§ 1465. Manner of mailing; when mailing complete

1465. Unless otherwise expressly provided:

(a) If a notice or other paper is required or permitted to be mailed to a person pursuant to this division, it shall be sent by:

(1) First-class mail if the person's address is within the United States.

(2) Airmail if the person's address is not within the United States.

(b) Mailing is complete under this division when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

Comment. Section 1465 is new. Subdivision (a) provides a rule that is consistent with the 1978 amendment to Section 591.4 (Independent Administration of Estates Act). The introductory clause makes clear that Section 1465 does not apply to the extent that the applicable mailing provision expressly provides a different rule. Section 1465 does not apply where service is required to be made by mail in the manner authorized in Section 415.30 of the Code of Civil Procedure. See Probate Code Section 1467 and Comment thereto.

29/108

§ 1466. Personal delivery in lieu of mailing

1466. If a notice or other paper is required or permitted to be mailed pursuant to this division (whether by first-class, airmail, certified, or registered mail), it may be delivered personally to the person to whom it is required or permitted to be mailed. Personal delivery as provided in this section is deemed to satisfy the provision that requires or permits the notice or other paper to be mailed.

Comment. Section 1466 makes clear that personal delivery is the equivalent of mailing.

§ 1467. When service by mail deemed complete

1467. If service is made by mail pursuant to this division in the manner authorized in Section 415.30 of the Code of Civil Procedure, the service is complete on the date a written acknowledgment of receipt is executed.

Comment. Section 1467 makes clear that, when service is made under this division in the manner authorized in Section 415.30 of the Code of Civil Procedure, the service is complete on the date the acknowledgment of receipt is executed. Section 1467 does not include the requirement found in Section 415.30 that the acknowledgment be returned "to the sender." It is sufficient if proof is made that the person served (or a person authorized to acknowledge service on behalf of such person) did execute a written acknowledgment of receipt. For example, service is complete under Section 1467 if the written acknowledgment is returned to a person other than the sender.

Section 1467 applies only where service is made by mail in the manner authorized in Section 415.30. The section does not apply where a provision of this division merely requires that a notice or other paper be mailed. In the latter case, the applicable provision ordinarily is satisfied when the notice or other paper is deposited in the mail. See Section 1465.

404/992

§ 1468. Proof of giving of notice

1468. (a) Proof of the giving of notice under this division shall be made at or before the hearing to the satisfaction of the court. Such proof may be made by, but is not limited to, the following means:

(1) Proof of notice by personal delivery may be made by the affidavit of the person making such delivery showing the time and place of delivery and the name of the person to whom delivery was made.

(2) Proof of mailing may be made in the manner prescribed in Section 1013a of the Code of Civil Procedure.

(3) Proof of posting may be made by the affidavit of the person who posted the notice.

(4) Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

(5) Proof of notice, however given, may be made by testimonial evidence presented at the hearing.

(b) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it,

the court shall so find in its order, and such order, when it becomes final, is conclusive on all persons.

Comment. Section 1468 is drawn from the last sentence of Section 1200, but subdivision (a) of Section 1468 makes clear that proof of notice is allowed at or before the hearing and specifies the manner of proof. Paragraph (1) is adapted from subdivision (a) of Section 417.10 of the Code of Civil Procedure. Paragraph (2) continues existing practice. See W. Johnstone & G. Zillgitt, *California Conservatorships* § 2.16, at 37 (Cal. Cont. Ed. Bar 1968). Paragraph (3) also continues existing practice. See Dorsey, Notice and Procedure, in 1 *California Decedent Estate Administration* § 20.12, at 785-86 (Cal. Cont. Ed. Bar 1971). Paragraph (4) is adapted from subdivision (b) of Section 417.10 of the Code of Civil Procedure. Paragraph (5) is new but continues existing practice. See W. Johnstone & G. Zillgitt, supra § 2.15, at 37. A declaration may be used in lieu of an affidavit required by this section. See Code Civ. Proc. § 2015.5. See also Code Civ. Proc. § 2015.6 (affirmation in lieu of oath).

Subdivision (b) is the same as the last portion of the last sentence of Section 1200. The case law has developed exceptions to the rule of conclusiveness stated in Section 1200 and duplicated in subdivision (b) of Section 1468. See, e.g., *State v. Broderson*, 247 Cal. App.2d 797, 56 Cal. Rptr. 58 (1967) (finality of decree not protected by notice given because of presence of extrinsic fraud). See also *Estate of Clarke*, 66 Cal.2d 142, 424 P.2d 337, 56 Cal. Rptr. 897 (1967); *Estate of Reed*, 259 Cal. App.2d 14, 66 Cal. Rptr. 193 (1968). The provision in subdivision (b) for waiver of notice is derived from former Section 2005.

#### CROSS-REFERENCES

Definition, court, § 1418

Proof of giving special notice, § 2703

36/225

#### § 1469. Application of Sections 1200 and 1201 to proceedings under this division

1469. (a) When a provision of this division applies the provisions of this code applicable to executors or administrators to proceedings under this division, a reference to Section 1200 in the provisions applicable to executors or administrators shall be deemed to be a reference to this chapter.

(b) Section 1201 does not apply to proceedings under this division.

Comment. Section 1469 is new. Subdivision (a) insures that the notice provisions contained in this chapter will be used in all proceedings under this division. Some sections of this division incorporate by reference and apply the procedures applicable to executors or administrators which include Section 1200 concerning notice. However, Section

1469 provides that notice is to be given under this chapter rather than as provided in Section 1200. For provisions of this division adopting procedures applicable to executors or administrators, see Sections 2543 (manner of sale), 2546 (mines and mining claims), 2551 (borrowing money and giving security therefor), and 2553 (order authorizing lease). See also Section 2100 (law governing where no specific provision of this division applicable).

Subdivision (b) is an exception to the provisions of the sections listed above which incorporate provisions applicable to executors or administrators. Section 1201 relates to additional notice by publication in case of a petition for leave to sell, or to give, an option to purchase a mining claim or real property worked as a mine, or for leave to borrow money or to execute a mortgage or deed of trust or to give other security, or for leave to execute a lease or sublease.

39378

CHAPTER 4. APPOINTMENT OF LEGAL COUNSEL

§ 1470. Discretionary appointment of legal counsel

1470. (a) The court may appoint private legal counsel for a ward, a proposed ward, a conservatee, or a proposed conservatee in any proceeding under this division if the court determines such person is not otherwise represented by legal counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests.

(b) If a person is furnished legal counsel under this section, the court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel.

(c) The court shall order the sum fixed under subdivision (b) to be paid:

(1) If the person for whom legal counsel is appointed is an adult, from the estate of such person.

(2) If the person for whom legal counsel is appointed is a minor, by a parent or the parents of the minor or from the minor's estate, or any combination thereof, in such proportions as the court deems just.

Comment. Section 1470 is new and gives the court discretionary authority to appoint legal counsel in guardianship and conservatorship proceedings. The section permits appointment of counsel, for example, in a case involving the custody of a minor or in connection with a petition to obtain an order for surgery to be performed on a minor ward 14 years of age or older or for medical treatment of a conservatee. See Section 2357 (court ordered medical treatment). The authority provided by Section 1470 is comparable to the court's authority under the Family Law Act to appoint private counsel to represent the minor's interests in connection with a child custody issue. See Civil Code § 4606.

§ 1471. Mandatory appointment of legal counsel

1471. (a) If a conservatee, proposed conservatee, or person alleged to lack capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not such person lacks or appears to lack capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of such person in the following proceedings under this division:

(1) A proceeding to establish a conservatorship where the proposed conservatee opposes the conservatorship or the appointment of the proposed conservator.

(2) A proceeding by the conservatee to terminate the conservatorship.

(3) A proceeding by the conservatee for removal of the conservator.

(4) A proceeding by a temporary conservator to obtain an order authorizing removal of the conservatee from the conservatee's place of residence where the conservatee opposes such removal.

(5) A proceeding under Chapter 3 (commencing with Section 3100) of Part 6 for court authorization of a proposed transaction involving community or homestead property in which one of the spouses is alleged to lack legal capacity for the proposed transaction and such spouse opposes the proceeding.

(6) A proceeding under Part 7 (commencing with Section 3200) for court authorization of medical treatment where the person opposes the proceeding.

(b) If a conservatee or proposed conservatee has not retained legal counsel and does not plan to retain legal counsel, whether or not such person lacks or appears to lack capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interests of such person in the following proceedings under this division if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee:

- (1) A proceeding to establish a conservatorship.
- (2) A proceeding to terminate the conservatorship.
- (3) A proceeding to remove the conservator.
- (4) A proceeding brought by a temporary conservator to obtain an order authorizing removal of the conservatee from the conservatee's place of residence.

Comment. Section 1471 specifies those instances where appointment of counsel is required under this division. Compensation of counsel appointed under Section 1471 is governed by Section 1472.

Paragraphs (1) and (2) of subdivision (a) are based on the second sentence of former Section 2006. Unlike former Section 2006, paragraph (1) of subdivision (a) of Section 1471 requires the appointment of counsel in a proceeding to establish a conservatorship only if the proposed conservatee opposes the proceeding. If the proposed conservatee either consents to the appointment or does not or is not able to express an opinion, the court is not required to appoint counsel unless appointment of counsel is required under subdivision (b). Similarly, under paragraph (2) of subdivision (a) appointment of counsel is required in a proceeding to terminate the conservatorship only if the proceeding is brought by the conservatee unless such appointment is required under subdivision (b) or Section 1852.

Paragraph (3) of subdivision (a) continues the substance of a portion of the third paragraph of former Section 1851.1. See also Section 1852.

Paragraph (4) of subdivision (a) is based on a portion of the second sentence of the third paragraph of former Section 2201. Unlike former Section 2201, paragraph (4) requires the appointment of counsel only if the conservatee opposes the change of residence, but appointment of counsel may be required under subdivision (b).

Paragraphs (5) and (6) of subdivision (a) are new and are to protect the rights of a person alleged to lack capacity in a special proceeding for court authorization of certain property transactions or medical treatment. Appointment is mandatory in these cases since these proceedings are an alternative to establishing a conservatorship.

Subdivision (b) requires the appointment of legal counsel in the cases listed in the subdivision where the conservatee or proposed conservatee does not request the appointment of legal counsel but the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee. Although the court is given discretionary authority under Section 1470 to appoint legal counsel where the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect a person's interests, the appointment under subdivision (b) is mandatory and makes Section 1472 applicable. Section 1472 permits appointment of the public defender, compensation by the county in cases where the county does not have a public defender, and installment payments. These provisions are not found in Section 1470 which provides for discretionary appointment of legal counsel. Subdivision (b) is based in part on the fourth paragraph of

former Section 1351.1 (termination of conservatorship or removal of conservator), with the addition of the language authorizing the court to act on information received from whatever source it may have been received.

CROSS-REFERENCES

Mandatory appointment of legal counsel to file petition for  
Appointment of new conservator, § 1853  
Terminate conservatorship or remove conservator, § 1852

39380

§ 1472. Compensation of mandatory court-appointed counsel

1472. (a) If a person is furnished legal counsel under Section 1471:

(1) The court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel and shall make a determination of the person's ability to pay all or a portion of such sum.

(2) If the court determines that the person has the ability to pay all or a portion of such sum, the court shall order the conservator of the estate or, if none, the person to pay in such installments and in such manner as the court determines to be reasonable and compatible with the person's financial ability.

(3) In a proceeding for court authorization of a proposed transaction involving community or homestead property, the court may order payment out of the proceeds of the transaction.

(4) If a conservator is not appointed for the person ordered to make the payment, execution may be issued on the order in the same manner as on a judgment in a civil action.

(b) A county without a public defender is authorized to compensate counsel appointed by the court under Section 1471.

(c) The payment ordered by the court under subdivision (a) shall be made to the county if the public defender has been appointed or if compensation has been made by the county under subdivision (b). In the case of other court-appointed counsel, the payment shall be made to such counsel.

Comment. Section 1472 applies only where legal counsel is appointed under Section 1471. Paragraphs (1), (2), and (4) of subdivision (a) and subdivision (c) continue the substance of the third paragraph of former Section 2006. Paragraph (3) of subdivision (a) is new. Subdivision (b) continues the substance of former Section 2007.



CHAPTER 5. TRANSITIONAL PROVISIONS

§ 1480. Definitions

1480. As used in this chapter:

(a) "Operative date" means January 1, 1981.

(b) "Prior law" means the applicable law in effect on December 31, 1980.

Comment. Section 1480 is new.

405/480

§ 1481. Effect on existing guardianships and conservatorships generally

1481. Subject to Section 1484, a guardianship or conservatorship in existence under this code on the operative date continues in existence and is governed by this division.

Comment. Section 1481 states the general rule that the enactment of this division and the repeal of prior law governing guardianships and conservatorships does not affect the existence of guardianships and conservatorships formed under prior law. However, on and after the operative date such guardianships and conservatorships are no longer governed by prior law but by this division. For an exception to this general rule, see Section 1484 (pending matters arising under prior law). See also Section 1482 (effect on bonds and security and existing liabilities) and Sections 1485 and 1486 (conservatees deemed to lack legal capacity).

CROSS-REFERENCES

Definition, operative date, § 1480

405/758

§ 1482. Effect on bonds and security and existing liabilities

1482. (a) The bonds, security, and other similar obligations in effect immediately prior to the operative date shall continue to apply on and after the operative date the same as if filed, issued, taken, or incurred under this division after the operative date.

(b) If a guardian or conservator or surety is liable under prior law for any act or omission prior to the operative date, the repeals made by this act do not affect such liability. Such liability may be determined and enforced under prior law as fully and to the same extent as if such repeals had not been made.

§ 1483

Comment. Subdivision (a) of Section 1482 is consistent with the general rule stated in Section 1481. Subdivision (b) preserves liabilities under the prior law.

CROSS-REFERENCES

Definitions

Operative date, § 1480

Prior law, § 1480

405/759

§ 1483. Appointments or confirmations made under prior law

1483. The changes made in prior law by this division on and after the operative date in the standards for appointment of a guardian shall not affect the validity of any nomination, appointment, or confirmation made under prior law, but any appointment on or after the operative date is governed by this division.

Comment. Section 1483 is consistent with the general rule stated in Section 1481. See also Sections 1488 (effect on nomination by adult of guardian for such adult) and 1489 (effect on appointment of guardian by parent or other person for minor).

CROSS-REFERENCES

Definitions

Operative date, § 1480

Prior law, § 1480

405/760

§ 1484. Pending matters arising under prior law

1484. Any petition, report, account, or other matter filed or commenced before the operative date shall be continued under this division, so far as applicable, unless in the opinion of the court application of a particular provision of this division would substantially interfere with the effective conduct of the matter or with the rights of the parties or other interested persons, in which case the particular provision of this division does not apply and prior law applies.

Comment. Section 1484 constitutes a limited exception to the general rule stated in Section 1481.

CROSS-REFERENCES

Definitions

- Court, § 1418
- Interested person, § 1424
- Operative date, § 1480
- Petition, § 1430
- Prior law, § 1480

405/761

§ 1485. Effect on guardianships of adults and married minors

1485. (a) A guardianship of an adult, or a guardianship of the person of a married minor, in existence under this code on the operative date shall be deemed to be a conservatorship and is governed by the provisions of law applicable to conservatorships without petition or order, whether or not the letters of guardianship or the title of the proceeding are amended as provided in this chapter.

(b) A conservatee subject to conservatorship described in subdivision (a) shall be deemed to have been adjudicated to lack legal capacity as provided in Section 1835 unless otherwise ordered by the court.

(c) 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. Section 1485 continues in effect as conservatorships all guardianships for adults and all guardianships of the person of married minors established under prior law. It preserves the effect of the creation of such guardianships under prior law. See *Hellman Commercial Trust & Sav. Bank v. Alden*, 206 Cal. 592, 604-05, 275 P. 794, 799-800 (1929) (guardianship rendered the ward incapable of making a valid contract). However, such a person is not deemed to lack capacity to give informed consent for medical treatment unless the court so orders. See Section 2354. See also Section 1835.

Unless the court makes a different order, Section 1487 requires that the court make an order that the conservatee described in subdivision (a) be adjudged to lack legal capacity. However, Section 1487 and subdivision (b) of Section 1485 authorize the court to make a different order. Thus, the court may make an order under Section 1835 that the conservatee lacks the power to enter into specified types of transactions or any transaction in excess of a specified amount or the court may remove entirely the disability imposed on the conservatee by Section 1485. In the latter case, the conservatee will have the limited power to contract provided by Section 2430. See *Board of Regents State Univs. v. Davis*, 14 Cal.3d 33, 41, 533 P.2d 1047, 1053, 120 Cal. Rptr. 407, 413 (1975).

CROSS-REFERENCES

Allowance for ward or conservatee, § 2421  
 Definitions  
     Court, § 1418  
     Operative date, § 1480  
 Order reflecting capacity, § 1487  
 Wages of ward or conservatee, § 2601

15106

§ 1486. Effect on conservatorship of person for whom guardian could have been appointed

1486. If a conservator was appointed under prior law on the ground that the conservatee was a person for whom a guardian could have been appointed, the conservatee shall be deemed to have been adjudicated to lack legal capacity as provided in Section 1835 unless otherwise ordered by the court.

Comment. Section 1486 preserves the effect of a conservatorship established under prior law on the ground provided in former Section 1751 that the proposed conservatee was a person "for whom a guardian could be appointed under Division 4 of this code . . . ." Such a determination by the court making the appointment constituted an adjudication that the conservatee was incompetent. See Board of Regents State Univ. v. Davis, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, 1051 n.6, 1054, 120 Cal. Rptr 407, 411 n.6, 414 (1975). However, such a person is not deemed to lack capacity to give informed consent for medical treatment unless the court so orders. See Section 2354. See also Section 1835 and the Comment to Section 1485.

CROSS-REFERENCES

Allowance for conservatee, § 2421  
 Definitions  
     Court, § 1418  
     Prior law, § 1480  
 Order reflecting capacity, § 1487  
 Wages of conservatee, § 2601

15107

§ 1487. Order to reflect lack of legal capacity of existing wards and conservatees

1487. (a) At or before the time of the court's first biennial review after the operative date under Section 1850:

(1) With respect to guardianships described in Section 1485, the court shall make an order that the conservatee lacks legal capacity unless the court makes a different order.

(2) With respect to conservatorships described in Section 1486, the court shall make an order that the conservatee lacks legal capacity unless the court makes a different order.

(b) Noncompliance with this section does not alter the effect of Section 1485 or 1486, which shall continue to apply until the court makes an order as required by this section, and gives rise to no penalty.

Comment. Section 1487 implements Sections 1485 and 1486. Section 1487 requires that the court make an order that the conservatee lacks legal capacity unless the court makes some other order such as, for example, an order withdrawing the conservatee's power to enter into specified transactions.

#### CROSS-REFERENCES

##### Definitions

Court, § 1418  
Operative date, § 1480  
Rules of Judicial Council, § 1491

404/935

#### § 1488. Effect on nomination by adult of guardian for such adult

1488. If, prior to the operative date, an adult has in a signed writing nominated a person to serve as guardian if a guardian is in the future appointed for such adult, such nomination shall be deemed to be a nomination of a conservator. This section applies whether or not the signed writing was executed in the same manner as a witnessed will so long as the person signing the writing had at the time the writing was signed sufficient capacity to form an intelligent preference.

Comment. Section 1488 ensures that a nomination of a guardian made under former Section 1463 will be given effect under the new law (Section 1810).

Under Section 1810, a conservator may be nominated in a signed writing whether or not the writing is executed in the same manner as a witnessed will. The second sentence of Section 1488 applies the same standard to a signed writing made under prior law and purporting to nominate a guardian, even though the writing may not have met the stricter requirement of former Section 1463.

#### CROSS-REFERENCES

Definition, operative date, § 1480

§ 1489. Effect on appointment of guardian by parent or other person for a minor

1489. If, prior to the operative date, a parent or other person has in a signed writing appointed a person to serve as the guardian of the person or estate or both of a minor, or as the guardian of the property the minor receives from or by designation of the person making the appointment, such appointment shall be deemed to be a nomination of a guardian if the requirements of Section 1500 or 1501 are satisfied and, in such case, shall be given the same effect it would have under Section 1500 or 1501, as the case may be, if made after the operative date. This section applies whether or not the signed writing is a will or deed so long as the person signing the writing had at the time the writing was signed sufficient capacity to form an intelligent preference.

Comment. Section 1489 ensures that the appointment of a testamentary guardian made under former Section 1402 or 1403 will be given effect as a nomination of a guardian under the new law (Sections 1500 and 1501). See also Section 1514(c)-(d) and Civil Code § 4600.

Under Sections 1500 and 1501, a guardian may be nominated in a signed writing whether or not the writing is a will or deed. The second sentence of Section 1489 applies the same standard to a signed writing made prior to the operative date and purporting to appoint a guardian, even though the writing may not have met the stricter requirements of former Section 1402 or 1403.

CROSS-REFERENCES

Definition, operative date, § 1480

§ 1490. References in statutes

1490. (a) When used in any statute of this state with reference to an adult or to the person of a married minor, "guardian" means the conservator of that adult or the conservator of the person in case of the married minor.

(b) Any reference in the statutes of this state to the term "absentee" or "secretary concerned" as defined in former Section 1751.5 of the Probate Code shall be deemed to be a reference to the definitions of those terms in this division.

(c) Any reference in the statutes of this state to the terms "account in an insured savings and loan association," "shares of an insured credit union," or "single-premium deferred annuity" as defined in former Section 1510 of the Probate Code shall be deemed to be a reference to the definitions of those terms in this division.

Comment. Section 1490 recognizes that through inadvertence some conforming changes may not have been made in sections containing references made obsolete by the enactment of this division.

CROSS-REFERENCES

Definitions

- Absentee, § 1403
- Account in an insured savings and loan association, § 1406
- Secretary concerned, § 1440
- Shares of an insured credit union, § 1443
- Single-premium deferred annuity, § 1446

405/765

§ 1491. Rules of Judicial Council

1491. The Judicial Council may provide by rule for the orderly transition of pending proceedings on the operative date, including but not limited to rules relating to amendment of the title of the proceedings and amendment of, or issuance of, letters of guardianship or conservatorship.

Comment. Section 1491 makes clear the authority of the Judicial Council to prescribe rules prior to the operative date for the orderly transition of pending proceedings on the operative date. See also the Comment to Section 1464 (form of notice). See also Section 2356 (regulation of Director of Mental Health defining "mental health treatment facility").

CROSS-REFERENCES

- Definition, operative date, § 1480

PART 2. GUARDIANSHIP

CHAPTER 1. ESTABLISHMENT OF GUARDIANSHIP

Article 1. Nomination of Guardian

§ 1500. Nomination of guardian of person or estate or both by parent

1500. Subject to Section 1502, a parent may nominate a guardian of the person or estate, or both, of a minor child if:

(a) The other parent nominates, or consents in writing to the nomination of, the same guardian for the same child; or

(b) At the time the petition for appointment of the guardian is filed, either (1) the other parent is dead or lacks legal capacity to consent to the nomination or (2) the consent of the other parent would not be required for an adoption of the child.

Comment. Section 1500 supersedes former Section 1403, which authorized a parent to appoint a guardian, by will or deed, to take effect upon the death of the parent appointing. Section 1500 substitutes the concept of nomination for appointment. As to the effect to be given to a nomination under this section, see Section 1514.

A nomination under Section 1500 is subject to the requirements of Section 1502, which requires that the nomination be made in the petition for the appointment of the guardian or at the hearing on the petition or in a writing signed either before or after the petition is filed. See Section 1502 and Comment thereto.

Subdivisions (a) and (b) of Section 1500 continue the substance of the requirements that were stated in former Section 1403 except that a reference to a nomination by the other parent has been added for clarity.

An appointment of a guardian under prior law is deemed to be a nomination of a guardian. See Section 1489.

CROSS-REFERENCES

Additional powers of guardian nominated by will, § 2108  
 Consent of parent to adoption of child, Civil Code § 224  
 Joint guardians for one ward, § 2105  
 One guardian for several wards, § 2106

26/752

§ 1501. Nomination of guardian as to particular property

1501. Subject to Section 1502, a parent or any other person may nominate a guardian for property that a minor receives from or by designation of the nominator (whether before, at the time of, or after the



nomination) including, but not limited to, property received by the minor by virtue of a gift, deed, trust, will, succession, insurance, or benefits of any kind.

Comment. Section 1501 supersedes former Section 1402, which authorized a parent to appoint a guardian by will or deed for property a child took from such parent by will or succession and authorized any other person to appoint a guardian by will for property a minor took by will from such other person. Section 1501 substitutes the concept of nomination for appointment. As to the effect to be given to a nomination under this section, see Section 1514.

A nomination under Section 1501 is subject to the requirements of Section 1502, which requires that the nomination be made in the petition for the appointment of the guardian or at the hearing on the petition or in a writing signed either before or after the petition is filed. See Section 1502 and Comment thereto.

Section 1501 goes beyond prior law which limited the appointment of a guardian to property taken by will or succession in the case of a parent or property taken by will in the case of another person. Section 1501 covers all property received from or by designation of the person making the nomination, and includes such property as proceeds from an insurance policy. Compare Estate of Welfer, 110 Cal. App.2d 262, 242 P.2d 655 (1952) (father's desire expressed in his will that designated person be guardian with respect to proceeds of insurance policy on father's life not given effect because former Section 1402 covered only property taken by "will or succession"). Under Section 1501, a person may nominate a guardian for the proceeds of a life insurance policy owned by the nominator on the life of a person surviving the nominator.

Where a parent attempts to nominate a general guardian of the estate of a child as authorized by Section 1500, but the nomination does not satisfy the requirements of Section 1500 because the written consent of the other parent is required but not obtained, the nomination may nevertheless satisfy the requirements of Section 1501 and permit appointment of a guardian with respect to the property of the nominating parent that the child takes from that parent. Cf. Guardianship of Joaquin, 168 Cal. App.2d 99, 335 P.2d 507 (1952) (testamentary guardian).

An appointment of a guardian under prior law is deemed to be a nomination of a guardian. See Section 1489.

CROSS-REFERENCES

- Joint guardians for one ward, § 2105
- One guardian for several wards, § 2106
- Powers and duties of guardian where
  - Guardian as to particular property appointed, § 2109
  - Guardian nominated in will, § 2108

§ 1502. Manner of making nomination; when effective; effect of subsequent legal incapacity or death of nominator

1502. (a) A nomination of a guardian under this article may be made in the petition for the appointment of the guardian or at the hearing on the petition or in a writing signed either before or after the petition for the appointment of the guardian is filed.

(b) The nomination of a guardian under this article is effective when made except that a writing nominating a guardian under this article may provide that the nomination becomes effective only upon the occurrence of such specified condition or conditions as are stated in the writing, including but not limited to such conditions as the subsequent legal incapacity or death of the person making the nomination.

(c) Unless the writing making the nomination expressly otherwise provides, a nomination made under this article remains effective notwithstanding the subsequent legal incapacity or death of the person making the nomination.

Comment. Section 1502 is new. Subdivision (a) permits the nomination to be made by a signed writing at any time or at the hearing on the petition. Former Sections 1402 and 1403 in effect provided that an appointment of a testamentary guardian was effective only if made by will or deed in the case of a parent or by will in the case of any other person and the appointment was effective only upon the death of the person making the appointment. Subdivision (a) liberalizes former law to permit the nomination to be effective, for example, where a guardian is needed for a child because the parent making the nomination no longer has legal capacity and the other parent is dead.

Subdivision (b) makes clear that a writing making a nomination under this article may specify one or more conditions the occurrence of which makes the nomination become effective. Absent such specification, the nomination is effective, unless it is revoked, whenever a petition to appoint a guardian is filed.

Subdivision (c) makes clear that the death or subsequent lack of legal capacity does not affect the effectiveness of the nomination unless the writing making the nomination expressly otherwise provides.

An appointment of a guardian under prior law is deemed to be a nomination of a guardian. See Section 1489.

Article 2. Appointment of Guardian Generally§ 1510. Petition for appointment

1510. (a) A relative or other person on behalf of the minor, or the minor if 14 years of age or older, may file a petition for the appointment of a guardian of the minor.

(b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed, shall specify the proposed guardian, and shall state that such appointment is necessary or convenient.

(c) The petition shall set forth, so far as known to the petitioner, the names and addresses of all of the following:

(1) The parents of the proposed ward.

(2) The person having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward.

(3) The relatives of the proposed ward within the second degree.

(4) In the case of a guardianship of the estate, the spouse of the proposed ward.

(5) Any person nominated as guardian for the proposed ward under Section 1500 or 1501.

(d) If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration.

(f) If the petitioner has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, or other similar proceeding affecting the proposed ward, the petition shall disclose such pending proceeding.

Comment. Subdivision (a) of Section 1510 continues the substance of the second sentence of subdivision (a) of former Section 1440 and a portion of the first paragraph of former Section 1570.

The "necessary or convenient" standard of subdivision (b) is taken from the first sentence of subdivision (a) of former Section 1440. The requirement that the petition specify the proposed guardian is new but continues former practice. See Petition for Appointment of Guardian of Minor (Form Approved by Judicial Council of California, effective January 1, 1976).

Subdivision (c) is new and is drawn in part from the second sentence of former Section 1754 (conservatorship). This subdivision will facilitate compliance with the notice requirements of Section 1511. The subdivision generally continues former guardianship practice. The former practice is clarified to require a listing of both the person having legal custody and the person having the care of the proposed ward if they are different persons. The former practice is broadened to include relatives within the second degree who reside outside of California and the spouse of the minor. (Note that a guardian of the person may not be appointed for a married minor. See Section 1515.) See Petition for Appointment of Guardian of Minor (Form Approved by the Judicial Council of California, effective January 1, 1976). Paragraph (5) of subdivision (c) is new and reflects the addition of new provisions authorizing the nomination of a guardian. This paragraph supersedes the last sentence of former Section 1405.

Subdivision (d) is new and is based on a portion of former Section 1461.3. Subdivision (e) is new and is based on the penultimate sentence of former Section 1754 (conservatorship) and on former Section 1655 (Uniform Veterans' Guardianship Act).

Subdivision (f) is new but continues former guardianship practice. See Petition for Appointment of Guardian of Minor (Form Approved by Judicial Council of California, effective January 1, 1976). See also former Section 1440(c)(2) (disclosure of any adoption petition by petitioner required in nonrelative guardianship petition).

#### CROSS-REFERENCES

Appealable orders, § 2750  
 Appointment of guardian to fill vacancy, § 2110  
 Appointment of legal counsel for proposed ward, § 1470  
 Independent exercise of powers, § 2592  
 Joint guardians for one ward, § 2105  
 Nonprofit charitable corporation as guardian, § 2104  
 Notice to  
     Director of Mental Health, § 1461  
     Director of Developmental Services, § 1461  
     Director of Social Services, § 1542  
 One guardian for several wards, § 2106  
 Petition in case of certain nonrelative guardianships, §§ 1541-1542  
 Petition must be verified, § 1450  
 Temporary guardian, § 2250  
 Venue, §§ 2200-2216

§ 1511. Notice of hearing

1511. (a) Except as provided in subdivisions (f) and (g), at least 15 days before the hearing on the petition for the appointment of a guardian, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), (d), and (e) of this section. The notice shall be accompanied by a copy of the petition.

(b) Notice shall be served 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, on all of the following (other than the petitioner or persons joining in the petition):

- (1) The proposed ward if 14 years of age or older.
- (2) The person having legal custody of the proposed ward.
- (3) The parents of the proposed ward.
- (4) Any person nominated as a guardian for the proposed ward under Section 1500 or 1501.

(c) Notice shall be given by mail sent to their addresses stated in the petition, or in such manner as may be authorized by the court, to all of the following (other than the petitioner or persons joining in the petition):

- (1) The spouse named in the petition.
- (2) The relatives named in the petition.
- (3) The person having the care of the proposed ward if other than the person having legal custody of the proposed ward.

(d) If notice is required by Section 1461 or Section 1542 to be given to the Director of Mental Health or the Director of Developmental Services or the Director of Social Services, notice shall be mailed as so required.

(e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 2908.

(f) Unless the court orders otherwise, notice need not be given to any of the following:

(1) The parents or other relatives of a proposed ward who has been relinquished to a licensed adoption agency.

(2) The parents of a proposed ward who has been judicially declared free from their custody and control.

(g) Notice need not be given to any person if the court so orders upon a determination of either of the following:

(1) The person cannot with reasonable diligence be given the notice.

(2) The giving of the notice would be contrary to the interest of justice.

(h) Before the appointment of a guardian is made, proof shall be made to the court that each person entitled to notice under this section either:

(1) Has been given notice as required by this section; or

(2) Has not been given notice as required by this section because such person cannot with reasonable diligence be given the notice or because the giving of notice to such person would be contrary to the interest of justice.

Comment. Section 1511 supersedes former Section 1441 and substantially broadens the notice required. Subdivisions (b) and (c) of Section 1511 (1) retain the former requirement of notice to the parents, (2) clarify the former requirement that notice be given to the person having the "care" of the proposed ward by requiring notice to the person having legal custody of the proposed ward, and (3) add a requirement of notice to the proposed ward if 14 years of age or older, to the spouse of the proposed ward, and to any guardian nominated under Section 1500 or 1501. Notice is also required to be mailed to the person having the care of the proposed ward if that person is not the person having the legal custody of the proposed ward. The requirement of notice to a person nominated as guardian under Section 1500 or 1501 is designed to alert the nominee to the pending proceeding if the nominee is not the petitioner or a person joining in the petition. The former requirement of notice to "such relatives of the minor residing in the state as the court or judge deems proper" is expanded by subdivision (c) of Section 1511 to require notice to all relatives of the proposed ward within the second degree (see paragraph (3) of subdivision (c) of Section 1510) outside of as well as within California. Subdivisions (d) and (e) are included to alert the practitioner to the need to give notice to the Director of Mental Health, Director of Developmental Services, or Director of Social Services, and to the Veterans Administration in certain cases.

Subdivision (a) requires that notice be given at least 15 days before the hearing, and this time may not be shortened by the court. See Section 1462. If there is urgency, a temporary guardian may be appointed. See Section 2250.

Subdivision (f) continues the last sentence of former Section 1441, but the former provision specified that notice "shall" not be given, whereas subdivision (f) provides that notice "need" not be given. This change authorizes the court to require that notice be given in a case where such notice would be appropriate. The court had no comparable authority under the former provision.

Subdivisions (g) and (h) are based on the last portion of the second sentence of former Section 1441. The court can order that notice need not be given where the person to be given notice cannot be located in the exercise of reasonable diligence or where the giving of the notice would be contrary to the interest of justice. The court might determine that the giving of the notice would be contrary to the interest of justice, for example, if the parents or relatives of the proposed ward were in Vietnam and the giving of the notice might be dangerous to them or where a mother had abandoned the proposed ward, remarried, established a new family, and indicated in writing that she wanted to receive no further communications concerning her child because she was concealing its existence from her new family. The provision for proof of notice is generalized by subdivision (h) to apply to all notices required by Section 1511.

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451  
 Definition, court, § 1418  
 Mailing  
     Manner of, § 1465  
     Personal delivery in lieu of, § 1466  
     When complete, § 1465  
 Postponement of hearing, notice, § 1463  
 Proof of giving of notice, § 1468  
 Service by mail, when deemed complete, § 1467

36/227

#### § 1512. Amendment of petition to disclose newly discovered proceeding affecting custody

1512. Within 10 days after the petitioner in the guardianship proceeding becomes aware of any proceeding not disclosed in the guardianship petition affecting the custody of the proposed ward (including any adoption, juvenile court, marriage dissolution, domestic relations, or other similar proceeding affecting the proposed ward), the petitioner shall amend the guardianship petition to disclose the other proceeding.

Comment. Section 1512 is new. The section is designed to alert the court to any other proceeding affecting the custody of the proposed

ward that was not disclosed in the guardianship petition. The section supersedes the second paragraph of subdivision (c) of former Section 1440, which required a nonrelative petitioner for guardianship to amend the guardianship petition if the petitioner filed a petition for adoption of the minor of whom the petitioner was seeking guardianship.

29/121

§ 1513. Investigation and report by court-designated officer

1513. (a) The court investigator, probation officer, or domestic relations investigator in the county in which the petition for appointment of a guardian is pending shall make an investigation of each case whenever requested by the court.

(b) The officer making the investigation shall file with the court a written confidential report. The report may be considered by the court and shall be made available only to the persons who have been served in the proceeding and the persons who have appeared in the proceeding or their attorneys. The report may be received in evidence upon stipulation of all such persons who are present at the hearing.

(c) When the court directs that an investigation and report be made under this section, the court shall make an inquiry into the financial condition of (1) the parent, parents, or other person charged with the support and maintenance of the proposed ward and (2) the estate of the proposed ward. If the court finds such parent, parents, or other person or the proposed ward's estate able, in whole or in part, to pay the expense of the investigation and report, the court shall make an order requiring such parent, parents, or other person, or the guardian of the ward's estate when appointed, to repay to the county such part, or all, of such expenses of the investigation and report as, in the opinion of the court, is proper. The repayment shall be made to the county officer designated by the board of supervisors, who shall keep suitable accounts of such expenses and repayments and shall deposit the collections in the county treasury. An order may be made under this subdivision only after a hearing, held after such notice as the court may require, if a hearing is requested.

Comment. Subdivision (a) of Section 1513 continues the substance of former Section 1443 with two modifications:



(1) The former law has been expanded in Section 1513 to permit investigations by the court investigator and the domestic relations investigator. The court investigator makes other investigations under this division and it is appropriate that this officer be included among the persons authorized to make investigations under Section 1513. The addition of the domestic relations investigator to Section 1513 is consistent with Civil Code Section 4602, which authorizes investigations to be made in child custody matters by the domestic relations investigator as well as by the probation officer.

(2) Section 1513 does not continue the provision of former law that precluded an investigation and report when a report was required under former Section 1440.1 (continued in Section 1543). This provision of former law was unduly rigid and has not been continued because it would preclude the court, for example, from obtaining a report under Section 1513 in a case where the agency obligated to file the report under Section 1543 has such an interest in the matter that the agency's report is not fair and objective as far as the proposed guardian is concerned. Subdivision (c) of Section 1513 will tend to protect against any unnecessary investigation and report under Section 1513 in a case where a report is being made under Section 1543 because the petitioner in the guardianship proceeding will wish to avoid the expense of an unnecessary report.

Subdivisions (b) and (c) of Section 1513 are new and are adapted from comparable provisions of Civil Code Section 4602.

CROSS-REFERENCES

- Appointment of legal counsel for proposed ward, § 1470
- Definitions
- Court, § 1418
- Court investigator, § 1419
- Report in case of certain nonrelative guardianships, § 1543

Note. AB 2721 would amend subdivision (c) to substitute "shall" for "may."

4440.

§ 1514. Appointment of guardian

1514. (a) Upon hearing of the petition, if it appears necessary or convenient, the court may appoint a guardian of the person or estate of the proposed ward or both.

(b) In appointing a guardian of the person, the court is governed by the provisions of Section 4600 of the Civil Code, relating to custody of a minor.

(c) The court shall appoint a guardian nominated under Section 1500 insofar as the nomination relates to the guardianship of the estate unless the court determines that the nominee is unsuitable.

(d) The court shall appoint the person nominated under Section 1501 as guardian of the property covered by the nomination unless the court determines that the nominee is unsuitable. If the person so appointed is appointed only as guardian of the property covered by the nomination, the letters of guardianship shall so indicate.

(e) Subject to subdivisions (c) and (d), in appointing a guardian of the estate:

(1) The court is to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the proposed ward.

(2) If the proposed ward is of sufficient age to form an intelligent preference as to the person to be appointed as guardian, the court shall give consideration to that preference in determining the person to be so appointed.

Comment. Subdivision (a) of Section 1514 continues the substance of the first sentence of former Section 1405 and the substance of a portion of the first sentence of subdivision (a) of former Section 1440.

Subdivision (b) applies only to a guardian of the person of a minor. If a person is to be appointed as a guardian of both the person and of the estate, subdivision (b) applies. Subdivision (b) 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, 106 Cal. Rptr. 655 (1973).

Subdivisions (c) and (d)--which require the appointment of the person nominated under Section 1500 or 1501 as guardian of the property covered by the nomination unless the nominee is determined to be unsuitable--supersede 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 of the estate was binding on the court or was merely persuasive. See 3 N. Condee, Probate Court Practice § 2029, at 151 (2d ed. 1964); Schlesinger, Testamentary Guardianships for Minors and Incompetents, in California Will Drafting § 10.10, at 312-13 (Cal. Cont. Ed. Bar 1965). Subdivision (b) permits appointment of a person nominated as the guardian of the person and estate of a minor in the court's discretion, if the appointment of such person is permitted under the standard provided in Civil Code Section 4600; but, even though the person nominated as a guardian of the person and estate is not appointed as guardian of the person, the court must nevertheless appoint the nominee as the guardian of the estate unless the court determines that the nominee is unfit.

Subdivision (e) provides the standards for appointing a general guardian of the estate of a minor. A general guardian may coexist with a guardian as to particular property nominated under Section 1501, with the latter controlling the property received from the person making the nomination. See Section 2109. However, no new general guardian may be appointed when an existing general guardian is serving unless the existing guardian is removed or the appointment is vacated. See *Guardianship of Kimball*, 80 Cal. App.2d 884, 182 P.2d 612 (1947). Paragraph (2) of subdivision (e) continues the first sentence of former Section 1406 insofar as it related to appointment of a general guardian of the estate of a minor but requires rather than permits the court to consider the minor's preference.

When a guardian nominated by will is granted additional powers by the will and is appointed by the court, the order of appointment shall include a grant of such powers to the guardian unless the court for good cause determines otherwise. See Section 2108.

Section 1514 substitutes the rule of Section 4600 and the general rule stated in subdivision (e) for the priorities and limitations stated in former Sections 1406-1409 and supersedes those sections.

Former Section 1406 permitted a minor over 14 years of age to nominate a guardian, but the court had considerable latitude in determining whether to approve the minor's nominee. See *Guardianship of Kentera*, 41 Cal.2d 639, 262 P.2d 317 (1953); *Guardianship of Rose*, 171 Cal. App.2d 677, 340 P.2d 1045 (1959). Section 1510 does not continue the right of the minor to nominate the guardian but preserves the standing of a minor 14 years of age or older to petition as a party in a guardianship proceeding for the 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 concerning the minor's custody. And subdivision (e) of Section 1510 requires the court to consider the minor's preference as to the person to be appointed as guardian of the estate except where the guardian has been nominated under Section 1500.

#### CROSS-REFERENCES

Appealable orders, § 2750  
 Appointment of guardian to fill vacancy, § 2110  
 Appointment of legal counsel for proposed ward, § 1470  
 Definition, court, § 1418  
 Director of Developmental Services as guardian, Health & Saf. Code § 416  
 Joint guardians for one ward, § 2105  
 Nonprofit charitable corporation as guardian, § 2104  
 One guardian for several wards, § 2106  
 Order of appointment, additional conditions, §§ 2358, 2402  
 Public guardian, Welf. & Inst. Code § 8006  
 Trust company as guardian of estate, § 480

§ 1515. No guardian of person for married minor

1515. Notwithstanding any other provision of this part, no guardian of the person shall be appointed for a minor who is married or whose marriage has been dissolved. This section does not apply in the case of a minor whose marriage has been adjudged a nullity.

Comment. Section 1515 supersedes former Section 1433, which precluded appointment of a guardian of the person of a married minor solely by reason of minority. If a married minor is in need of protective supervision of the person, a conservator of the person may be appointed under Part 3. If a conservator of the person of a married minor is appointed and the marriage is adjudged a nullity, the conservatorship of the person terminates (Section 1860) and, if the minor is in need of protective supervision of the person, a guardian may be appointed. If the marriage of an adult is adjudged a nullity, it has no effect on the conservatorship of the person if one had been established, even though it was established prior to the time the conservatee became an adult. Nothing in Section 1515 precludes the appointment of a guardian of the estate of a married minor.

## CROSS-REFERENCES

Termination of guardianship of person when minor marries, § 1600

4429

Article 3. Nonrelative Guardianships§ 1540. Application of article

1540. This article does not apply in any of the following cases:

- (a) Where the petition is for guardianship of the estate exclusively.
- (b) Where the petitioner is a relative of the proposed ward.
- (c) Where the petitioner is one nominated as a guardian of the proposed ward under Section 1500.
- (d) Where the Director of Developmental Services is appointed guardian pursuant to Article 7.5 (commencing with Section 416) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.
- (e) Where the director of the department designated by the board of supervisors to provide social services is appointed guardian.
- (f) Where the public guardian is appointed guardian.

Comment. Section 1540 is new. The section is drawn from the qualifications for application of subdivision (c) of former Section 1440 and from former Section 1440.3.

§ 1541. Additional contents of petition for guardianship

1541. In addition to the other required contents of the petition for appointment of a guardian, the petition shall include both of the following:

(a) A statement that, upon request by an agency referred to in Section 1543 for information relating to the investigation referred to in that section, the petitioner will promptly submit the information required.

(b) 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 or where filed.

(c) A statement whether or not the petitioner's home is licensed as a foster family home.

Comment. Section 1541 continues the substance of the second sentence of subdivision (c) of former Section 1440. For cases in which this article does not apply, see Section 1540.

CROSS-REFERENCES

Disclosure of proceedings affecting custody, §§ 1510(f), 1512

4436

§ 1542. Delivery of copy of petition to Director of Social Services

1542. The petitioner shall mail a notice of the hearing and a copy of the petition to the Director of Social Services at the director's office in Sacramento at least 15 days before the hearing.

Comment. Section 1542 continues the substance of the first sentence of subdivision (c) of former Section 1440 except that the requirement that notice of the hearing be given has been added, "mail" has been substituted for "served," and the 15-day provision has been added. The provision of former Section 1440 requiring proof of service to be made to the court at the time of hearing has been omitted; this will permit proof of mailing to be filed with the court prior to the hearing. See Section 1468.

For cases in which this article does not apply, see Section 1540.

CROSS-REFERENCES

Manner of mailing, § 1465

Personal delivery in lieu of mailing, § 1466

When mailing complete, § 1465

§ 1543. Report on suitability of guardian

1543. (a) If the petition as filed or as amended states that an adoption petition has been filed by the petitioner, a report with respect to the suitability of the petitioner for guardianship shall be filed with the court by the agency investigating the adoption. In other cases, the local agency designated by the board of supervisors to provide public social services shall file a report with the court with respect to the petitioner of the same character required to be made with regard to an applicant for foster family home licensure.

(b) The report filed with the court pursuant to this section is confidential. The report may be considered by the court and shall be made available only to the persons who have been served in the proceeding or who have appeared in the proceeding or their attorneys. The report may be received in evidence upon stipulation of all such persons who are present at the hearing.

Comment. Subdivision (a) of Section 1543 is the same in substance as former Section 1440.1. Subdivision (b) supersedes former Section 1440.2, is comparable to subdivision (b) of Section 1513, and is adapted from the comparable provision of Civil Code Section 4602. See also Section 1513 (investigation by court investigator, probation officer, or domestic relations investigator). For cases in which this article does not apply, see Section 1540.

## CROSS-REFERENCES

Definition, court, § 1418

29175

CHAPTER 2. TERMINATION§ 1600. Majority, death, or marriage of ward

1600. (a) A guardianship of the person or estate or both terminates when the ward attains majority or dies.

(b) A guardianship of the person terminates when the ward marries.

Comment. Subdivision (a) of Section 1600 continues subdivisions (1) and (2) of former Section 1590, relating to termination of guardianship when the ward attains majority. The age of majority is 18. See Civil Code § 25. Subdivision (a) also codifies the rule that the death of the ward terminates the guardianship. See Section 1860 for a comparable provision. Subdivision (b) continues that portion of subdivision

(1) of former Section 1590 relating to termination of the guardianship of the person when a minor marries.

The court retains jurisdiction of the guardianship proceeding despite the termination of the guardianship. See Section 2630. If the married minor is in need of protective supervision of the person, a petition for conservatorship of the person may be filed. See Section 1800. See also Section 1820(b) (filing petition for appointment of conservator during proposed conservatee's minority so that the appointment of a conservator may be made effective immediately upon the minor's becoming 18).

CROSS-REFERENCES

Allowance of

- Disbursements after termination of guardianship, § 2623
- Expenses for care of estate after death of ward, § 2623
- Care of estate after death of ward, § 2467
- Disposition of estate after death of ward, § 2631
- No guardian of person for married minor, § 1515
- Ward reaching majority may settle accounts with guardian, § 2627

29176

§ 1601. Termination by court order

1601. Upon petition of the guardian, a parent, or the ward and after such notice as the court may require, the court may make an order terminating the guardianship if the court determines that it is no longer necessary that the ward have a guardian or that it is in the ward's best interest to terminate the guardianship.

Comment. Section 1601 continues the first portion of subdivision (3) of former Section 1590 except that a parent is added to the persons authorized to petition for termination of the guardianship. The standard for termination of the guardianship was not formerly specified in the statute. But see former Section 1580 (removal of guardian when it is "no longer necessary that the ward should be under guardianship"). The court retains jurisdiction of the guardianship proceeding despite termination of the guardianship. See Section 2630.

CROSS-REFERENCES

- Allowance of disbursements after termination, § 2623
- Appealable orders, § 2750
- Appointment of legal counsel for ward, § 1470
- Definition, court, § 1418
- Proof of giving of notice, § 1468
- Request for special notice, § 2700
- Termination of proceeding upon
  - Exhaustion of estate, § 2626
  - Transfer of all assets to foreign guardian, § 2803

PART 3. CONSERVATORSHIP

CHAPTER 1. ESTABLISHMENT OF CONSERVATORSHIP

Article 1. Persons for Whom Conservator May Be Appointed

§ 1800. Conservatorships for adults or married minors

1800. If the other requirements of this chapter are satisfied, the court may appoint:

(a) A conservator of the person or estate of an adult, or both.

(b) A conservator of the person of a minor who is married or whose marriage has been dissolved.

Comment. Section 1800 is new and makes clear that conservatorships are authorized only for adults and for minors who are married or whose marriage has been dissolved. In the case of a minor who is married or whose marriage has been dissolved, a conservator of the person may be appointed if the requirements of this chapter are satisfied; a guardian of the estate of the minor may be appointed where necessary or convenient. See Sections 1514, 1515. In the case of a minor whose marriage has been adjudged a nullity, guardianship and not conservatorship is the appropriate protective proceeding of the person. See Section 1515.

CROSS-REFERENCES

Definition, court, § 1418

29193

§ 1801. Showing required for appointment generally

1801. Subject to Section 1800:

(a) A conservator of the person may be appointed for a person who is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter.

(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence. "Substantial inability" may not be proved solely by isolated incidents of negligence or improvidence.

(c) A conservator of the person and estate may be appointed for a person described in subdivisions (a) and (b).

Comment. Section 1801 continues the substance of a portion of former Section 1751. The portion of former Section 1751 that authorized



§ 1802

the appointment of a conservator for an adult for whom a guardian could be appointed is superseded by subdivision (f) of Section 1821 and subdivisions (a) and (b) of Section 1831.

29194

§ 1802. Appointment upon request of proposed conservatee

1802. Subject to Section 1800, a conservator of the person or estate, or both, may be appointed for a person who voluntarily requests the appointment and who, to the satisfaction of the court, establishes good cause for the appointment.

Comment. Section 1802 continues the substance of a portion of former Section 1751.

CROSS-REFERENCES

Definition, court, § 1418

29195

§ 1803. Proposed conservatee an "absentee"

1803. A conservator of the estate may be appointed for a person who is an absentee as defined in Section 1403.

Comment. Section 1803 continues a portion of former Section 1751. For special provisions applicable where the proposed conservatee is an absentee, see Article 4 (commencing with Section 1840).

29198

Article 2. Order of Preference for  
Appointment of Conservator

§ 1810. Nomination by proposed conservatee

1810. If the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator in the petition or in a writing signed either before or after the petition is filed. The court shall appoint the nominee as conservator unless the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee.

Comment. Section 1810 continues the substance of the second sentence of former Section 1752. Like former Section 1752, but unlike former Section 1463 (guardianship), Section 1810 does not require that the writing containing the nomination be executed in the same manner as a witnessed will. The only formal requirements for a nomination under

Section 1810 are that the nomination be in writing and be signed by the proposed conservatee. The nomination may be made in a writing made long before the conservatorship proceedings are commenced; but, whenever made, the proposed conservatee must have had at the time the writing was executed sufficient capacity to form an intelligent preference. A nomination of a guardian made by an adult under prior law is deemed to be a nomination of a conservator. See Section 1488.

The proposed conservatee--whether or not the petitioner--may waive bond and, in such a case, the court may in its discretion dispense with bond. Section 2321.

CROSS-REFERENCES

Definition, court, § 1418

30/939

§ 1811. Nomination by spouse or relative of proposed conservatee

1811. (a) A spouse, adult child, parent, brother, or sister of the proposed conservatee may nominate a conservator in the petition or at the hearing on the petition.

(b) The spouse or a parent of the proposed conservatee may nominate a conservator in a writing signed either before or after the petition is filed and such nomination shall remain effective notwithstanding the subsequent legal incapacity or death of the spouse or parent, except that a nomination by the spouse becomes void upon dissolution or an adjudication of nullity of their marriage.

Comment. Section 1811 is new. Subdivision (a) specifies the manner in which the nomination contemplated by former Section 1753 (continued in Section 1812) shall be made. Subdivision (b) goes beyond prior law, and gives a written nomination made by a spouse or parent posthumous effect analogous to a nomination of a guardian under Section 1500 or 1501. Unlike the nomination of a guardian of the estate which the court must confirm unless the appointee is "unsuitable" (Section 1514), or a nomination made by the proposed conservatee pursuant to Section 1810 which nominee the court must appoint unless it is not in the best interests of the proposed conservatee, a nomination made under Section 1811 merely entitles the nominee to some preference for appointment. See Section 1812.

29199

§ 1812. Order of preference for appointment as conservator

1812. (a) Subject to Sections 1810 and 1813, the selection of a conservator of the person or estate, or both, is solely in the discretion of the court and, in making the selection, the court is to be

tion of the court and, in making the selection, the court is to be guided by what appears to be for the best interests of the proposed conservatee.

(b) Subject to Sections 1810 and 1813, of persons equally qualified in the opinion of the court to appointment as conservator of the person or estate or both of another, preference is to be given in the following order:

(1) The spouse of the proposed conservatee or the person nominated by the spouse pursuant to Section 1811.

(2) An adult child of the proposed conservatee or the person nominated by the child pursuant to Section 1811.

(3) A parent of the proposed conservatee or the person nominated by the parent pursuant to Section 1811.

(4) A brother or sister of the proposed conservatee or the person nominated by the brother or sister pursuant to Section 1811.

(5) Any other person or entity eligible for appointment as a conservator under this code or, if there is no such person or entity willing to act as a conservator, under the Welfare and Institutions Code.

(c) The preference for any nominee for appointment under paragraphs (2), (3), and (4) of subdivision (b) is subordinate to the preference for any other parent, child, brother, or sister in such class.

Comment. Section 1812 continues the substance of former Section 1753 and the first sentence of former Section 1752. The last sentence of former Section 1752 is omitted as unnecessary in view of the addition of the introductory clause to subdivision (b) of Section 1812 and the more detailed and inconsistent provisions of former Section 1753 which are continued in Section 1812. The last paragraph of former Section 1753 has been omitted as unnecessary. The reference to guardian of an incompetent person has been omitted since guardians are no longer appointed for incompetent persons.

#### CROSS-REFERENCES

Appointment of conservator to fill vacancy, § 2110

Definition, court, § 1418

Department of Mental Health as conservator, Welf. & Inst. Code § 7284

Director of Developmental Services as conservator, Health & Saf. Code § 416

Joint conservators, § 2105

Nonprofit charitable corporation as conservator, § 2104

One conservator for several conservatees, § 2106

Public guardian as conservator, Welf. & Inst. Code, § 8006

Trust company as conservator of the estate, § 480

Veterans' Home of California as conservator of the estate, Mil. & Vet. Code § 1046

§ 1813. Condition for appointment of absentee's spouse

1813. The spouse of an absentee as defined in Section 1403 may not be appointed as conservator of the estate of the absentee unless the spouse alleges in the petition for appointment as conservator, and the court finds, that the spouse has not commenced any action or proceeding against the absentee for judicial or legal separation, divorce or dissolution of marriage, annulment, or adjudication of nullity of their marriage.

Comment. Section 1813 continues the substance of the second sentence of former Section 1754.5. See also Section 1841(b) (statement in petition).

## CROSS-REFERENCES

Definition, court, § 1418

4449

Article 3. Establishment of Conservatorship§ 1820. Filing of petition

1820. (a) A petition for the appointment of a conservator may be filed by any of the following:

- (1) The proposed conservatee.
- (2) A relative of the proposed conservatee.
- (3) Any other person or entity eligible for appointment as a conservator under this code or under the Welfare and Institutions Code.
- (4) Any friend, other than a creditor, of the proposed conservatee.

(b) If the proposed conservatee is a minor, the petition may be filed during his or her minority so that the appointment of a conservator may be made effective immediately upon the minor's attaining the status described in Section 1800. An existing guardian of the minor may be appointed as conservator under this part upon the minor's attaining the status described in Section 1800, whether or not the guardian's accounts have been settled.

Comment. Subdivision (a) of Section 1820 continues the substance of a portion of the first sentence of former Section 1754 except that a relative of the proposed conservatee may now petition, whether or not

the relative is also a creditor. See also former Section 1570 (nonresident ward). Paragraph (3) of subdivision (a) is new and is added for clarity.

The first sentence of subdivision (b) is new and will permit the uninterrupted continuation of protective proceedings for a minor under guardianship who is approaching majority and will need a conservator. The second sentence of subdivision (b) is based on a portion of the first sentence of former Section 1704. Under subdivision (b), however, the power of the court to appoint an existing guardian as conservator upon the minor's reaching majority is not conditioned upon settlement of the guardian's accounts. Such settlement may take place after the guardian's appointment as conservator. See Section 2630.

CROSS-REFERENCES

Appointment of counsel for proposed conservatee, §§ 1471-1472  
 Notice to Director of Mental Health or Director of Developmental Services, § 1461  
 Petition must be verified, § 1450  
 Venue, §§ 2200-2216

4450

§ 1821. Contents of petition

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the proposed conservator, and shall state the reasons why the appointment is required.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse and of the relatives of the proposed conservatee within the second degree.

(c) If the petition is filed by one other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor of the proposed conservatee.

(d) 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 Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration.

(f) The petition may include a further statement that any one or more of the following is necessary for the protection of the proposed conservatee or the estate of the proposed conservatee:

(1) That the proposed conservatee be adjudged to lack legal capacity.

(2) That the power of the proposed conservatee to enter into any one or more of the following be withdrawn: (i) specified types of transactions; (ii) any transaction in excess of a specified money amount; (iii) any transaction other than specified types of transactions.

(3) That the proposed conservatee be adjudged to lack the capacity to give informed consent for medical treatment and that the court by order give the conservator of the person the powers specified in Section 2355.

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

Comment. Subdivision (a) of Section 1821 continues the substance of a portion of the first sentence of former Section 1754 but adds the requirement that the petition "specify the proposed conservator" and state the "reasons for appointment." This addition is consistent with former practice. See Petition for Appointment of Conservator (Form Approved by Judicial Council of California, effective July 1, 1977).

Subdivision (b) is the same in substance as the second sentence of former Section 1754. Subdivision (c) is new and conforms to the change in former law made in Section 1820 (creditor-relative permitted to file petition).

Subdivision (d) is drawn from a portion of former Section 1461.3 (guardianship) and is consistent with former practice in conservatorship proceedings. See Petition for Appointment of Conservator (Form Approved by the Judicial Council of California, effective July 1, 1977). Subdivision (d) facilitates compliance with notice requirements. See Section 1822(b).

Subdivision (e) is new and is consistent with former practice. See Petition for Appointment of Conservator (Form Approved by the Judicial Council of California, effective July 1, 1977). Subdivision (e) facilitates compliance with notice requirements. See Section 1822(c).

Subdivision (f) is new and provides for information needed in connection with Section 1835 (restriction of conservatee's capacity).

Subdivision (g) is new. If the allegation provided for in this subdivision is made, it triggers an investigation and report by the court investigator (Section 1826) which may result in a determination by the court that the proposed conservatee need not attend the hearing (Section 1825).

CROSS-REFERENCES

Additional contents of petition for conservatorship of absentee,  
 §§ 1813, 1841

Independent exercise of powers, § 2592

Nonprofit charitable corporation as conservator, § 2104

One conservator for several conservatees, § 2106

Joint conservators, § 2105

Uniform Veterans' Guardianship Act, §§ 2900-2918

Verification of petition, § 1450

4452

§ 1822. Notice of hearing

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), and (d) of this section. The notice shall be accompanied by a copy of the petition.

(b) Notice shall be mailed to the following persons (other than the petitioner or persons joining in the petition):

(1) The spouse, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 2908.

Comment. Subdivision (a) of Section 1822, which requires that notice be mailed at least 15 days before the hearing, is drawn from former Section 1754. The requirement of former Section 1754 that the notice be of the "nature of the proceedings" is replaced by a requirement that a copy of the petition be mailed with the notice of the time and place of the hearing.

Subdivision (b) continues the substance of a portion of the fourth sentence of former Section 1754 but add the provision that the mailing is to be sent to the addresses stated in the petition. See Section 1821(b).

Subdivisions (c) and (d) are based on the penultimate sentence of former Section 1754, which appears to have adopted a portion of former Section 1461.3 (guardianship) and provisions of the Uniform Veterans' Guardianship Act.

The provision for shortening the time for the notice which was found in former Section 1461.3 is not continued in Section 1822. If time is of the essence, a temporary conservatorship may be used. See Sections 2250-2258.

#### CROSS-REFERENCES

Additional notice where proposed conservatee is an absentee, § 1842  
Clerk sets petition for hearing, § 1451

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

4454

#### § 1823. Citation to proposed conservatee

1823. (a) 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 hearing.

(b) The citation shall include a statement of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1801 and shall state the substance of all of the following:

(1) The proposed conservatee may be adjudged unable to provide for personal needs or to manage financial resources and, by reason thereof, a conservator may be appointed for the person or estate or both.

(2) Such adjudication may transfer to the appointed conservator the proposed conservatee's right to contract, to manage and control property, to give informed consent for medical treatment, and to fix a residence.

(3) The court or a court investigator will explain the nature, purpose, and effect of the proceeding to the proposed conservatee and will answer questions concerning the explanation.

(4) The proposed conservatee has the right to appear at the hearing and to oppose the petition.



(5) The proposed conservatee has the right to choose and be represented by legal counsel and has the right to have legal counsel appointed by the court if the proposed conservatee opposes the petition and is unable to retain legal counsel.

(6) The proposed conservatee has the right to a jury trial if desired.

Comment. Section 1823 continues the substance of the second paragraph of former Section 1754 but adds the reference to informed consent for medical treatment. A citation is not required if the proposed conservatee is an "absentee." Section 1843.

CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472

4458

§ 1824. Service on proposed conservatee of citation and petition

1824. The citation and a copy of the petition shall be served on the proposed conservatee at least 15 days before the hearing. Service shall be made 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. If the proposed conservatee is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

Comment. The first two sentences of Section 1824 are the same in substance as the first sentence of the third paragraph of former Section 1754 except that 15 days' notice is required rather than the 10 days' notice formerly required. The third sentence of Section 1824 is new.

No citation is required if the proposed conservatee is the petitioner. See Section 1823(a). If the proposed conservatee is an "absentee," no citation is required. Section 1843.

CROSS-REFERENCES

Definition, court, § 1418

When service by mail deemed complete, § 1467

4459

§ 1825. Attendance of proposed conservatee at hearing

1825. (a) The proposed conservatee shall be produced at the hearing except in the following cases:

(1) Where the proposed conservatee is out of the state when served and is not the petitioner.

(2) Where the proposed conservatee is unable to attend the hearing by reason of medical inability.

(3) Where the court investigator has reported to the court that the proposed conservatee has expressly communicated that the proposed conservatee (i) is not willing to attend the hearing, (ii) does not wish to contest the establishment of the conservatorship, and (iii) does not object to the proposed conservator or prefer that another person act as conservator, and the court makes an order that the proposed conservatee need not attend the hearing.

(b) If the proposed conservatee is unable to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) 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 that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the proposed conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.

(c) Emotional or psychological instability is not good cause for the absence of the proposed conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee.

Comment. Section 1825 continues the substance of the first four sentences of the fourth paragraph of former Section 1754 with the addition of paragraph (3) of subdivision (a), which is new. An "absentee," as defined in Section 1403, need not be produced at the hearing. See Section 1844.

#### CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472  
Investigation and report by court investigator, § 1826

4460

§ 1826. Information to proposed conservatee by court investigator; investigation and report

1826. If the petition alleges that the proposed conservatee is not willing to attend the hearing or upon receipt of an affidavit or certificate attesting to the medical inability of the proposed conservatee to

attend the hearing, the court investigator shall do all of the following:

(a) Interview the proposed conservatee personally.

(b) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, attend the hearing, have the matter of the establishment of the conservatorship tried by jury, and be represented by legal counsel.

(c) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(d) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(e) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(f) Determine whether the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(g) If the proposed conservatee opposes the establishment of the conservatorship, or objects to the proposed conservator or prefers another person to act as conservator, and has not retained counsel, determine whether the proposed conservatee desires the court to appoint legal counsel.

(h) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in any case where the proposed conservatee does not oppose the establishment of the conservatorship or object to the proposed conservator and has not retained legal counsel and does not plan to retain legal counsel.

(i) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning both of the following:

(1) Representation by legal counsel.

(2) Willingness to attend the hearing.

Comment. Section 1826 continues the substance of the fifth, sixth, and seventh paragraphs of former Section 1754 with the addition of (1) a provision requiring an investigation and report if the petition alleges that the proposed conservatee is not willing to attend the hearing, and (2) a requirement that the court investigator determine whether the proposed conservatee is willing to attend the hearing and report to the court the express communication of the proposed conservatee concerning willingness to attend the hearing. These additions are necessary to implement paragraph (3) of subdivision (a) of Section 1825. Also added is subdivisions (g) and (h) which are necessary to implement subdivision (b) of Section 1471.

The determination referred to in subdivision (c) is relevant to whether the proposed conservatee must be produced at the hearing. See Section 1825(a)(2), (3). The determinations referred to in subdivisions (d) and (e) are also relevant to whether the proposed conservatee must be produced at the hearing--see Section 1825(a)(3)--are also relevant to the appointment of legal counsel under Section 1471 as are the determinations in subdivisions (g) and (h).

CROSS-REFERENCES

Biennial review of conservatorship, § 1851

Court investigator, § 1454

Definitions

Court, § 1418

Court investigator, § 1419

4461

§ 1827. Law and procedure applicable to hearing

1827. (a) The court shall hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded.

(b) Demand for a court or jury trial shall be made within five days after the hearing on the conservatorship petition. A court or jury trial shall commence within 10 judicial days of the date of demand, except the court shall continue the trial date for a period not to exceed 15 judicial days upon the request of the legal counsel for the proposed conservatee.

Comment. Section 1827 continues the substance of the second paragraph of former Section 1606.5 (guardianship of incompetent adult) and the second paragraph of former Section 2006 (conservatorship).

CROSS-REFERENCES

Appointment of legal counsel, §§ 1471-1472  
 Definition, court, § 1418  
 Medical certificate or affidavit, use of, §§ 1825, 2254  
 Persons who may support or oppose petition, § 1829

Note. Section 1827 (as set out above) picks up the addition proposed by AB 3122.

4462

§ 1828. Information to proposed conservatee by court

1828. (a) Except as provided in subdivision (c), prior to the appointment of a conservator of the person or estate, or both, the court shall inform the proposed conservatee of all of the following so far as relevant to the allegations made and the determinations requested in the petition:

(1) The nature and purpose of the proceeding.

(2) The appointment of a conservator is a legal adjudication of the conservatee's inability properly to provide for the conservatee's personal needs or to manage the conservatee's own financial resources and the effect of such an adjudication on the conservatee's basic rights.

(3) The identity of the proposed conservator.

(4) The nature and effect on the conservatee's basic rights of any order requested under Section 1835.

(5) The proposed conservatee has the right to oppose the proceeding, to have the matter of the establishment of the conservatorship tried by jury, and to be represented by legal counsel if the proposed conservatee so chooses.

(b) After the court so informs the proposed conservatee and prior to the appointment of a conservator, the court shall consult the proposed conservatee to determine the proposed conservatee's opinion concerning all of the following:

(1) The establishment of the conservatorship.

(2) The appointment of the proposed conservator.

(3) Any order requested under Section 1835.

(c) This section does not apply where both of the following conditions are satisfied:

(1) The proposed conservatee is absent from the hearing and is not required to attend the hearing under the provisions of subdivision (a) of Section 1825.

(2) Any showing required by Section 1825 has been made.

Comment. Subdivisions (a) and (b) of Section 1828 continue the substance of the first paragraph of former Section 1754.1. Language has been added to recognize that the information given to the proposed conservatee should be relevant to the allegations made and the determinations requested in the petition and reference has been added to any order requested under Section 1835.

Subdivision (c) expands the second paragraph of former Section 1754.1 which made the section inapplicable only if the proposed conservatee's inability to attend the hearing was "medically" certified. Subdivision (c) makes this section inapplicable in the case of any case where the proposed conservatee is not required to attend the hearing.

Section 1828 does not continue the introductory clause of former Section 1754.1, which dispensed with the court giving the information to the proposed conservatee where the proposed conservatee is the petitioner. Under Section 1828, the proposed conservatee is given the information, whether or not the petitioner.

CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472  
 Definition, court, § 1418

09598

§ 1829. Persons who may support or oppose petition

1829. The proposed conservatee, any relative or friend of the proposed conservatee, or any other interested person may appear at the hearing to support or oppose the petition.

Comment. Section 1829 continues the substance of the last sentence of former Section 1754 with the addition of the words "to support or" and the substitution of other "interested person" (defined in Section 1424) for any "officer or agency of this state or of the United States or the authorized delegate thereof."

CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472  
 Definition, interested person, § 1424

09597

§ 1830. Order appointing conservator

1830. The order appointing the conservator shall contain, among other things, the names, addresses, and telephone numbers of:

- (a) The conservator.
- (b) The conservatee's attorney, if any.
- (c) The court investigator, if any.

Comment. Section 1830 continues the substance of the last sentence of former Section 1801.

## CROSS-REFERENCES

Appealable orders, § 2750  
 Order of appointment, additional conditions, §§ 2358, 2402

4464

Article 4. Determining Extent of Conservatee's  
 Legal Capacity

§ 1835. Adjudication of conservatee's lack of legal capacity or lack  
 of capacity to give informed medical consent; withdrawing  
 power to enter into specified transactions

1835. (a) If the court determines that it is necessary for the protection of the conservatee or the conservatee's estate, the court may by order do either of the following:

(1) Adjudge that the conservatee lacks legal capacity.

(2) Withdraw the power of the conservatee to enter into any one or more of the following: (i) specified types of transactions; (ii) any transaction in excess of a specified amount; (iii) any transaction other than specified types of transactions.

(b) If the court determines that the conservatee does not have the capacity to give informed consent for any and all forms of medical treatment, the court may (1) adjudge that the conservatee lacks the capacity to give informed consent for medical treatment and (2) by order give the conservator of the person the powers specified in Section 2355. If an order is made under this subdivision, the letters of conservatorship shall include a statement that the conservator has the powers specified in Section 2355.

(c) The order referred to in subdivisions (a) and (b) may be included in the order of appointment of the conservator if such order was requested in the petition for the appointment of the conservator or may be made subsequently upon a petition filed, noticed, and heard in the same manner as a petition for appointment of a conservator.

(d) The order referred to in subdivisions (a) and (b) may be modified or revoked upon a petition made, noticed, and heard in the same manner as a petition for termination of a conservatorship under Chapter 3 (commencing with Section 1860). The court, in its discretion, may provide in the order referred to in subdivisions (a) and (b) that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order. If not so limited, the order continues in effect until modified or revoked.

Comment. Section 1835 is new. Subdivision (a)(1), together with Section 1836, preserves the effect under former Section 1751 of appointing a conservator on the ground that the conservatee was a person for whom a guardian could have been appointed. The appointment of a guardian for an adult under former 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, 604-05, 275 P. 794, 799-800 (1929). An order appointing a conservator on the ground that the conservatee was a person for whom a guardian could have been appointed rendered the conservatee incapable of contracting. See *Board of Regents State Univs. v. Davis*, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, 1051 n.6, 1054, 120 Cal. Rptr. 407, 411 n.6, 414 (1975).

Section 1835 permits the court to determine that the conservatee lacks legal capacity or to constrict the conservatee's power to contract. If the court determines that the conservatee lacks legal capacity, the conservatee will thereby be rendered incapable of making any conveyance or contract, or of delegating any power or waiving any right, until restored to capacity. See Civil Code § 40.

The provision authorizing the court to withdraw the power of the conservatee to enter into specified types of transactions or any transaction in excess of a specified amount is drawn from Section 5357 of the Welfare and Institutions Code.

#### CROSS-REFERENCES

Definition, court, § 1418  
 Effect on adjudication of lack of legal capacity, § 1836  
 Legal capacity of adult for whom guardian or conservator was appointed under prior law, §§ 1485-1487  
 Medical treatment of conservatee, § 2354  
 Petitions  
     Contents, § 1821  
     Verification, § 1450  
 Review of order at time of biennial review, § 1851

29/116

#### § 1836. Effect of adjudication of lack of legal capacity

1836. An adjudication that the conservatee lacks legal capacity is an adjudication that the conservatee is an incompetent person.

Comment. Section 1836 and subdivision (a)(1) of Section 1835 (adjudication conservatee lacks legal capacity) preserve the effect under former Section 1571 of appointing a conservator on the ground that the conservatee was a person for whom a guardian could have been appointed. See former Sections 1460-1463, 1470-1472.



Article 5. Special Provisions Applicable Where  
Proposed Conservatee Is An Absentee

§ 1840. Procedure for appointment of conservator for absentee

1840. Except as otherwise provided in this article, a conservator for an absentee (Section 1403), shall be appointed as provided in Article 3 (commencing with Section 1820).

Comment. Section 1840 continues former law which applied the general provisions relating to appointment of a conservator to the appointment of a conservator for an absentee but also included some special provisions applicable where the proposed conservatee is an absentee. Because of the limited use of conservatorships for absentees, these special provisions have been relocated from the general provisions relating to appointment of conservators and have been collected in this article.

CROSS-REFERENCES

Condition on appointment of spouse of absentee as conservator, § 1813  
Conservator of estate may be appointed for absentee, § 1803  
Termination of conservatorship of absentee, § 1864

§ 1841. Additional contents of petition

1841. In addition to the other required contents of the petition, if the proposed conservatee is an absentee:

(a) The petition, and any notice required by Section 1822 or any other law, shall set forth the last known military rank or grade and the social security account number of the proposed conservatee.

(b) The petition shall state whether the absentee's spouse has commenced any action or proceeding against the absentee for judicial or legal separation, divorce or dissolution of marriage, annulment, or adjudication of nullity of their marriage.

Comment. Section 1841 continues that portion of the first and second sentences of former Section 1754.5 that related to the information required to be contained in the petition or in the notice except that, under Section 1841, the information concerning military rank and social security number is also required to be included in the petition.

CROSS-REFERENCES

Condition on appointment of spouse of absentee as conservator, § 1813  
Definition, absentee, § 1403

§ 1842. Notice of hearing

1842. In addition to the persons and entities to whom notice of hearing is required under Section 1822, if the proposed conservatee is an absentee, a copy of the petition and notice of the time and place of the hearing shall be mailed at least 15 days before the hearing to the secretary concerned or to the head of the United States department or agency concerned, as the case may be. In such case, 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 hearing will be held.

Comment. Section 1842 continues the substance of a portion of the fourth sentence and all of the fifth sentence of former Section 1754. The inconsistent requirement of former Section 1754.5 that the copy of the petition and notice be "delivered only by a method which would be sufficient for service of a summons in a civil action" is not continued.

## CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

## Definitions

Absentee, § 1403

Secretary concerned, § 1430

## Mailing

Manner of mailing, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

4470

§ 1843. Citation to proposed conservatee not required

1843. No citation is required under Section 1823 to the proposed conservatee if the proposed conservatee is an absentee.

Comment. Section 1843 continues the substance of the second sentence of the third paragraph of former Section 1754.

## CROSS-REFERENCES

Definition, absentee, § 1403

4471

§ 1844. Proof of status of proposed conservatee; attendance at hearing not required

1844. (a) An official written report or record complying with Section 1283 of the Evidence Code that a proposed conservatee is an

absentee shall be received as evidence of that fact and the court shall not determine the status of the proposed conservatee inconsistent with the status determined as shown by the written report or record.

(b) The inability of the proposed conservatee to attend the hearing is established by the official written report or record referred to in subdivision (a).

Comment. Subdivision (a) of Section 1844 continues the substance of the last sentence of former Section 1754.5. Subdivision (b) continues the substance of the last sentence of the fourth paragraph of former Section 1754.

CROSS-REFERENCES

Definitions:

Absentee, § 1403

Court, § 1418

4472

CHAPTER 2. BIENNIAL REVIEW OF CONSERVATORSHIP

§ 1850. Court review of conservatorship

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter.

(b) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship for a nonresident of this state where the conservatee is not present in this state.

Comment. Subdivision (a) of Section 1850 continues the substance of the first sentence of former Section 1851.1. Subdivision (b) is new and provides two exceptions to the application of the chapter. The first exception recognizes that the provisions of the chapter as a practical matter cannot apply where the conservatee is an absentee, and the second exception is consistent with Section 1825(a)(1).

CROSS-REFERENCES

Definition, court, § 1418

4473

§ 1851. Visitation and findings by court investigator

1851. (a) When court review is required, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship

and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, and whether the present conservator is acting in the best interests of the conservatee. If the court has made an order under Section 1835, the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator at the same time it is certified to the court.

Comment. Section 1851 continues the substance of the second, third, and fourth sentences of former Section 1851.1 except that (1) the report is required not less than 15 days prior to the date of review rather than "within" 15 days of the date of review, (2) the court investigator is required to determine whether the terms of an order made under Section 1835 should be modified or the order revoked, and (3) the second sentence of subdivision (b) is new.

CROSS-REFERENCES

Compelling production of conservatee, § 1853

Court investigator, appointment, § 1454

Definitions

Court, § 1418

Court investigator, § 1419

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

4474

§ 1852. Notification of counsel; representation of conservatee at hearing

1852. If the conservatee wishes to petition the court for termination of the proceeding or for removal of the existing conservator, or if, based on information contained in the court investigator's report or obtained from any other source, the court determines that a trial or hearing for such termination or removal is in the best interests of the conservatee, the court shall notify the attorney of record for the conservatee, if any, or shall appoint the public defender or private

counsel under Section 1471, to file the petition and represent the conservatee at the trial or hearing.

Comment. Section 1852 continues the substance of the fourth paragraph of former Section 1851.1, with the addition of the language authorizing the court to act on information from whatever source it may be received.

CROSS-REFERENCES

Definition, court, § 1418

4626

§ 1853. Failure to locate conservatee; removal of conservator on failure to produce conservatee; petition to appoint new conservator

1853. (a) If the court investigator is unable to locate the conservatee, the court shall order the court investigator to serve notice upon the conservator of the person, or upon the conservator of the estate if there is no conservator of the person, in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as is ordered by the court, to make the conservatee available for the purposes of Section 1851 to the court investigator within 15 days of the receipt of such notice or to show cause why the conservator should not be removed.

(b) If the conservatee is not made available within the time prescribed, unless good cause is shown for not doing so, the court, on its own motion or on petition, shall revoke the letters of conservatorship and enter judgment accordingly and, in the case of a conservator of the estate so removed, shall order the conservator to file an accounting and to surrender the estate to the person legally entitled thereto. If the conservator is so removed, the court shall notify the attorney of record for the conservatee, if any, or shall appoint the public defender or private counsel under Section 1471, to file a petition for appointment of a new conservator and to represent the conservatee in connection with such petition.

Comment. Section 1853 supersedes the last paragraph of former Section 1851.1. Section 1853 substitutes removal of the conservator for termination of the conservatorship as the sanction.

The conservator is to be removed only if the conservator fails to show "good cause" for not making the conservatee available. What constitutes good cause depends upon the circumstances of the particular

case. For example, good cause would be shown where it was established that the conservatee had disappeared from his or her place of residence and a diligent search was in progress to find the conservatee or where the conservatee was out of state to receive necessary medical treatment. Unlike the former provision, Section 1853 provides for the manner of service and provides that the conservatee is to be made available to the court investigator for the purposes of Section 1851. Section 1853 also places the duty to produce the conservatee on the conservator of the person if there is a conservator of the person.

CROSS-REFERENCES

Appointment to fill vacancy, § 2110  
 Definitions  
     Court, § 1418  
     Court investigator, § 1419  
 When service by mail deemed complete, § 1467

4627

CHAPTER 3. TERMINATION

§ 1860. When conservatorship terminates

1860. A conservatorship continues until terminated by any of the following:

- (a) The death of the conservatee.
- (b) The marriage of a minor conservatee is adjudged a nullity.
- (c) Order of court.

Comment. Section 1860 continues a portion of the first sentence of former Section 1755 with the addition of subdivision (b). If the conservatorship of a minor terminates because the marriage is adjudged a nullity, a guardian may be appointed. See the Comment to Section 1515.

The provision of former Section 1755 for termination of the conservatorship on the death of the conservator is not continued; death of the conservator merely terminates the relationship of conservator and conservatee but does not terminate the conservatorship proceeding. See Section 2630. Cf. Estate of Mims, 202 Cal. App.2d 332, 20 Cal. Rptr. 667 (1962) (guardianship). The court retains jurisdiction of the conservatorship proceeding despite termination of the conservatorship. See Section 2630.

CROSS-REFERENCES

Allowance for  
     Care of estate after conservatee's death, § 2623  
     Disbursements after termination of conservatorship, § 2623  
 Care of estate after death of conservatee, § 2467  
 Definition, court, § 1418  
 Disposition of estate after death of conservatee, § 2631  
 Termination of proceeding upon  
     Exhaustion of estate, § 2626  
     Transfer of all assets to foreign guardian or conservator, § 2808

§ 1861. Petition for termination of conservatorship

1861. (a) A petition for the termination of the conservatorship may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) Any person or entity eligible for appointment as a conservator under this code or under the Welfare and Institution Code.

(4) The spouse or any relative or friend of the conservatee.

(b) The petition shall state facts showing that the conservatorship is no longer required.

Comment. Section 1861 continues the second and third sentences of former Section 1755. Paragraph (3) of subdivision (a) is new, but the persons and entities therein described no doubt were included under the language "any relative or friend of the conservatee" contained in former Section 1755.

CROSS-REFERENCES

Appointment of legal counsel for conservatee, §§ 1471-1472

Definition, court, § 1418

Director of Mental Health as conservator, Welf. & Inst. Code § 7284

Director of Developmental Services as conservator, Health & Saf. Code § 416

Nonprofit charitable corporation as conservator, § 2104

Notice to Director of Mental Health or Director of Developmental Services, § 1461

Persons who may petition where conservatee is an absentee, § 1864

Petition must be verified, § 1450

Public guardian as conservator, Welf. & Inst. Code § 8006

Trust company as conservator of estate, § 480

4637.

§ 1862. Notice of hearing

1862. (a) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of the hearing shall be mailed to the persons specified in Section 1822.

(b) If the conservator is not the petitioner and has not joined in the petition, the conservator shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing.

(c) If the conservatee is not the petitioner and has not joined in the petition, the conservatee shall be served with a copy of the petition and a notice of the time and place of hearing at least 15 days prior to the hearing.

(d) Service under subdivisions (b) and (c) shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure. If the conservator or conservatee cannot with reasonable diligence be served with a copy of the petition and notice of hearing, the court may dispense with such service.

Comment. Subdivision (a) of Section 1862 continues the substance of a portion of the fourth sentence of former Section 1755, which provided that notice of the hearing shall be given to the persons and in the manner provided for the appointment of a conservator.

Subdivisions (b) and (d) continue the substance of the fifth, sixth, and seventh sentences of former Section 1755 except that subdivision (b) requires 15 days' notice rather than five days as was the case under former Section 1755. This change makes subdivision (b) consistent with Section 1824.

It was not clear under the former law whether issuance and personal service of a citation on the conservatee was required when the hearing is on the termination of the conservatorship. See W. Johnstone & G. Zillgitt, California Conservatorships § 7.10, at 266 (Cal. Cont. Ed. Bar 1968). Subdivision (c) requires that the conservatee be served with a copy of the petition and notice of hearing; issuance and service of a citation is not required.

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451  
 Definition, court, § 1418  
 Mailing  
     Manner of, § 1465  
     Personal delivery in lieu of, § 1466  
     When complete, § 1465  
 Notice to Director of Mental Health or Director of Developmental Services, § 1461  
 Notice to persons requesting special notice, §§ 2700-2703  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700  
 When service by mail deemed complete, § 1467

4638

#### § 1863. Hearing and judgment

1863. (a) The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded. The conservator, the conservatee, or any relative or friend of the conservatee or other interested person may appear and support or oppose the petition.



(b) If the court determines that the conservatorship is no longer required or that grounds for establishment of a conservatorship of the person or estate, or both, no longer exist, the court shall make such a finding and shall enter judgment terminating the conservatorship accordingly.

(c) At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated upon the settlement and approval of the conservator's final account by the court.

(d) Termination of conservatorship does not preclude institution of new proceedings for appointment of a conservator on the same or other grounds.

Comment. Section 1863 supersedes the last five sentences of former Section 1755. Under subdivision (a), the authority to support the petition is added and the list of those who may appear and support or oppose the petition is broadened to include the conservatee and other interested persons. Subdivision (d) supersedes the last sentence of former Section 1755.5 but broadens its application to all cases and not merely those where the conservatee was an absentee as defined in Section 1403.

CROSS-REFERENCES

Appealable orders, § 2750  
 Appointment of legal counsel for conservatee, §§ 1471-1472  
 Definitions  
     Court, § 1418  
     Interested person, § 1424  
 Jurisdiction of court after termination of conservatorship, § 2630  
 Right to counsel, §§ 1470-1472

4639

§ 1864. Termination of conservatorship of "absentee"

1864. (a) In the case of the conservatorship of an absentee as defined in Section 1403, the petition to terminate the conservatorship may also be filed by any officer or agency of this state or of the United States or the authorized delegate thereof.

(b) If the petition states and the court determines that the absentee has returned to the controllable jurisdiction of the military department or civilian department or agency concerned, or is deceased, as determined under 37 United States Code, Section 556, or 5 United States Code, Section 5566, as the case may be, the court shall order the conservatorship terminated. An official written report or record of such

military department or civilian department or agency that the absentee has returned to such controllable jurisdiction or is deceased shall be received as evidence of such fact.

Comment. Section 1864 continues the substance of the first paragraph of former Section 1755.5.

CROSS-REFERENCES

Definition, court, § 1418

404/969

PART 4. PROVISIONS COMMON TO GUARDIANSHIP  
AND CONSERVATORSHIP

CHAPTER 1. GENERAL PROVISIONS

§ 2100. Law governing guardianships and conservatorships

2100. Guardianships and conservatorships are governed by the provisions of this division. If no specific provision of this division is applicable, the provisions of Division 3 (commencing with Section 300) govern so far as they are applicable to like situations.

Comment. Section 2100 supersedes former Sections 1606 and 1702. The language conforms more closely to former Section 1702 than to former Section 1606. The language "except as provided in Section 1853 of this code" which was contained in former Section 1702 is not continued; this omission makes no substantive change since the effect of the former exception is continued by the language "[i]f no specific provision of this division is applicable."

Section 1452 establishes a specific rule concerning when the right to jury trial exists under this division. See the Comment to that Section. Accordingly, Section 2100 does not incorporate those portions of Section 1230 which, arguably, provide for a broader right to jury trial. See also Section 1469 (Sections 1200 and 1201 not applicable to proceeding under this division).

26/757

§ 2101. Relationship confidential and subject to law of trusts

2101. The relationship of guardian and ward and conservator and conservatee is confidential and is subject to the law relating to trusts.

Comment. Section 2101 continues the substance of the fifth sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702. As to the duty to use ordinary care and diligence in managing the estate, see Section 2401 and the Comment to that section.

It should be noted that a guardian or conservator is subject to the principles of good faith and fair dealing applicable to a trustee; and,

despite various provisions that permit the guardian or conservator to act without prior court authorization in the case of certain transactions, under some circumstances the guardian or conservator may be required to obtain court authorization of a transaction. See, e.g., Civil Code Section 2230 (transaction in which trustee has adverse interest to beneficiary). The guardian or conservator may be removed for having an interest adverse to the faithful performance of duties. See Section 2650. For provisions relating to trusts generally, see Civil Code Sections 2215-2289.

26/758

§ 2102. Control by court

2102. A guardian or conservator is subject to the regulation and control of the court in the performance of the duties of the office.

Comment. Section 2102 continues the substance of the last sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702.

CROSS-REFERENCES

Definition, court, § 1418  
 Instructions by court, §§ 2359, 2403

999/558

§ 2103. Effect of court authorization, approval, or confirmation

2103. Unless reversed on appeal, a judgment, order, or decree made pursuant to this division releases the guardian or conservator and the sureties from all claims of the ward or conservatee and of any persons affected thereby, based upon any act or omission directly authorized, approved, or confirmed in the judgment, order, or decree. This section does not apply where the judgment, order, or decree is obtained by fraud or conspiracy or by misrepresentation contained in the petition or in the judgment, order, or decree as to any material fact.

Comment. Section 2103 continues the substance of former Section 2103 (conservatorship) except that new Section 2103 applies to inaction approved by the court as well as to action. New Section 2103 supersedes former Section 1557.2 (guardianship) which applied only to orders authorizing purchases of real estate or investments.

CROSS-REFERENCES

Appealable orders, § 2750  
 Instructions from or approval by court, §§ 2359, 2403  
 Reversal of order appointing guardian or conservator, effect of, § 2752  
 Suits against sureties, limitation period, § 2333  
 Suit to recover property sold, limitation period, § 2548

§ 2104. Nonprofit charitable corporation as guardian or conservator

2104. (a) A nonprofit charitable corporation may be appointed as a guardian or conservator of the person or estate, or both, if all of the following requirements are met:

(1) The corporation is incorporated in this state.

(2) The articles of incorporation specifically authorize the corporation to accept appointments as guardian or conservator, as the case may be.

(3) The corporation has been providing, at the time of appointment, care, counseling, or financial assistance to the proposed ward or conservatee under the supervision of a registered social worker certified by the Board of Behavioral Science Examiners of this state.

(b) The petition for appointment of a nonprofit charitable corporation described in this section as a guardian or conservator shall include in the caption the name of a responsible corporate officer who shall act for the corporation for the purposes of this division. If, for any reason, the officer so named ceases to act as the responsible corporate officer for the purposes of this division, the corporation shall file with the court a notice containing (1) the name of the successor responsible corporate officer and (2) the date the successor becomes the responsible corporate officer.

(c) If a nonprofit charitable corporation described in this section is appointed as a guardian or conservator:

(1) The corporation's compensation as guardian or conservator shall be allowed only for services actually rendered and shall not be based on the value of the estate.

(2) Any fee allowed for an attorney for such corporation shall be for services actually rendered and shall not be based on the value of the estate.

Comment. Subdivisions (a) and (b) of Section 2104 continue the substance of a portion of former Sections 1400 and 1701. Subdivision (c) continues the substance of the last paragraph of former Section 1907 and subdivision (2) of former Section 1908 (conservatorship) in a much more concise form and extends the same limitations to guardianships.

CROSS-REFERENCES

Bond, § 2325  
 Definition, court, § 1418  
 Testamentary disposition to nonprofit charitable corporation appointed  
 as guardian or conservator, § 22.1

29/123

§ 2105. Joint guardians or conservators

2105. (a) The court, in its discretion, may appoint for a ward or conservatee:

- (1) Two or more joint guardians or conservators of the person.
- (2) Two or more joint guardians or conservators of the estate.
- (3) Two or more joint guardians or conservators of the person and estate.

(b) When joint guardians or conservators are appointed:

- (1) Each shall qualify in the same manner as a sole guardian or conservator.
- (2) The act of a majority of the joint guardians or conservators is valid.

(c) If one of the joint guardians or conservators dies or is removed or resigns, the powers and duties continue in the remaining joint guardians or conservators until further appointment is made by the court.

(d) Where joint guardians or conservators have been appointed and one or more are absent from the state or legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining joint guardians or conservators to act as to all matters embraced within its order.

Comment. Subdivision (a) of Section 2105 continues the substance of a portion of the second sentence of former Section 1405 and the last sentence of former Section 1751.

Subdivision (b) supersedes the third sentence of former Section 1405. Under the former provision, one of several joint guardians was "governed and liable in all respects as a sole guardian." Under paragraph (1) of subdivision (b), each of several joint guardians or conservators shall "qualify" in the same manner as a sole guardian or conservator. See, e.g., Sections 2300 (oath and bond required), 2326 (joint bond permitted). Paragraph (2) is based on the last sentence of Section 570 which appears to have been applied to guardianship and conservatorship proceedings by former Sections 1606 and 1702. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.84, at 225 (Cal. Cont. Ed. Bar 1968).

Section 2105 does not deal with the question of when one of several joint guardians or conservators may be liable for the act of another of the joint guardians or conservators. However, under certain circumstances one joint guardian or conservator may be held liable for the act of another joint conservator. See W. Johnstone & G. Zillgitt, supra § 3.6, at 56. Mere dissent from the action proposed by the majority may be insufficient to insulate the dissenting guardian or conservator from liability since there may be a duty to disclose questionable actions of a joint guardian or conservator. Cf. In re Estate of Osborne, 87 Cal. 1, 25 P. 157 (1890) (co-executors). See also Section 2101 (law of trusts applies).

Subdivision (c) is drawn from former Sections 1591 and 1955 but has been expanded to cover the case where there is a removal or resignation as well as the case of a death. Subdivision (d) continues the substance of former Section 1956.

CROSS-REFERENCES

Definition, court, § 1418

968/915

§ 2106. One guardian or conservator for several wards or conservatees

2106. (a) The court, in its discretion, may appoint one guardian or conservator for several wards or conservatees.

(b) The appointment of one guardian or conservator for several wards or conservatees may be requested in the initial petition filed in the proceeding or may be requested subsequently upon a petition filed in the same proceeding and noticed and heard with respect to the newly proposed ward or conservatee in the same manner as an initial petition for appointment of a guardian or conservator.

Comment. Subdivision (a) of Section 2106 makes clear that a proceeding may be for the appointment of one guardian for several wards or one conservator for several conservatees. This continues authority formerly found in subdivision (b) of former Section 1440 (guardians). No express authority was contained in the former conservatorship statute. Subdivision (b) of Section 2106 is new.

CROSS-REFERENCES

Definition, court, § 1418

Joint guardians or conservators, § 2105

Separate bonds or single bond where several wards or conservatees,  
§ 2327

100/936

§ 2107. Powers and duties of guardian or conservator appointed in California for nonresident

2107. (a) Unless limited by court order, a guardian or conservator of the person of a nonresident has the same powers and duties as a

guardian or conservator of the person of a resident while the nonresident is in this state.

(b) A guardian or conservator of the estate of a nonresident has, with respect to the estate of the nonresident within this state, the same powers and duties as a guardian or conservator of the estate of a resident. The responsibility of such a guardian or conservator with regard to inventory, accounting, and disposal of the estate is confined to such estate as comes into the hands of the guardian or conservator in this state.

Comment. Section 2107 prescribes the powers and duties of a guardian or conservator appointed in California for a nonresident. The section continues the substance of former Section 1571 except that the court is specifically authorized to limit the powers and duties of a guardian or conservator of the person of a nonresident. Thus, for example, if the appointment of a guardian or conservator of the person of a nonresident is made for a limited purpose such as to give consent for medical treatment, the court may make an express limitation of the powers and duties of the guardian or conservator to the accomplishment of that purpose.

Subdivision (a) states only the powers and duties while the ward or conservatee is in this state. Section 2107 does not deal with the question of the extent of the powers of the California guardian or conservator of the person when the nonresident ward or conservatee is not within California. See generally, *Mayer v. Willing*, 196 Cal. App.2d 379, 16 Cal. Rptr. 476 (1961); 39 Am. Jur.2d Guardian and Ward §§ 26, 219 (1968).

The provision in former Section 1571 that a guardian of the estate of a nonresident must give bond as provided for other guardians has been omitted from Section 2107 as unnecessary. The provisions of Chapter 4 (commencing with Section 2300) concerning bonds apply to guardians and conservators of nonresidents as well as of residents.

26/754

§ 2108. Additional powers and duties granted guardian nominated by will

2108. (a) Except to the extent the court for good cause determines otherwise, if a guardian of the person is nominated by a will under Section 1500 and is appointed by the court, the guardian so appointed shall be granted in the order of appointment, to the extent provided in the will, the same authority with respect to the person of the ward as a parent having legal custody of a child and may exercise such authority without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as if such authority were exercised by a parent having legal custody of a child.

(b) Except to the extent the court for good cause determines otherwise and subject to Sections 2593, 2594, and 2595, if a guardian of the estate is nominated by a will under Section 1500 or a guardian for property is nominated by a will under Section 1501 and the guardian is appointed by the court, the guardian so appointed shall be granted in the order of appointment, to the extent provided in the will, the right to exercise any one or more of the powers listed in Section 2591 without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as if such authority were granted by order of the court under Section 2590. In the case of a guardian nominated by a will under Section 1501, such additional authority shall be limited to the property covered by the nomination.

(c) The terms of any order made under this section shall be included in the letters of guardianship.

Comment. Section 2108 supersedes that portion of former Section 1484 which provided that the powers of a testamentary guardian could be "legally modified, enlarged, or changed by the will by which he was appointed."

Subdivision (a) of Section 2108 permits the testator to give a guardian of the person nominated by will, unless the court for good cause otherwise determines, the same authority as a parent. The appointment of a guardian of the person nominated by a will is, of course, subject to the provisions of Section 4600 of the Civil Code, relating to custody of a minor. See Section 1514(b). But, if the person nominated in the will is appointed by the court, subdivision (a) of Section 2108 applies.

Subdivision (b) permits the testator to give a guardian of the estate or of property authority to act without court authorization as provided in the provisions--listed in subdivision (b)--relating to the independent exercise of powers. The court is required to appoint a guardian of the estate (Section 1500) or of property (Section 1501) unless the person nominated is determined by the court to be "unsuitable." See Section 1514(c), (d). If the person nominated in the will is appointed by the court, subdivision (b) of Section 2108 applies.

Where good cause is shown, the court need not make an order granting the guardian the powers granted by the will. It is unclear whether the court had this authority under former law. See former Section 1484 (powers and duties of testamentary guardian may be "legally modified, enlarged, or changed by the will by which he was appointed").

A court order made under Section 2108 may grant additional powers of the guardian only "to the extent provided in the will." The will may grant only one or a few of the specific additional powers permissible under Section 2108 or may provide the broadest grant of additional powers possible under the section. Nothing in Section 2108 precludes the court from granting a guardian nominated in a will additional powers listed in Section 2591 under the independent exercise of powers provisions even though these additional powers were not granted in the will that nominated the guardian.



## CROSS-REFERENCES

Bond of nominated guardian, § 2324

Definition, court, § 1418

Powers and duties of guardian of particular property, § 2109

26/756

§ 2109. Powers and duties of guardian as to particular property; allocation of duties between guardians; instructions from court

2109. (a) Subject to Section 2108, a guardian appointed under subdivision (d) of Section 1514 for particular property upon a nomination made under Section 1501 has, with respect to that property, the same powers and duties as a guardian of the estate. The responsibility of such a guardian with regard to inventory, accounting, and disposal of the estate is confined to the property covered by the nomination.

(b) When a guardian is appointed under subdivision (d) of Section 1514 for particular property upon a nomination made under Section 1501 and there is a guardian of the estate appointed under any other provision of Part 2 (commencing with Section 1500):

(1) The guardian appointed for the property covered by the nomination controls that property and the guardian of the estate controls the balance of the guardianship estate.

(2) Either guardian may petition under Section 2403 to the court in which the guardianship of the estate proceeding is pending for instructions concerning how the duties that are imposed by law upon the guardian of the estate are to be allocated between the two guardians.

Comment. Section 2109 is new. Subdivision (a) is analogous to subdivision (b) of Section 2107 (guardian of estate of nonresident). Paragraph (1) of subdivision (b) codifies the rule set forth in *Guardianship of Joaquin*, 168 Cal. App.2d 99, 335 P.2d 507 (1959). Paragraph (2) of subdivision (b) makes clear that the court in which the general guardianship of the estate proceeding is pending is authorized to provide instructions to the two guardians allocating the duties imposed by this division and other statutes on the guardian of the estate between the two guardians. This will permit the court to give instructions on such matters as which guardian will pay particular debts or how much each will contribute to the support of the ward.

## CROSS-REFERENCES

Bond of nominated guardian, § 2324

Powers and duties of guardian nominated in will, § 2108

§ 2110. Appointment to fill vacancy

2110. When for any reason a vacancy occurs in the office of guardian or conservator, the court may appoint a successor, after notice and hearing as in the case of an original appointment.

Comment. Section 2110 continues the substance of former Section 1954 with the addition of "for any reason." Former Section 1582 covered an appointment in case of resignation or removal.

CROSS-REFERENCES

Definition, court, § 1418

38/466

§ 2111. Transfer or conveyance of property pursuant to court order

2111. (a) Whenever the court authorizes or directs the conveyance of real property or the transfer of personal property of the guardianship or conservatorship estate, the conveyance shall be executed or the transfer made by the guardian or conservator of the estate in accordance with the terms of the order.

(b) A conveyance of real property by a guardian or conservator shall refer to the order authorizing or directing the conveyance to be executed. A certified copy of the order shall be recorded in the office of the county recorder in each county in which any portion of the real property is located.

(c) A conveyance or transfer of real or personal property, made by a guardian or conservator in accordance with an order authorizing or directing the conveyance or transfer, passes the title, right, or interest conveyed or transferred as fully as if the ward or conservatee had executed the conveyance or made the transfer while competent and over the age of majority.

Comment. Subdivisions (a) and (b) of Section 2111 are drawn from the first sentence of Section 786 (sales of real property by executors or administrators). Former Sections 1534 and 1852 made this provision applicable to sales of real property by guardians and conservators. See also former Section 1530a (transfer of real property by guardian pursuant to compromise).

Subdivision (c) is drawn from the last sentence of Section 853. Unlike Section 786 (conveyance passes all estate of decedent prior to sale) or former Section 1530a (guardian's conveyance pursuant to compromise passes ward's estate at time of conveyance), subdivision (c) permits the guardian or conservator to convey or transfer the title, right,

or interest to the same extent as it might have been conveyed or transferred by a competent adult. Thus, for example, in a proceeding under Sections 2520-2528, the court might order the guardian or conservator to execute a quit claim deed to remove a cloud on the petitioner's property or the court might direct a conveyance of real property to complete a contract and order the guardian or conservator to execute a grant deed which will pass after-acquired title. See generally 3 B. Witkin, Summary of California Law Real Property § 86 at 1840, § 160 at 1900-01 (8th ed. 1973).

CROSS-REFERENCES

Conveyances to complete contract, § 2528  
 Dedication or conveyance of property or easement with or without consideration, § 2556  
 Exchanges of property, § 2557  
 Partition of property, conveyances pursuant to agreement, § 2463  
 Property claimed by another, § 2528

404/797

CHAPTER 2. JURISDICTION AND VENUE

Article 1. Jurisdiction and Venue

§ 2200. Jurisdiction in superior court

2200. The superior court has jurisdiction of guardianship and conservatorship proceedings.

Comment. Section 2200 continues portions of former Sections 1405 and 1440 (guardianship of minor), 1460 (guardianship of incompetent), and 2051 (conservatorship).

§ 2201. Venue for residents

2201. The proper county for the commencement of a guardianship or conservatorship proceeding for a resident of this state is either of the following:

(a) The county in which the proposed ward or proposed conservatee resides.

(b) Such other county as may be in the best interests of the proposed ward or proposed conservatee.

Comment. Section 2201 supersedes portions of former Sections 1440(a) (county in which minor resides or is temporarily domiciled), 1460 (any county in which application for guardianship of incompetent is made), and 2051 (county in which proposed conservatee resides). Subdivision (b) is new and permits the court, for example, to determine that the venue is proper even though the place of residence is in dispute. See *Hillman v. Stults*, 263 Cal. App.2d 848, 70 Cal. Rptr. 295 (1968); *Guardianship of Smith*, 147 Cal. App.2d 686, 306 P.2d 86 (1957). This

avoids the need to litigate the issue of residence if the court determines that continuance of the proceeding in the county where filed is for the best interests of the ward or conservatee.

08361

§ 2202. Venue for nonresidents

2202. (a) The proper county for the commencement of a proceeding for the guardianship or conservatorship of the person of a nonresident of this state is either of the following:

(1) The county in which the proposed ward or conservatee is temporarily living.

(2) Such other county as may be in the best interests of the proposed ward or proposed conservatee.

(b) The proper county for the institution of a proceeding for the guardianship or conservatorship of the estate for a nonresident of this state is any of the following:

(1) The county in which the proposed ward or proposed conservatee is temporarily living.

(2) Any county in which the proposed ward or proposed conservatee has property.

(3) Such other county as may be in the best interests of the proposed ward or proposed conservatee.

Comment. Section 2202 continues and clarifies the substance of portions of former Sections 1440(a) (guardian of minor), 1570 (guardian of minor or incompetent), and 2051 (conservatorship) but adds the provision in subdivisions (a) and (b) that venue is proper in "such other county as may be in the best interests of the proposed ward or proposed conservatee." The addition of this provision to subdivision (a) enables the court of the county where the property is located, for example, to determine that the venue is proper with respect to the person as well as the estate where a guardianship or conservatorship of the person is necessary in California.

29/124

§ 2203. Court having priority where proceedings instituted in several counties

2203. (a) If proceedings for the guardianship or conservatorship of the estate are instituted in more than one county, the guardianship or conservatorship of the estate first granted, including a temporary guardianship or conservatorship of the estate, governs and extends to all the property of the ward or conservatee within this state and the other proceeding should be dismissed.

(b) If proceedings for the guardianship or conservatorship of the person are instituted in more than one county, the guardianship or conservatorship first granted, including a temporary guardianship or conservatorship, governs and the other proceeding shall be dismissed.

Comment. Subdivision (a) of Section 2203 continues the substance of the last sentence of former Section 1570 (guardianship) except that the provision has been extended to residents as well as nonresidents and the reference to a temporary guardianship or conservatorship is new. The phrase "and the other proceeding shall be dismissed" has been substituted for the language of the last sentence of former Section 1570 that the "court of no other county has jurisdiction." There was no provision under prior conservatorship law comparable to subdivision (a). Subdivision (b) is new and is adapted from subdivision (a).

26773

Article 2. Change of Venue

§ 2210. Definitions

2210. As used in this article:

(a) "Guardian or conservator" includes a proposed guardian or proposed conservator.

(b) "Ward or conservatee" includes a proposed ward or proposed conservatee.

Comment. Section 2210 makes clear that this article applies prior to the appointment of the guardian or conservator as well as after the appointment.

404/943

§ 2211. Authority to transfer proceeding

2211. The court in which a guardianship or conservatorship proceeding is pending may, upon petition therefor, transfer the proceeding to another county within this state.

Comment. Section 2211 continues the substance of portions of former Sections 1603 (guardianship) and 2051 and 2052 (conservatorship).

29219

§ 2212. Who may petition for transfer

2212. The petition for transfer may be filed only by one or more of the following:

(a) The guardian or conservator.

(b) The ward or conservatee.

- (c) The spouse of the ward or conservatee.
- (d) A relative or friend of the ward or conservatee.
- (e) Any other interested person.

Comment. Section 2212 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship) but clarifies and may expand the class of persons who may petition for transfer. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.21, at 40 (Cal. Cont. Ed. Bar 1968). See also former Section 1603 (guardianship).

CROSS-REFERENCES

Definition, interested person, § 1424

29220

§ 2213. Contents of petition

2213. The petition for transfer shall set forth all of the following:

- (a) The county to which the proceeding is to be transferred.
- (b) The name and address of the ward or conservatee.
- (c) A brief description of the character, value, and location of the property of the ward or conservatee.
- (d) The reasons for the transfer.
- (e) The names and addresses, so far as they are known to the petitioner, of the spouse and of the relatives of the ward or conservatee within the second degree.
- (f) The name and address of the guardian or conservator if other than the petitioner.

Comment. Section 2213 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship). See also former Section 1603 (guardianship).

CROSS-REFERENCES

Petition must be verified, § 1450

29221

§ 2214. Notice of hearing

2214. Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. In addition, the petitioner shall mail a notice of the time and place of the hearing and a copy of the petition to all persons required

to be listed in the petition at least 15 days before the date set for the hearing.

Comment. Section 2214 continues the substance of the first two sentences of former Section 2053 (conservatorship) except that the time for mailing the notice is extended from 10 to 15 days and the provision of the first sentence of former Section 2053 relating to the clerk setting the petition for hearing is continued in Section 1451. See also former Section 1603 (guardianship).

CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Notice to Director of Mental Health or Director of Developmental Services, § 1461

Proof of giving of notice, § 1468

Request for special notice, § 2700

29222

§ 2215. Hearing and order

2215. (a) Any of the following persons may appear at the hearing to support or oppose the petition and may file written objections to the petition:

- (1) Any person required to be listed in the petition.
- (2) Any creditor of the ward or conservatee or of the estate.
- (3) Any other interested person.

(b) If the court determines that the transfer requested in the petition will be for the best interests of the ward or conservatee, it shall make an order transferring the proceeding to the other county.

Comment. Section 2215 continues the substance of the third and fourth sentences of former Section 2053 (conservatorship) except that the language "at the hearing to support or oppose the petition" is added and "any other interested person" is also added. See also former Section 1603 (guardianship). Subdivision (a) permits any person required to be listed in the petition to support or oppose the petition. These persons are listed in Section 2213.

CROSS-REFERENCES

Definitions

Court, § 1418

Interested person, § 1424

§ 2216. Transfer

2216. (a) Upon the order of transfer, the clerk shall transmit to the clerk of the court to which the proceeding is transferred a certified or exemplified copy of the order, together with all papers in the proceeding on file with the clerk.

(b) The clerk of the court from which the removal is made shall receive no fee therefor but shall be paid out of the estate all expenses incurred by the clerk in the removal. The clerk of the court to which the proceeding is transferred shall be entitled to such fees as are payable on the filing of a like original proceeding.

Comment. Subdivision (a) of Section 2216 continues the substance of the fifth sentence of former Section 2053 (conservatorship); subdivision (b) continues the substance of former Section 2054 (conservatorship). See also former Section 1603 (guardianship).

21981

CHAPTER 3. TEMPORARY GUARDIANS AND CONSERVATORS§ 2250. Appointment

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

- (1) A temporary guardian of the person or estate or both.
- (2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary guardian or temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed ward if 14 years of age or older or to the proposed conservatee. The appointment of the temporary guardian or temporary conservator may be made with or without notice to other persons as the court may require.



(d) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or conservator or such appointments may be requested in separate petitions.

Comment. Section 2250 continues the substance of former Section 1640 (special guardian) and the first paragraph of former Section 2201 (temporary conservator) with the addition of authority to appoint a temporary guardian of the person and the addition of the phrase "or other showing as it may require" in subdivision (b) and the requirement in subdivision (c) of notice to the proposed ward if over 14 or to the proposed conservatee unless the court otherwise orders. This permits the court to shorten the time of notice, dispense with notice entirely, order a different manner of giving notice, or make such other order as is appropriate in the circumstances. Subdivision (d) is new.

CROSS-REFERENCES

Appointment of temporary guardian or conservator when powers of guardian or conservator are suspended, § 2654  
 Appointment of legal counsel for proposed ward or conservatee, § 1470  
 Definition, court, § 1418  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Temporary guardian or conservator pending appeal, § 2751

21983

§ 2251. Issuance of letters

2251. A temporary guardian or temporary conservator shall be issued temporary letters of guardianship or conservatorship upon taking the oath and filing the bond as in the case of a guardian or conservator. The letters shall indicate the termination date of the temporary appointment.

Comment. Section 2251 continues the substance of former Sections 1641 (special guardian) and 2202 (temporary conservator) with the addition of the reference to the taking of the oath and the requirement that the termination date be stated in the letters. See Section 2257 (termination date).

CROSS-REFERENCES

Additional powers to be stated in letters, § 2252  
 Oath and bond, § 2300

26/750

§ 2252. Powers and duties

2252. (a) Except as otherwise provided in subdivisions (b) and (c), a temporary guardian or temporary conservator has only the power and authority and only the duties that are necessary to provide for the

temporary care, maintenance, and support of the ward or conservatee and that are necessary to conserve and protect the property of the ward or conservatee from loss or injury.

(b) Unless the court otherwise orders:

(1) A temporary guardian of the person has the powers and duties specified in Section 2353 (medical treatment).

(2) A temporary conservator of the person has the powers and duties specified in Section 2354 (medical treatment).

(c) The temporary guardian or temporary conservator has such additional powers and duties as may be ordered by the court (1) in the order of appointment or (2) by subsequent order made with or without notice as the court may require.

(d) The terms of any order made under subdivision (b) or (c) shall be included in the temporary letters of guardianship or conservatorship.

Comment. Subdivisions (a) and (c) of Section 2252 continue the substance of former Sections 1642 (special guardian) and 2203 (temporary conservator).

Subdivision (b) makes clear that the temporary guardian or conservator has limited authority with respect to medical treatment for the ward or conservatee unless the court by order limits or expands the authority given by Section 2353 (guardian) or 2354 (conservator). The court might, for example, give the temporary conservator the powers and duties of a conservator under Section 2355 (medical treatment of conservatee adjudicated to lack capacity to give informed consent) where the circumstances of the particular case required such an order. See also Section 2357 (petition by temporary guardian or conservator for court authorization of medical treatment for ward or conservatee).

Subdivision (d) is new.

#### CROSS-REFERENCES

Definition, court, § 1418

30946

#### § 2253. Change of conservatee's residence generally

2253. (a) If a temporary conservator of the person proposes to fix the residence of the conservatee to a place other than that where the conservatee resided prior to the commencement of the proceedings, such power shall be requested of the court in writing, unless such change of residence is required of the conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request shall specify in particular the place to which the temporary conservator proposes to move the conservatee, and the precise reasons why it is believed that the conservatee will suffer irreparable

harm if such change of residence is not permitted, and no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

(b) If the court so directs, the court investigator shall do all of the following:

(1) Interview the conservatee personally.

(2) Inform the conservatee of the nature, purpose, and effect of the request made under subdivision (a), and of the right of the conservatee to oppose the request, attend the hearing, and be represented by legal counsel.

(3) Determine whether the conservatee is unable to attend hearing because of medical inability and, if able to attend, whether the conservatee is willing to attend the hearing.

(4) Determine whether the conservatee wishes to oppose the request.

(5) Determine whether the conservatee wishes to be represented by legal counsel at the hearing and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(6) If the conservatee has not retained legal counsel and does not plan to do so, determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee.

(7) Determine whether the proposed change of place of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

(8) Report to the court in writing, at least two days before the hearing, concerning all of the foregoing, including the conservatee's express communication concerning representation by legal counsel and willingness to attend the hearing.

(c) Within seven days of the date of filing of a temporary conservator's request to remove the conservatee from his or her previous place of residence, the court shall hold a hearing on the request.

(d) The conservatee shall be present at the hearing except in the following cases:

(1) Where the conservatee is unable to attend the hearing by reason of medical inability. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(2) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee is not willing to attend the hearing and does not wish to oppose the request, and the court makes an order that the conservatee need not attend the hearing.

(e) If the conservatee is unable to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the 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 that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.

(f) At the hearing, the conservatee has the right to be represented by counsel and the right to confront and cross-examine any witness presented by or on behalf of the temporary conservator and to present evidence on his or her own behalf.

(g) The court may approve the request to remove the conservatee from the previous place of residence only if the court finds (1) that change of residence is required to prevent irreparable harm to the conservatee and (2) that no means less restrictive of the conservatee's liberty will suffice to prevent such harm. If an order is made authorizing the temporary conservator to remove the conservatee from the previous place of residence, the order shall specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator shall not be authorized to remove the conservatee from the State of California unless it is additionally shown that such removal is required to permit the performance of specified

nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from the State of California without authorization of the court is guilty of a felony.

(h) The court shall also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence. Under no circumstances shall a temporary conservator be permitted to sell or relinquish, on the conservatee's behalf, any lease or estate in real or personal property used as or within the conservatee's place of residence. Nor shall the temporary conservator be permitted to sell or relinquish, on the conservatee's behalf, any estate or interest in other real or personal property without specific approval of the court, which may be granted only upon a finding that the selling or relinquishing is necessary to avert irreparable harm to the conservatee.

Comment. Section 2253 continues the substance of the second, third, fourth, and fifth paragraphs of former Section 2201 with the addition of subdivision (b), paragraph (2) of subdivision (d), and paragraph (e). The standard for inability to attend the hearing for medical reasons is conformed to the standard used for attendance at the hearing on the establishment of a conservatorship (Section 1825) and the requirement is added that medical inability to attend the hearing be established by a medical affidavit or certificate. This requirement is comparable to the requirement used for proof of medical inability to attend the hearing on the establishment of a conservatorship (Section 1825). The phrase "by a preponderance of the evidence" in former Section 2201 has been omitted as unnecessary. As to removal of the conservatee from residence in case of emergency or with the conservatee's consent for medical treatment, see Section 2254. It should be noted that a petition must be verified (Section 1450) and "petition" is defined in Section 1430 to include a "request" in the nature of a petition.

CROSS-REFERENCES

Appointment of legal counsel for conservatee, §§ 1471-1472

Definitions

Court, § 1418

Court investigator, § 1419

Note. Subdivision (g) of Section 2253 would be affected by SB 1682 (on inactive file in Assembly).

30944

§ 2254. Removal of conservatee from residence in case of emergency or with conservatee's consent for medical treatment

2254. (a) Notwithstanding Section 2253, a temporary conservator may remove a temporary conservatee from the temporary conservatee's

place of residence without court authorization if an emergency exists. For the purposes of this section, an emergency exists if the temporary conservatee's place of residence is unfit for habitation or if the temporary conservatee has a medical condition which presents an immediate threat to the temporary conservatee's physical survival.

(b) No later than one judicial day after the emergency removal of the temporary conservatee, the temporary conservator shall file a written request pursuant to Section 2253 for authorization to fix the residence of the temporary conservatee other than the temporary conservatee's previous place of residence.

(c) Nothing in this chapter prevents a temporary conservator from removing a temporary conservatee from the place of residence to a health facility for treatment without court authorization when the temporary conservatee has given informed consent to the removal.

(d) Nothing in this chapter prevents a temporary conservator from removing a temporary conservatee without court authorization from one health facility where the conservatee is receiving medical care to another health facility where the conservatee will receive medical care.

Comment. Section 2254 continues the substance of former Section 2201.5 with the addition of subdivision (d).

CROSS-REFERENCES

Definition, court, § 1418

21987

§ 2255. Inventory and appraisement of estate

2255. (a) Except as provided in subdivision (b), an inventory and appraisement of the estate shall be filed by the temporary guardian or temporary conservator of the estate as required by Article 2 (commencing with Section 2610) of Chapter 7.

(b) A temporary guardian or temporary conservator of the estate may inventory the estate in the final account, without the necessity for an appraisal of the estate, if the final account is filed within three months after the entry of the order of appointment of the temporary guardian or temporary conservator.

Comment. Section 2255 continues the substance of former Sections 1643 (special guardian) and 2204 (temporary conservator).

§ 2256. Accounts

2256. (a) Except as provided in subdivision (b), the temporary guardian or temporary conservator of the estate shall present his or her account to the court for settlement and allowance within 90 days after the appointment of the guardian or conservator or within such other time as the court may fix.

(b) If the temporary guardian or temporary conservator of the estate is appointed guardian or conservator of the estate, the guardian or conservator may account for the administration as temporary guardian or temporary conservator in his or her first regular account.

(c) Accounts are subject to Sections 2621 to 2626, inclusive, Sections 2630 to 2632, inclusive, and Sections 2640 to 2642, inclusive.

Comment. Section 2256 continues the substance of former Sections 1644 (special guardian) and 2205 (temporary conservator) with some expansion in subdivision (c) to reflect new provisions included in the provisions relating to accounts and the addition of a reference in subdivision (c) to Sections 2640-2642 relating to petitions for court orders fixing compensation for the guardian or conservator or attorney.

CROSS-REFERENCES

Appealable orders, § 2750  
Definition, court, § 1418

21990

§ 2257. Termination

2257. (a) Except as provided in subdivision (b), the powers of a temporary guardian or temporary conservator terminate (except for the rendering of the account) at the earliest of the following times:

(1) The time the temporary guardian or conservator acquires notice that a guardian or conservator is appointed and qualified.

(2) Thirty days after the appointment of the temporary guardian or temporary conservator or such earlier time as the court may specify in the order of appointment.

(b) With or without notice as the court may require, the court may for good cause order that the time for the termination of the powers of the temporary guardian or temporary conservator be extended pending final determination by the court of the petition for appointment of a guardian or conservator or pending the final decision on appeal there-

from or for other cause. The order which extends the time for termination shall fix the time when the powers of the temporary guardian or temporary conservator terminate except for the rendering of the account.

Comment. Section 2257 continues the substance of former Sections 1645 (special guardian) and 2206 (temporary conservator) with the addition of the notice requirement to paragraph (1) of subdivision (a).

CROSS-REFERENCES

Appointment of temporary guardian or conservator pending appeal, § 2751  
 Definition, court, § 1418

Termination date to be stated in letters, § 2251

21991

§ 2258. Suspension, removal, resignation, and discharge

2258. A temporary guardian or temporary conservator is subject to the provisions of this division governing the suspension, removal, resignation, or discharge of a guardian or conservator.

Comment. Section 2258 continues the substance of former Sections 1646 (special guardian) and 2207 (temporary conservatorship).

CROSS-REFERENCES

Removal or resignation of guardian or conservator, §§ 2650-2660

18547

CHAPTER 4. OATH, LETTERS, AND BOND

Article 1. Requirement of Oath and Bond

§ 2300. Oath and bond required before appointment effective

2300. Before the appointment of a guardian or conservator is effective, the guardian or conservator shall:

(a) Take an oath to perform the duties of the office according to law, which oath shall be attached to or endorsed upon the letters of guardianship or conservatorship.

(b) File the required bond if a bond is required.

Comment. Section 2300 is based on the first portion of former Section 1480 and the second sentence of former Section 1801. The requirement that the oath be attached to or endorsed upon the letters is taken from former Section 1480 and is consistent with a similar requirement in Section 540 (executor or administrator); former Section 1801 required that the oath "be filed in the proceeding."

CROSS-REFERENCES

Temporary guardian or conservator, § 2251



Article 2. Letters§ 2310. Issuance of letters

2310. The appointment, the taking of the oath, and the filing of the bond, if required, shall thereafter be evidenced by the issuance by the clerk of the court of letters of conservatorship or guardianship, as the case may be.

Comment. Section 2310 continues the substance of a portion of the third sentence of former Section 1801 and extends the provision to guardianships. The reference to the filing of the bond is taken from former Section 1481.

## CROSS-REFERENCES

Appealable orders, § 2750  
 Definition, court, § 1418  
 Temporary letters of guardianship or conservatorship, § 2251

27866

§ 2311. Form of letters

2311. Except as otherwise required by the order of appointment, the letters shall be in substantially the same form as letters of administration.

Comment. Section 2311 continues portions of former Sections 1481 and 1801.

## CROSS-REFERENCES

Additional conditions on performance of duties  
 Guardian or conservator of estate, § 2402  
 Guardian or conservator of person, § 2358  
 Additional powers granted to guardian nominated in will, § 2108  
 Guardian as to particular property, § 1514(d)  
 Guardian or conservator of nonresident, § 2107  
 Independent exercise of powers, § 2594  
 Oath attached to or endorsed on letters, § 2300  
 Temporary letters of guardianship or conservatorship, §§ 2251, 2252  
 Transitional provision, Judicial Council rules, § 1491

28293

§ 2312. Notice to ward or conservatee

2312. Before letters of guardianship or conservatorship may be issued, a copy of the order of the court appointing the guardian or conservator shall be mailed to the ward if 14 years of age or older or to the conservatee.

Comment. Section 2312 continues the fourth sentence of former Section 1801, and extends the provision to a ward 14 years of age or older. The former provision has been clarified by substituting "mailed" for "served by mail."

CROSS-REFERENCES

Definition, court, § 1418  
 Mailing  
     Manner of, § 1465  
     Personal delivery in lieu of, § 1466  
     When complete, § 1465  
 Proof of giving of notice, § 1468

31515

Article 3. Bonds of Guardians and Conservators

§ 2320. General requirement of bond; amount

2320. (a) Except as otherwise provided by statute:

(1) Every guardian and conservator shall furnish a bond in the amount fixed by the court, conditioned upon the faithful execution of the duties of the office according to law, to protect the ward or conservatee and all persons interested in the guardianship or conservatorship estate.

(2) Unless the court increases or decreases the amount upon a showing of good cause, the amount of the bond shall be the lowest amount permitted under Section 541 for a bond given under that section by an authorized surety company.

(b) If the sureties on the bond are individual persons, the bond shall be approved by the court and shall be for twice the amount required for a bond given by an authorized surety company.

Comment. Section 2320 is based on the second and third sentences of former Section 1802 and a portion of former Section 1480. The amount of the bond is determined by reference to Section 541 (bond of executors or administrators) except that the court may increase or decrease the amount of the bond that would otherwise be required upon a showing of good cause. Section 2320 substitutes a uniform rule for the conflicting rules provided in former Sections 1480 (bond not less than amount equivalent to that specified in Section 541) and 1802 (amount of bond not to exceed amount specified in Section 541). The cost of a surety bond is an allowable expense of the guardian or conservator. See Section 2623(a)(1).

One of the exceptions that qualifies Section 2320 is found in Section 2328 which permits reduction in the amount of the bond when money, securities, or other property are deposited in a bank or trust company or invested in an account of an insured savings and loan association, subject to withdrawal only upon authorization of the court.

CROSS-REFERENCES

Additional conditions in order of appointment, liability of surety, §§ 2358, 2402  
 Approval of bond of individual sureties, §§ 545, 546  
 Bond of guardian or conservator of person only, § 2322  
 Bond of nominated guardian, § 2324  
 Bond of trust company appointed as guardian or conservator, § 481  
 Bond under Uniform Veterans' Guardianship Act, §§ 2907, 2916  
 Bond where estate consists solely of public benefits, § 2323  
 Definition, court, § 1418  
 Liability of guardian or conservator not limited to amount of bond, § 554  
 Liability on bond for failure timely to file inventory, § 2615  
 Nature of surety's liability, § 554  
 Waiver of bond by conservatee, § 2321

31516

§ 2321. Waiver of bond by conservatee

2321. In a conservatorship proceeding, where the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its discretion may dispense with the requirement that a bond be filed.

Comment. Section 2321 continues the first sentence of former Section 1802 except that the former requirement that the conservatee "as petitioner" waive the bond has not been continued. Under Section 2321, the conservatee may waive the bond, for example, in a prior nomination of the conservator, in the petition, or at the court hearing.

CROSS-REFERENCES

Definition, court, § 1418

31517

§ 2322. Guardian or conservator of person only

2322. One appointed only as guardian of the person or conservator of the person need not file a bond unless required by the court.

Comment. Section 2322 continues the fourth sentence of former Section 1802 and extends the same rule to the guardian of the person.

CROSS-REFERENCES

Definition, court, § 1418

31519

§ 2323. Estate consisting entirely of public benefits

2323. (a) The court may dispense with the requirement of a bond where the entirety of the estate consists of benefits received or to be received under either or both of the following:

(1) Part 3 (commencing with Section 11000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(2) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of Chapter 7, Title 42, United States Code.

(b) If property, other than the benefits described in subdivision (a), becomes part of the estate, the court may require the filing of a bond.

Comment. Section 2323 continues former Section 1480.3 except that the former provision is expanded to cover the estate of a conservatee as well as the estate of a minor. See Welf. & Inst. Code §§ 10002, 11006.5.

The programs specified in Section 2323 are: (1) state aid and medical assistance (Welf. & Inst. Code §§ 11000-15520), (2) county aid and relief to indigents (Welf. & Inst. Code §§ 17000-17410), (3) federal old age, survivors, and disability insurance benefits (42 U.S.C. §§ 401-431 (1970 & Supp. V 1976)), and (4) federal supplemental security income for the aged, blind, and disabled (42 U.S.C. §§ 1381-1383c (1970)). See Review of Selected 1976 California Legislation, 8 Pac. L.J. 165, 188 (1977).

CROSS-REFERENCES

Definition, court, § 1418

31521

§ 2324. Nominated guardian

2324. If the person making the nomination has waived the filing of the bond, a guardian nominated under Section 1500 or 1501 need not file a bond unless required by the court.

Comment. Section 2324 supersedes former Section 1485, which provided that a testamentary guardian need not file a bond unless required by the court. This principle is continued in Section 2324 with revisions necessary to reflect the substitution of a nomination concept for the former testamentary appointment system and the addition of a provision that the person making the nomination waive the filing of the bond.

CROSS-REFERENCES

Definition, court, § 1418  
Nomination of guardian, §§ 1500-1502

30185

§ 2325. Bond of nonprofit charitable corporation

2325. The surety on the bond of a nonprofit charitable corporation described in Section 2104 shall be an authorized surety company.

Comment. Section 2325 continues the substance of former Sections 1480.6 and 1802.5. The cost of the bond is an allowable expense. See Section 2623(a)(1).

30186

§ 2326. Joint guardians or conservators

2326. (a) If joint guardians or conservators are appointed, the court may order that separate bonds or a joint bond or a combination thereof be furnished.

(b) If a joint bond is furnished, the liability on the bond is joint and several.

Comment. Section 2326 is based on a portion of the second sentence of former Section 1405 and the last sentence of former Section 1802. Section 2326 makes clear that the liability on a joint bond is joint and several and is consistent with Section 544 (administrators and executors).

CROSS-REFERENCES

Definition, court, § 1418

Joint guardians or conservators, § 2105

30187

§ 2327. Several wards or conservatees

2327. If the proceeding involves more than one ward or conservatee, the court may order separate bonds or a single bond or a combination thereof.

Comment. Section 2327 is based on the second sentence of subdivision (b) of Section 1440 and makes clear that, where the proceeding involves several wards or several conservatees, the court, in its discretion, may order a separate bond for each ward or conservatee, a single bond to cover all the wards or conservatees, or a combination of such bonds.

CROSS-REFERENCES

Definition, court, § 1418

One guardian or conservator for several wards or conservatees, § 2106

30188

§ 2328. Deposit of money or other property subject to court control

2328. (a) In any proceeding to determine the amount of the bond of the guardian or conservator (whether at the time of appointment or subsequently), if the estate includes money, securities, or personal property which have been or will be deposited in a bank 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 in an insured savings and loan association, upon condition that the money, securities, or other property, including any earnings thereon, will not be withdrawn except on authorization of the court, the court, in its discretion, with or without notice, may so order and may do either of the following:

(1) Exclude such money, securities, and other property in determining the amount of the required bond or reduce the amount of the bond to be required in respect to such money, securities, or other property to such an amount as the court determines is reasonable.

(2) If a bond has already been furnished or the amount fixed, reduce the amount to such an amount as the court determines is reasonable.

(b) The petitioner for letters, or the proposed guardian or conservator in advance of appointment of a guardian or conservator, may do any one or more of the following:

(1) Deliver to a bank in this state or a trust company authorized to transact a trust business in this state, money, securities, or personal property in such person's possession.

(2) Deliver to an insured savings and loan association money in such person's possession.

(3) Allow a bank in this state or a trust company authorized to transact a trust business in this state to retain such money, securities, and personal property already in its possession.

(4) Allow an insured savings and loan association to retain any such money already invested with it.

(c) In the cases described in subdivision (b), the petitioner or proposed guardian or conservator shall obtain and file with the court a written receipt including the agreement of the bank, trust company, or insured savings and loan association that the money, securities, or other property, including any earnings thereon, shall not be allowed to be withdrawn except upon authorization of the court.

(d) In receiving and retaining money, securities, or other property under subdivisions (b) and (c), the bank, trust company, or insured savings and loan association shall be protected to the same extent as

though it had received the money, securities, or other property from a person to whom letters had been issued.

Comment. Section 2328 continues the substance of former Section 1405.1 except that Section 2328 includes personal property in addition to money and securities. In this respect, Section 2328 continues the substance of former Section 1804 (conservators) but omits wording which arguably referred to Financial Code Section 1586 for procedure when the deposit affects the amount of the bond. Under Section 2328, the guardian or conservator is permitted, for example, to deposit jewelry or other personal property of the ward or conservatee with a trust company, subject to withdrawal only on order of court, and have the bond reduced accordingly. For related sections, see Fin. Code §§ 764, 765, 1586, and 6408.5. See also Section 2453 (bank and savings accounts), Section 2454 (deposit of personal property with trust company), and Section 2456 (accounts and deposits withdrawable only on court order). Securities deposited with a trust company under Section 2328 may be deposited in a securities depository. See Section 2455(b).

CROSS-REFERENCES

Definitions

Account in an insured savings and loan association, § 1406  
 Court, § 1418

30938

§ 2329. Reduction of amount of bond

2329. (a) A guardian or conservator may apply to the court for reduction in the amount of the bond. The application shall be made by filing a petition setting forth the condition of the estate.

(b) Notice of hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. Upon the hearing, the court may reduce the amount of the bond to such amount as the court in its discretion determines is proper under the circumstances; but, except upon a showing of good cause, the amount of the bond shall not be reduced below the amount determined pursuant to Section 2320.

(c) The guardian or conservator may furnish new sureties who may be the same sureties as on the previous bond and who shall qualify for the reduced amount.

(d) Nothing in this section limits the authority of the court to reduce the amount of the bond with or without notice under Section 2328.

Comment. Section 2329 continues the substance of former Sections 1483.1 and 1803, but the limitation on the amount to which the bond can be reduced is revised to conform to the requirements of Section 2320.

Subdivision (d) is new. It makes clear the relationship of Section 2329 and Section 2328; the court may reduce the amount of the bond under Section 2328 without compliance with Section 2329.

CROSS-REFERENCES

Clerk sets petition for hearing, § 1451  
 Definition, court, § 1418  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468

30940

§ 2330. Additional bond on real property transactions

2330. Upon the confirmation of the sale of any real property of an estate, or upon the authorization of any mortgage or deed of trust with respect to real property of an estate by which money is to be raised, the guardian or conservator shall furnish such additional bond as is required by the court in order to make the sum of the bonds furnished by the guardian or conservator equal to the amount determined pursuant to Section 2320, taking into account the proceeds of the sale or mortgage or deed of trust.

Comment. Section 2330 continues the substance of former Section 1534a, which applied to conservators by virtue of former Section 1852.

CROSS-REFERENCES

Definition, court, § 1418

38035

§ 2331. Deposit in place of surety bond

2331. (a) A guardian or conservator may, instead of furnishing the required surety bond, file with the clerk of the court a cash bond, or an assigned interest in an account in a bank in this state or in an insured savings and loan association, or deposit with the clerk bearer or endorsed bonds of the United States or of the State of California, in the sum required for a surety bond given by an authorized surety company.

(b) The security furnished under subdivision (a) is subject to increase or decrease as provided with respect to the surety bond, shall be conditioned the same as required of the surety bond, and is returnable to the guardian or conservator on the termination of the service of the guardian or conservator or on later substitution of a surety bond or other adequate security.



Comment. Section 2331 continues former Sections 1480.5 and 1803.5. The requirement that the bank be "in this state" is new and is consistent with Section 2328. The language allowing return of the deposited security on later substitution of a surety bond or other adequate security has been added.

## CROSS-REFERENCES

## Definitions

Account in an insured savings and loan association, § 1406  
Court, § 1418

38044

§ 2332. Filing and preservation of bond.

2332. Every bond given by a guardian or conservator shall be filed and preserved in the office of the clerk of the court.

Comment. Section 2332 is the same in substance as a portion of former Sections 1486 and 1805. For requirements as to entries in register of actions and presumptive effect of such entries, see Section 545, incorporated by the general reference provisions of Section 2100.

## CROSS-REFERENCES

Definition, court, § 1418

32450

§ 2333. Suit against sureties on bond; limitation period

2333. (a) In case of a breach of a condition of the bond, an action may be brought against the sureties on the bond for the use and benefit of the ward or conservatee or of any person interested in the estate.

(b) Except as provided in subdivision (c), no action may be maintained against the sureties on the bond unless commenced within three years from the discharge or removal of the guardian or conservator or within three years from the date the order surcharging the guardian or conservator becomes final, whichever is later.

(c) If at the time of the discharge or removal of the guardian or conservator or when the order of surcharge becomes final any person entitled to bring the action is under any legal disability to sue, such person may commence the action within three years after the disability is removed.

Comment. Subdivision (a) of Section 2333 continues a portion of former Sections 1486 and 1805. Subdivisions (b) and (c) are based on former Section 1487 with the addition of wording as to "surcharge" from

former Section 1806. Subdivision (b) adopts the three-year period under former Section 1487 rather than the two-year period under former Section 1806. Subdivision (c) adopts the three-year period under former Section 1487 rather than the one-year period under former Section 1806.

CROSS-REFERENCES

Effect on liability of court authorization or approval, § 2103  
 Liability of guardian or conservator not limited to amount of bond,  
 § 554  
 Nature of surety's liability, § 554  
 Suit to recover property sold by guardian or conservator, limitation  
 period, § 2548

38048

§ 2334. Insufficiency of sureties; order for further security or  
 new bond

2334. (a) The ward or conservatee, or any relative or friend of the ward or conservatee, or any interested person may apply to the court for an order that the guardian or conservator be required to furnish further security. The application shall be made by a petition showing that the sureties on the bond furnished by the guardian or conservator have become, or are becoming, insolvent, or that they have removed or are about to remove from the state, or that from any other cause the bond is insufficient.

(b) If it comes to the knowledge of the court that the bond of a guardian or conservator is from any cause insufficient, the court may on its own motion, without any application, make an order requiring the guardian or conservator to furnish further security.

(c) If the court is satisfied from the petition or from its own information that the matter requires investigation, the court shall issue a citation to the guardian or conservator directing the guardian or conservator to appear before the court at a designated time and place to show cause why further security should not be required. The citation shall be served on the guardian or conservator personally at least 15 days before the return day. If the guardian or conservator cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the guardian or conservator. On the return of the citation or at such other time as the court may fix, the court shall proceed to hear the matter, and if it satisfactorily appears that the

security, from any cause, is insufficient, the court shall make an order requiring the guardian or conservator to give further security, or to file a new bond, within a reasonable time, not less than five days.

(d) If sufficient security or additional security is not given within the time fixed by the court's order, the court shall revoke the letters issued to the guardian or conservator.

(e) When a petition is filed requesting an order under this section that a guardian or conservator be required to give further security, or to give a bond where no bond was originally required, and the petition alleges facts showing that the guardian or conservator is failing to use ordinary care and diligence in the management of the estate, the court, by order, may suspend the powers of the guardian or conservator until the matter can be heard and determined.

Comment. Section 2334 supersedes former Section 1483 (guardianship) which was general in terms. There were no express provisions in the conservatorship statute on this subject. See former Section 1702.

Section 2334 is the same in substance as Sections 547-550 (executors and administrators) except that the court is directed to prescribe the manner of service if personal service cannot be made. (Cf. Code Civ. Proc. § 413.30) and subdivision (e) requires an allegation of facts showing that the guardian or conservator is failing to use ordinary care and diligence in the management of the estate rather than an allegation that the guardian or conservator is wasting the property of the estate.

#### CROSS-REFERENCES

Accounts on removal of guardian or conservator, § 2630  
 Definition, court, § 1418  
 Petition must be verified, § 1450  
 Suspension of powers of guardian or conservator generally, § 2654

90870

#### § 2335. Substitution of surety

2335. (a) A guardian or conservator who desires a substitution and discharge of a surety may file a petition with the court for that purpose together with an accounting. The court shall issue a citation to the existing surety directing the surety to appear before the court at a designated time and place to show cause why the surety should not be substituted and discharged. The citation shall be served on the

surety personally at least 15 days before the return day. If the surety cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the surety.

(b) The court shall hear the matter on the return of the citation or at such other time as the court may appoint. If, upon the hearing, the accounting is approved and it appears to the court that the substitute surety is satisfactory and that no injury can result to the estate, the court may order a substitution of surety and discharge the existing surety from liability on the bond for any subsequent act, default, or misconduct of the guardian or conservator.

Comment. Section 2335 continues the substance of former Sections 1483.2 and 1483.3 except that 15 days rather than five days service of citation is required before the return day and the court is directed to prescribe the manner of service if personal service cannot be made. Cf. Code Civ. Proc. § 413.30. There were no express provisions in the conservatorship statute on this subject. See former Section 1702.

CROSS-REFERENCES

Definition, court, § 1418  
 Petition must be verified, § 1450

90871

§ 2336. Release of surety

2336. (a) A surety may apply to the court for an order that the surety be discharged from liability on the bond for any subsequent act, default, or misconduct of the guardian or conservator. The court shall issue a citation to the guardian or conservator directing the guardian or conservator to appear before the court at a designated time and place and give other security. The citation shall be served on the guardian or conservator personally at least 15 days before the return day. If the guardian or conservator cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the guardian or conservator.

(b) If the guardian or conservator fails to give new sureties to the satisfaction of the court on the return of the citation or within such reasonable time as the court shall allow, unless the surety making the application consents to a longer extension of time, the court shall revoke the letters of the guardian or conservator.

(c) If new sureties are given to the satisfaction of the court, the court shall thereupon make an order that the surety who applied for the order shall not be liable on the bond for any subsequent act, default, or misconduct of the guardian or conservator.

Comment. Section 2336 continues the substance of former Sections 1488, 1489, and 1490 with new provisions as to the service of the citation. See the Comments to Sections 2234 and 2235. There were no express provisions in the conservatorship statute on this subject. See former Section 1702.

CROSS-REFERENCES

Application must be verified, §§ 1430, 1450  
 Definition, court, § 1418.

4649

CHAPTER 5. POWERS AND DUTIES OF GUARDIAN OR  
 CONSERVATOR OF THE PERSON

§ 2350. Definitions

2350. As used in this chapter:

- (a) "Conservator" means the conservator of the person.
- (b) "Guardian" means the guardian of the person.

Comment. Section 2350 is new. This chapter deals with powers and duties of a guardian or conservator of the person, and the definitions provided by Section 2350 permit a shorthand reference to such a guardian or conservator in the various sections of this chapter. If one person is appointed as the conservator of the person and estate or as the guardian of the person and estate, that person has the powers and duties conferred by this chapter.

969/027

§ 2351. Care, custody, control, and education

2351. The guardian or conservator has the care, custody, and control of, and has charge of the education of, the ward or conservatee.

Comment. The provision of Section 2351 for care, custody, and control continues provisions found in the first sentence of former Sections 1500 (guardianship) and 1851 (conservatorship), respectively. The words "and control" were contained in former Section 1851 but not in former Section 1500. The generalization of these words to apply to guardianships as well as to conservatorships makes no substantive change. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.3, at 152-53 (Cal. Cont. Ed. Bar 1968).

The provision of Section 2351 concerning the education of the ward or conservatee extends to conservators the provision of the second sentence of former Section 1500 which applied only to guardians. This

extension makes clear that a conservator of the person is authorized to provide for the education of a married minor subject to conservatorship as well as of a conservatee over the age of 18.

CROSS-REFERENCES

Additional powers of guardian nominated in will, § 2108

Definitions

Conservator, § 2350

Guardian, § 2350

Effect of court authorization, approval, or confirmation, § 2103

Nonresident ward or conservatee, § 2107

Removal of guardian or conservator for

Continued failure to perform duties, § 2650(c)

Gross immorality or conviction of felony, § 2650(e)

Incapacity to perform duties, § 2650 (d)

405/852

§ 2352. Residence and domicile of ward or conservatee

2352. (a) The guardian or conservator may fix the residence and domicile of the ward or conservatee at:

(1) Any place within this state without the permission of the court.

(2) A place not within this state if permission of the court is first obtained.

(b) The guardian or conservator shall promptly mail to the court notice of all changes in the residence and domicile of the ward or conservatee.

Comment. Subdivision (a) of Section 2352 continues the substance of the third sentence of former Section 1500 and the last portion of the first sentence of former Section 1851. Subdivision (b) continues the substance of subdivision (c) of former Section 1500 and subdivision (b) of former Section 1851 except that notice is to be given to the court in which the proceedings are then pending rather than the court which issued letters. The authority of a temporary conservator of the person to change the place of residence of the conservatee is severely limited. See Sections 2253, 2254.

CROSS-REFERENCES

Additional powers of guardian nominated in will, § 2108

Appealable orders, § 2750

Definitions

Conservator, § 2350

Court, § 1418

Guardian, § 2350

Request for special notice, § 2700

Note. Section 2352 (as set out above) picks up amendments to Sections 1500 and 1851 proposed by Assembly Bill 3122.

§ 2353. Medical treatment of ward

2353. (a) Subject to subdivision (b), the guardian has the same right as a parent having legal custody of a child to give consent to medical treatment performed upon the ward and to require the ward to receive medical treatment.

(b) Except as provided in subdivision (c), if the ward is 14 years of age or older, no surgery shall be performed upon the ward without either (1) the consent of both the ward and the guardian or (2) a court order obtained pursuant to Section 2357 specifically authorizing such treatment.

(c) The guardian may consent to surgery to be performed upon the ward, and may require the ward to receive such surgery, in any case where the guardian determines in good faith based upon medical advice that the case is an emergency case in which the ward faces loss of life or serious bodily injury if the surgery is not performed. In such a case, the consent of the guardian alone is sufficient and no person is liable because the surgery is performed upon the ward without the ward's consent.

Comment. Section 2353 is new and is designed to provide clear guidelines as to the authority of the guardian to consent to and to require the ward to receive medical treatment.

Subdivisions (b) and (c) are drawn from a somewhat similar provision found in Section 5358 of the Welfare and Institutions Code (Lanterman-Petris-Short Act). See also In re Roger S., 19 Cal.3d 921, 931, 569 P.2d 1286, 1292, 141 Cal. Rptr. 298, 304 (1977) (minor over 14 has independent right to assert protections of due process clause).

The immunity from liability provided by the second sentence of subdivision (c) does not extend to malpractice; the immunity goes only to the failure to obtain consent of the patient (the ward) to the surgery.

Section 2353 does not deal with the question of what constitutes informed consent for the purpose of medical treatment. See the Comment to Section 2354.

Unless the court otherwise orders, a temporary guardian has the powers and duties conferred by Section 2353. See Section 2252.

## CROSS-REFERENCES

Additional powers of guardian nominated by will, § 2108  
 Definition, guardian, § 2350  
 Effect of court authorization or approval, § 2103

§ 2354. Medical treatment of conservatee not adjudicated to lack capacity to give informed consent

2354. (a) If the conservatee has not been adjudicated to lack the capacity to give informed consent for medical treatment, the conservatee may consent to his or her medical treatment. The conservator may also give consent to such medical treatment, but the consent of the conservator is not required if the conservatee has the capacity to give informed consent to the medical treatment, and the consent of the conservator alone is not sufficient under this subdivision if the conservatee objects to the medical treatment.

(b) The conservator may require the conservatee to receive medical treatment, whether or not the conservatee consents to such treatment, if a court order specifically authorizing such medical treatment has been obtained pursuant to Section 2357 of this code or Section 5358.2 of the Welfare and Institutions Code.

(c) The conservator may consent to medical treatment to be performed upon the conservatee, and may require the conservatee to receive such medical treatment, in any case where the conservator determines in good faith based upon medical advice that the case is an emergency case in which the medical treatment is required because (1) such treatment is required for the alleviation of severe pain or (2) the conservatee has a medical condition which, if not immediately diagnosed and treated, will lead to disability or death. In such a case, the consent of the conservator alone is sufficient and no person is liable because the medical treatment is performed upon the conservatee without the conservatee's consent.

Comment. Section 2354 is new and is designed to provide clear guidelines where the conservatee has not been adjudicated to lack the capacity to give informed consent for medical treatment. See Section 1835 (adjudication of lack of capacity to give informed consent for medical treatment).

Under subdivision (a), if the conservatee consents to the medical treatment (which includes surgery), there is no restriction imposed by this division on providing the medical treatment to the conservatee. Accordingly, medical personnel may safely rely upon the conservatee's informed consent so long as the conservatee has not be adjudicated to lack capacity to give informed consent for medical treatment. This section does not deal with the question of what constitutes informed consent for the purposes of medical treatment. In connection with what constitutes informed consent, see *Cobbs v. Grant*, 8 Cal.3d 229, 502 P.2d



1, 104 Cal. Rptr. 505 (1972). If the medical practitioner is unwilling to rely on the consent of the conservatee, the practitioner may also require the consent of the conservator. If the medical practitioner is willing to rely on the consent of the conservatee alone, the conservator who wishes to forestall the treatment must seek an adjudication under Section 1835 that the conservatee lacks capacity to give informal consent for medical treatment.

The consent of the conservator alone is sufficient consent for medical treatment if the conservatee does not object to the treatment. Accordingly, if the conservatee is in such a condition that he or she is unable to give consent, the consent of the conservator is sufficient since consent of the conservatee is not required under subdivision (a)--all that is required is that the conservatee does not object.

Subdivisions (b) and (c) are drawn from Section 5358 of the Welfare and Institutions Code (Lanterman-Petris-Short Act). These subdivisions will help to eliminate the uncertainty that existed under prior law. See 60 Ops. Cal. Atty. Gen. 375 (1977). The immunity from liability provided by the second sentence of subdivision (c) does not extend to malpractice; the immunity goes only to the failure to obtain the consent of the patient (the conservatee).

Unless the court otherwise orders, a temporary conservator has the powers and duties conferred by Section 2354. See Section 2252 and the Comment to that section.

Section 2354 does not deal with the payment of the expenses of medical treatment; determination of the reasonableness of such expenses and paying them is the responsibility of the conservator of the estate. See Section 2430.

Where involuntary civil mental health treatment is involved, proceedings may be had only under the Lanterman-Petris-Short Act, and not under this division. See Section 2356(a). See also Section 2356(b) (Natural Death Act).

#### CROSS-REFERENCES

Definition, conservator, § 2350

Effect of court authorization or approval, § 2103

27/232

#### § 2355. Medical treatment of conservatee adjudicated to lack capacity to give informed consent

2355. (a) If the conservatee has been adjudicated to lack the capacity to give informed consent for medical treatment, the conservator has the exclusive authority to give consent for such medical treatment to be performed on the conservatee as the conservator in good faith based on medical advice determines to be necessary and the conservator may require the conservatee to receive such medical treatment, whether or not the conservatee objects. In any such case, the consent of the conservator alone is sufficient and no person is liable because the medical treatment is performed upon the conservatee without the conservatee's consent.

(b) If prior to the establishment of the conservatorship the conservatee was an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing, the treatment required by the conservator under the provisions of this section shall be by an accredited practitioner of that religion.

Comment. Section 2355 is new. Subdivision (a) and makes clear that, when the conservatee has been adjudicated to lack capacity to give informed consent to medical treatment, this power rests exclusively with the conservator. The adjudication of lack of capacity referred to in Section 2355 may be included in the order of appointment of the conservator or may be made upon a subsequently filed petition. See Section 1835.

The immunity provided by the last sentence of subdivision (a) does not extend to malpractice; the immunity goes only to the failure to obtain the consent of the patient (the conservatee). Section 2355 does not deal with the question of what constitutes informed consent. See the Comment to Section 2354.

Subdivision (b) provides recognition of the religious beliefs of the conservatee prior to conservatorship insofar as those beliefs relate to medical treatment. The subdivision does not limit the authority of the court under Section 2357.

Where involuntary civil mental health treatment is involved, proceedings may be had only under the Lanterman-Petris-Short Act, and not under this division. See Section 2536(a). See also Section 2536(b) (Natural Death Act).

#### CROSS-REFERENCES

Definition, conservator, § 2350  
 Effect of court authorization or approval, § 2103  
 Instructions from court, § 2359

405/853

#### § 2356. Involuntary civil mental health treatment; Natural Death Act

2356. (a) No conservatee shall be placed in a mental health treatment facility under the provisions of this division against the conservatee's will. Involuntary civil mental health treatment for such a conservatee shall be obtained only pursuant to the provisions of Chapter 2 (commencing with Section 5150) or Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. On or before July 1, 1979, the Director of Mental Health shall adopt and issue regulations defining "mental health treatment facility" for the purposes of this subdivision.

(b) The provisions of this chapter are subject to any valid and effective directive of the conservatee under Chapter 3.9 (commencing

with Section 7185) of Part 1 of Division 7 of the Health and Safety Code (Natural Death Act).

Comment. Subdivision (a) of Section 2356 continues the substance of the second paragraph of former Sections 1500 and 1851, respectively. Subdivision (b) is new.

CROSS-REFERENCES

Definitions

Conservator, § 2350

Guardian, § 2350

Removal of conservator for failure to comply with subdivision (a), § 2650(g)

Note. Section 2356 has been revised to limit subdivision (a) to a conservatee as proposed by Assembly Bill 3122.

36/234

§ 2357. Court ordered medical treatment

2357. (a) As used in this section:

(1) "Guardian or conservator" includes a temporary guardian of the person or a temporary conservator of the person.

(2) "Ward or conservatee" includes a person for whom a temporary guardian of the person or temporary conservator of the person has been appointed.

(b) If the ward or conservatee requires medical treatment for an existing or continuing medical condition which is not authorized to be performed upon the ward or conservatee under Section 2252, 2353, 2354, or 2355, and the ward or conservatee is unable to give an informed consent to such medical treatment, the guardian or conservator may petition the court under this section for an order authorizing such medical treatment and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to such medical treatment.

(c) The petition shall state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(1) The nature of the medical condition of the ward or conservatee which requires treatment.

(2) The recommended course of medical treatment which is considered to be medically appropriate.

(3) The threat to the health of the ward or conservatee if authorization to consent to the recommended medical treatment is delayed or denied by the court.

(4) The predictable or probable outcome of the recommended course of medical treatment.

(5) The medically available alternatives, if any, to the course of treatment recommended.

(6) The reasonable efforts made to obtain an informed consent from the ward or conservatee.

(d) Upon the filing of the petition, the court shall notify the attorney of record for the ward or conservatee, if any, or shall appoint the public defender or private counsel under Section 1471, to consult with and represent the ward or conservatee at the hearing on the petition.

(e) The hearing on the petition may be held pursuant to an order of the court prescribing the notice to be given of the hearing. The order shall specify the period of notice of the hearing and the period so fixed shall take into account (1) the existing medical facts and circumstances set forth in the petition or in the medical affidavit attached to the petition or in a medical affidavit presented to the court and (2) the desirability, where the condition of the ward or conservatee permits, of giving adequate notice to all interested persons.

(f) A copy of the notice of hearing or of the order prescribing notice of hearing, and a copy of the petition, shall be personally served or mailed, as prescribed in the order, on all of the following:

(1) The ward or conservatee.

(2) The attorney of record for the ward or conservatee, if any, or the attorney appointed by the court to represent the ward or conservatee at the hearing.

(3) Such other persons, if any, as the court in its discretion may require in the order, which may include the spouse of the ward or conservatee and any known relatives of the ward or conservatee within the second degree.

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon the proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the

guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from all of the evidence presented to the court all of the following:

(1) The existing or continuing medical condition of the ward or conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or consent, or both, to specified medical treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2357 is new. The section serves the same purpose as Section 5358.2 of the Welfare and Institutions Code (Lanterman-Petris-Short Act); but Section 2357 provides for notice to interested persons, for the appointment of counsel to represent the ward or conservatee where necessary, for the presentation to the court of medical affidavits showing the need for the medical treatment, and for findings by the court before an order authorizing the treatment is made.

Subdivision (i) has no counterpart in the Welfare and Institutions Code section. This subdivision covers the situation where the ward or conservatee or some interested person believes the ward or conservatee needs medical treatment which the guardian or conservator is unwilling to obtain or has failed to obtain.

As to the powers and duties concerning medical treatment generally, see Sections 2252 (temporary guardian or conservator), 2353 (guardian), 2354-2356 (conservator).

#### CROSS-REFERENCES

- Additional powers of guardian nominated in will, § 2108
- Appointment of legal counsel for ward or conservatee, § 1470
- Clerk sets petition for hearing, § 1451
- Definitions
  - Conservator, § 2350
  - Court, § 1418
  - Guardian, § 2350
  - Interested person, § 1424
- Effect of court authorization, § 2103
- Petition must be verified, § 1450
- Proof of giving of notice, § 1468

§ 2358. Additional conditions in order of appointment

2358. When a guardian or conservator is appointed, the court may, with the consent of the guardian or conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care, treatment, education, and welfare of the ward or conservatee. Any such conditions shall be included in the letters of guardianship or conservatorship. The performance of such conditions is a part of the duties of the guardian or conservator, for the faithful performance of which the guardian or conservator and the sureties on the bond are responsible.

Comment. Section 2358 continues the portion of former Section 1512 which applied to a guardian of the person of a minor and broadens its application to include a conservator of the person. The requirement that the conditions be included in the letters is new. In the case of a guardian or conservator of the person, the requirement of a bond is discretionary with the court. See Section 2322.

## CROSS-REFERENCES

Additional powers of guardian nominated in will, § 2108

Definitions

Conservator, § 2350

Court, § 1418

Guardian, § 2350

Liability of guardian or conservator not limited to amount of bond,  
§ 554

Nature of surety's liability, § 554

999/343

§ 2359. Instructions from or approval by court

2359. (a) Upon petition of the guardian or conservator or ward or conservatee or other interested person, the court may authorize and instruct the guardian or conservator or approve and confirm the acts of the guardian or conservator.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2359 is based on the portion of former Section 1860 (instructions to or approval of acts of conservator) insofar as that section related to the care and protection of the conservatee. See also former Section 1516, which was limited to instructing the guardian of the estate. Section 2359 makes clear that the court may instruct and approve with respect to supervision of the person as well as with respect to management of the estate (Section 2403). Section 2359 also

extends to guardians of the person the former conservatorship provision of Section 1860 which authorized the court not only to authorize or instruct in advance but also to approve or confirm actions already taken.

CROSS-REFERENCES

Appealable orders, § 2750  
 Clerk sets petition for hearing, § 1451  
 Definitions  
     Conservator, § 2350  
     Court, § 1418  
     Guardian, § 2350  
     Interested person, § 1424  
 Effect of court authorization, approval, or confirmation, § 2103  
 Notice to Director of Mental Health or Director of Developmental Services, § 1461  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468

969/042

CHAPTER 6. POWERS AND DUTIES OF GUARDIAN OR  
 CONSERVATOR OF THE ESTATE

Article 1. Definitions and General Provisions

§ 2400. Definitions

2400. As used in this chapter:

- (a) "Conservator" means the conservator of the estate.
- (b) "Guardian" means the guardian of the estate.

Comment. Section 2400 is new. This chapter deals with powers and duties of a guardian or conservator of the estate, and the definitions provided by Section 2400 permit a shorthand reference to such a guardian or conservator in the various sections of this chapter. If one person is appointed as the conservator of the person and estate or as the guardian of the person and estate, that person has the powers and duties conferred by this chapter.

368/242

§ 2401. Duty to manage estate using ordinary care and diligence

2401. (a) The guardian or conservator has the management of the estate and, in managing the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

(1) Shall exercise a power when ordinary care and diligence requires that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

Comment. Section 2401 supplements the provision of Section 2101 that the relationship of guardian and ward and conservator and conservatee is subject to the law relating to trusts. The standard stated in subdivision (a) of Section 2401 is consistent with trust principles but recognizes specifically that what is ordinary care and diligence varies with the circumstances of each case. Compare Civil Code § 2259 (duty of trustee to use at least ordinary care and diligence in the execution of the trust). In determining what constitutes ordinary care and diligence a professional guardian or conservator (such as a trust company or the trust department of a bank) will be held to a greater standard of care based on its presumed expertise than a lay guardian or conservator. Cf. Estate of Beach, 15 Cal.3d 623, 542 P.2d 994, 125 Cal. Rptr. 570 (1975). Section 2401 applies to all powers and duties of the guardian or conservator, whether or not prior court authorization is required. But see Section 2103 (effect of court authorization or approval).

Subdivision (b) of Section 2401 makes clear that ordinary care and diligence may require that the guardian or conservator exercise a power. For example, the guardian or conservator may fail to exercise ordinary care and diligence under the circumstances of the particular estate if the guardian or conservator fails to secure insurance to cover the risk of loss of property of the estate. At the same time, subdivision (b) also makes clear that the extent to which a power should be exercised is limited to what is required by the exercise of ordinary care and diligence under all the circumstances. Thus, for example, in purchasing insurance covering the estate property, the guardian or conservator should not purchase an amount in excess of the amount that would be purchased using ordinary care and diligence in the management of the estate. See also the discussion in the Comment to Section 2451 (collection of debts).

Section 2401 supersedes the portion of the first sentence of former Section 1502 which required every guardian of an estate to manage it frugally and without waste.

#### CROSS-REFERENCES

##### Definitions

- Conservator, § 2400
- Guardian, § 2400
- Guardian nominated in will, § 2108
- Liability of guardian or conservator not limited to amount of bond, § 554
- Nature of surety's liability, § 554
- Nonresident ward or conservatee, § 2107
- Petition for instructions or confirmation, § 2403
- Removal of guardian or conservator for
  - Continued failure to perform duties, § 2650(c)
  - Failure to use ordinary care and diligence, § 2650(a)
  - Gross immorality or conviction of felony, § 2650(c)
  - Incapacity to perform duties, § 2650(d)
  - Insolvency or bankruptcy, § 2650(h)
- Review of sales, purchases, and other transactions upon accounting, § 2625



§ 2402. Additional conditions in order of appointment

2402. When a guardian or conservator is appointed, the court may, with the consent of the guardian or conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care and custody of the property of the ward or conservatee. Any such conditions shall be included in the letters of guardianship or conservatorship. The performance of such conditions is a part of the duties of the guardian or conservator for the faithful performance of which the guardian or conservator and the sureties on the bond are responsible.

Comment. Section 2402 continues the portion of former Section 1512 which applied to a guardian of the estate of a minor and broadens its application to include a conservator of the estate and adds the requirement that the conditions be included in the letters.

CROSS-REFERENCES

Additional powers of guardian nominated in will, § 2108

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Liability of guardian or conservator not limited to amount of bond, § 554

Nature of surety's liability, § 554

09599

§ 2403. Instructions from or approval by court

2403. (a) Upon petition of the guardian or conservator, the ward or conservatee, a creditor, or other interested person, the court may authorize and instruct the guardian or conservator, or approve and confirm the acts of the guardian or conservator, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2403 is based on former Sections 1516 (instructions to guardian of estate) and 1860 (instructions to or approval of acts of conservator). The word "investment" is added in subdivision (a). Section 2403 supersedes the last portion of the first sentence of

former Section 1557 which relates to investments. Section 2403 extends to guardians the former conservatorship provision of Section 1860 which authorized the court not only to instruct in advance but also to confirm actions already taken. See *Place v. Trent*, 27 Cal. App.3d 526, 103 Cal. Rptr. 841 (1972). The provision of former Section 1516 (instructions to guardian) that limited the use of the instruction procedure to cases where no other or different procedure was provided by statute has not been continued. Such a provision was unduly rigid and, moreover, is not appropriate in view of the broader scope of Section 2403 (based on former Section 1860 which permitted not only instructions and authorization in advance but also subsequent approval and confirmation). As to the compensation of the guardian or conservator and the attorney in connection with obtaining authorization or instructions on a matter not requiring court authorization, see the Comment to Section 2640.

CROSS-REFERENCES

- Appealable orders, § 2750
- Clerk sets petition for hearing, § 1451
- Definitions
  - Conservator, § 2400
  - Court, § 1418
  - Guardian, § 2400
  - Interested person, § 1424
- Nonliability of guardian or conservator who complies with court order, § 2103
- Notice to Director of Mental Health or Director of Developmental Services, § 1461
- Petition must be verified, § 1450
- Proof of giving of notice, § 1468
- Request for special notice, § 2700

968/696

§ 2404. Order compelling guardian or conservator to pay support or debts

2404. (a) If the guardian or conservator fails, neglects, or refuses to furnish comfortable and suitable support, maintenance, or education for the ward or conservatee as required by this division, or to pay a debt, expense, or charge lawfully due and payable by the ward or conservatee or the estate as provided in this division, the court shall, upon petition or upon its own motion, order the guardian or conservator to do so from the estate.

(b) The petition may be filed by the ward or conservatee or by the creditor or any other interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2404 continues the substance of former Section 1859 with the addition of the reference to "education" (which appeared in former Section 1503) and supersedes former Section 1503.

CROSS-REFERENCES

Appealable orders, § 2750  
Clerk sets petition for hearing, § 1451  
Conveyance of property claimed to belong to another, §§ 2520-2528  
Definitions  
  Conservator, § 2400  
  Court, § 1418  
  Guardian, § 2400  
  Interested person, § 1424  
Petition must be verified, § 1450  
Proof of giving of notice, § 1468  
Request for special notice, § 2700  
Summary determination of disputes, § 2405

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§ 2405. Submitting disputed claim to commissioner, judge pro tempore, or probate judge for summary determination

2405. If the guardian or conservator doubts the correctness of any claim against the ward or conservatee or the estate or rejects a claim against the ward or conservatee or the estate, the guardian or conservator may do either of the following:

(a) Enter into an agreement in writing with the claimant to refer the matter in controversy to a commissioner or referee who is regularly attached to the court and designated in the agreement or to a judge pro tempore designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The commissioner or referee shall have the powers of a judge pro tempore. The designated person shall proceed promptly to hear and determine the matter in controversy by summary procedure, without any pleadings, discovery, or jury trial. The designated person shall make and file a decision in writing in which the facts found and conclusions of law shall be separately stated, and cause a copy thereof to be mailed promptly to the parties. Judgment shall be entered on the decision and shall be as valid and effective as if it had been rendered by a judge of the court in a suit against the guardian or conservator commenced by ordinary process.

(b) Enter into an agreement in writing with the claimant that a judge sitting in probate, pursuant to the agreement and with the written

consent of the judge, both filed with the clerk, may hear and determine the matter in controversy pursuant to the procedure provided in subdivision (a).

Comment. Section 2405 is the same in substance as paragraph (2) of Section 718 (summary determination of controversies concerning claims against decedent's estates) with slight modifications to adapt this portion of Section 718 for use in guardianships and conservatorships. Section 2405 has no provision comparable to paragraph (1) of Section 718 since paragraph (1) is particularly designed for use in connection with a decedent's estate.

Section 2405 is designed to reduce the cost of administration of estates and ease the court's workload by encouraging the settlement of claims against estates by summary reference proceedings rather than by litigation. See Review of Selected 1968 Code Legislation, at 226 (Cal. Cont. Ed. Bar 1968) (commenting on the addition of paragraph (2) to Section 718). Because of the binding effect of the decision of the commissioner, referee, judge pro tempore, or probate judge under Section 2405, an agreement to submit a controversy under the section requires approval of the court in which the guardianship or conservatorship proceeding is pending. See Section 1418 (defining "court").

CROSS-REFERENCES

Compromise of claims and actions, §§ 2500-2507  
 Conveyance or transfer of property claimed to belong to ward or conservatee or other person, §§ 2520-2528  
 Independent exercise of powers, § 2591(p)  
 Order compelling payment of debts, § 2404  
 Submitting dispute to arbitration, § 2406

26774

§ 2406. Submitting dispute to arbitration

2406. The guardian or conservator may enter into an agreement in writing with a person having a disputed claim against the ward or conservatee or the estate, or with a person against whom the ward or conservatee or the estate has a disputed claim, to submit the matter in controversy to arbitration under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, but no such agreement is effective unless it has first been approved by the court and a copy of the approved agreement has been filed in the guardianship or conservatorship proceeding.

Comment. Section 2406 is new and makes clear that the guardian or conservator may use arbitration to resolve a controversy. Because of the binding effect of the decision of the arbitrator, an agreement to submit a controversy to arbitration under this section requires approval of the court in which the guardianship or conservatorship proceeding is pending. See Section 1418 (defining "court").

CROSS-REFERENCES

Independent exercise of powers, § 2591(p)

§ 2407. Application of chapter to community and homestead property

2407. 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 Part 6 (commencing with Section 3000).

Comment. Section 2407 continues the substance of former Section 1529.

3060

Article 2. Support and Maintenance of Ward or Conservatee and Dependents§ 2420. Support, maintenance, and education

2420. (a) Subject to Section 2422, the guardian or conservator shall apply the income from the estate, so far as necessary, to the comfortable and suitable support, maintenance, and education of the ward or conservatee (including care, treatment, and support of the ward or conservatee if a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) and of those legally entitled to support, maintenance, or education from the ward or conservatee.

(b) If the income from the estate is insufficient for the purpose described in subdivision (a), the guardian or conservator may sell or give a security interest in or other lien on any personal property of the estate, or sell or mortgage or give a deed of trust on any real property of the estate, as provided in this part:

(c) When the amount paid by the guardian or conservator for the purpose described in subdivision (a) is not disproportionate to the value of the estate or the condition in life of the person to whom the payment is made, and the payments are supported by proper vouchers or other proof satisfactory to the court, the guardian or conservator shall be allowed credit for such payments when the accounts of the guardian or conservator are settled.

(d) Subject to Section 2230 of the Civil Code, nothing in this section requires the guardian or conservator to obtain court authorization before making the payments authorized by this section, but nothing in this section dispenses with the need to obtain any court authorization otherwise required for a particular transaction.

(e) Nothing in this section precludes the guardian or conservator from seeking court authorization, instructions, approval, or confirmation pursuant to Section 2403.

Comment. Subdivisions (a) and (b) of Section 2420 continue the substance of a portion of the first sentence of former Section 1502, but in subdivision (a) "education" is added and "those legally entitled to support" (contained in former Section 1855) is substituted for the reference in former Section 1502 to the ward's family. The reference to the care, treatment, and support of the ward or conservatee if a patient in a state hospital has been added to subdivision (a) conform Section 2420 to Section 2541. See the Comment to Section 2541. Subdivisions (a) and (b) supersede former Section 1855. As to subdivision (b), see Sections 2541 and 2551 (sale or encumbrance of property). Subdivision (c) continues the substance of the second sentence of former Section 1502 except that the provision is broadened by the reference to subdivision (a) to include payments for the support, maintenance, or education of persons legally entitled to support, maintenance, or education from the ward or conservatee.

Section 2420 does not require that the guardian or conservator obtain court authorization to apply the income for the purposes specified in subdivision (a). See subdivision (d). However, many guardians and conservators seek court authorization in advance (as authorized under Section 2403) for the expenditure of a monthly sum for the support and maintenance of the ward or conservatee and any dependents. It has been pointed out that the guardian or conservator is more likely to have payments allowed when authority is sought in advance than when the same payments are sought to be justified after they have been incurred. See W. Johnstone & G. Zillgitt, *California Conservatorships* § 5.9, at 156 (Cal. Cont. Ed. Bar 1968). Subdivision (e) makes clear that the guardian or conservator is authorized to obtain advance authority for payments and to seek any other court authorizations, instructions, approvals, or confirmations that the circumstances require.

It should be noted that a guardian or conservator is subject to the principles of good faith and fair dealing applicable to a trustee (Section 2101); and, despite subdivision (d), may be required to obtain court approval of certain transactions. See, e.g., Civil Code § 2230.

#### CROSS-REFERENCES

Appealable orders, § 2750  
 Advances from personal funds of guardian or conservator, § 2466  
 Borrowing money and giving security, § 2451  
 Definitions  
     Conservator, § 2400  
     Court, § 1413  
     Guardian, § 2400  
 Effect of court authorization or approval, § 2103  
 Order authorizing support from estate where third party liable for support, § 2422  
 Review on settlement of accounts, § 2625  
 Sale of estate property, § 2541

§ 2421. Allowance for ward or conservatee

2421. (a) Upon petition of the guardian or conservator or the ward or conservatee, the court may authorize the guardian or conservator to pay to the ward or conservatee out of the estate a reasonable allowance for the personal use of the ward or conservatee. The allowance shall be in such amount as the court may determine to be for the best interests of the ward or conservatee.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The guardian or conservator is not required to account for such allowance other than to establish that it has been paid to the ward or conservatee. The funds so paid are subject to the sole control of the ward or conservatee.

Comment. Section 2421 continues the substance of former Section 1861 (conservatorship) and generalizes the provisions to apply to guardianships as well. The former law is expanded to permit a petition by the ward or conservatee. If the court makes an order under Section 2421, the allowance paid to the ward or conservatee is subject to the sole control of the ward or conservatee. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.18, at 166 (Cal. Cont. Ed. Bar 1968).

CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice, § 2700

Wages of ward or conservatee, § 2601

968/902

§ 2422. Order authorizing support notwithstanding third party liable

2422. (a) Upon petition of the guardian or conservator, the ward or conservatee, or any other interested person, the court may for good cause order the ward or conservatee to be wholly or partially supported, maintained, or educated out of the estate notwithstanding the existence of a third party legally obligated to provide such support, maintenance,

or education. Such order may be made for a limited period of time. If not so limited, it continues in effect until modified or revoked.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part I.

Comment. Subdivision (a) of Section 2422 continues the substance of former Section 1857 and supersedes former Sections 1504 and 1505. Subdivision (b) is new. To accomplish the purposes of this section, the guardian or conservator may use the income of the estate and, if necessary, may sell or encumber property of the estate. See Sections 2420, 2541.

CROSS-REFERENCES

Appealable orders, § 2750  
 Clerk sets petition for hearing, § 1451  
 Definitions  
     Conservator, § 2400  
     Court, § 1418  
     Guardian, § 2400  
     Interested person, § 1424  
 Effect of court authorization or approval, § 2103  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700

968/602

§ 2423. Payment of surplus income to relatives of conservatee

2423. (a) On petition of the conservator, the conservatee, or a relative within the second degree of the conservatee, the court may by order authorize or direct the conservator to pay and distribute surplus income of the estate, or any part of such surplus income, not used for the support and maintenance of the conservatee, to such relatives within the second degree of the conservatee whom the conservatee would, in the judgment of the court, have aided but for the existence of the conservatorship. The court in ordering payments under this section may impose conditions if the court determines that the conservatee would have imposed such conditions if the conservatee had the capacity to act.

(b) The granting of the order and the amounts and proportions of the payments are discretionary with the court, but the court shall consider all of the following:



(1) The amount of surplus income available after adequate provision has been made for the comfortable and proper support, maintenance, and education of the conservatee.

(2) The circumstances and condition of life to which the conservatee and such relatives have been accustomed.

(3) The amount which the conservatee would in the judgment of the court have allowed such relatives but for the existence of the conservatorship.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2423 continues the substance of former Sections 1558 and 1856 except that "next of kin" has been changed to relatives within the second degree. The meaning of the former terminology was ambiguous. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.33, at 181 (Cal. Cont. Ed. Bar 1968). The right to file a petition is extended to include the conservatee.

Unlike other powers and duties in this chapter, the provisions of Section 2423 apply only to conservatorships and not to guardianships.

The second sentence of subdivision (a)--authorizing the court in making allowances to impose conditions if the court finds that the conservatee would have imposed them if the conservatee had the capacity to act--continues prior case law. See Guardianship of Hudelson, 18 Cal.2d 401, 115 P.2d 805 (1941). See also Sections 2580-2585 (substituted judgment) which permit gifts to persons other than relatives and gifts of principal as well as income.

#### CROSS-REFERENCES

Appealable orders, § 2750

Clerk sets petition for hearing, § 1451

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Effect of court authorization or approval, § 2103

Notice to Director of Mental Health or Director of Developmental Services, § 1461

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice, § 2700

045/218

### Article 3. Payment of Debts and Expenses

#### § 2430. Payment of debts and expenses generally

2430. (a) Subject to subdivisions (b) and (c), the guardian or conservator shall pay the following from any principal and income of the estate:

(1) The just debts incurred by the ward or conservatee before creation of the guardianship or conservatorship, giving priority to the debts described in Section 2431 to the extent required by that section.

(2) The just debts incurred by the ward or conservatee during the guardianship or conservatorship for the necessities of life to the extent reasonable. The guardian or conservator may deduct the amount of any payments for such debts from any allowance otherwise payable to the ward or conservatee.

(3) In the case of a conservatorship, any other debts incurred by the conservatee during the conservatorship only if both of the following conditions exist:

(i) The debt appears to be such as a reasonably prudent person might incur.

(ii) The debt is not beyond the capacity of the conservatee as provided in an order made pursuant to Section 1835.

(4) The reasonable expenses incurred in the collection, care, and administration of the estate, but court authorization is required for payment of compensation to any of the following:

(i) The guardian or conservator of the person or estate or both.

(ii) An attorney for the guardian or conservator of the person or estate or both.

(iii) An attorney for the ward or conservatee.

(iv) An attorney for the estate.

(b) The payments provided for by paragraphs (1) and (3) of subdivision (a) are not required to be made to the extent such payments would impair the ability to provide necessities of life to the ward or conservatee and the spouse and minor children of the ward or conservatee.

(c) The guardian or conservator may petition the court under Section 2403 for instructions when there is doubt whether a debt should be paid under this section.

Comment. Section 2430 is adapted from portions of former Sections 1501, 1501a, and 1858. The priorities given under paragraphs (1) and (2) of subdivision (a) to debts incurred before creation of the guardianship or conservatorship and to debts for necessities incurred after such creation are derived from former Section 1858. The requirement that such debts be "just" is derived from former Section 1501 and requires that the debts be legally enforceable debts. Cf. Estate of

Cross, 51 Cal. App.3d 80, 86, 123 Cal. Rptr. 825, \_\_\_ (1975) (construing the words "justly due" in Probate Code Section 929). The requirement that debts incurred for necessities incurred after creation be paid "to the extent reasonable" is new. Thus, the guardian or conservator may refuse to pay a debt for necessities to the extent the debt is unreasonable in amount. Paragraph (3) is based on the third sentence of former Section 1858 but recognizes that the court may withdraw or restrict the conservatee's power to contract. See Section 1835; Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, 1051 n.6, 1054, 120 Cal. Rptr. 407, 411 n.6, 414 (1975). Paragraph (4) supersedes the last portion of the second sentence of former Section 1858. This provision is generalized to apply to guardianships as well as to conservatorships. The requirement of court authorization for payment of compensation is new and is consistent with former Sections 1556 and 1556.1. See Sections 2640-2643 (order fixing compensation for guardian, conservator, or attorney). See also Section 2644 (order authorizing periodic payments of compensation to guardian, conservator, or attorney).

Subdivision (b) is based on the last portion of the first sentence of former Section 1858 and the last sentence of former Section 1501a.

Subdivision (c) continues the substance of a provision of former Section 1858 (conservatorship) and extends this provision to guardianships as well as conservatorships.

Where the court has not withdrawn or limited the conservatee's power to contract, the conservator nonetheless may disaffirm debts of the conservatee (other than for necessities to the extent reasonable) if the debt is not such as a reasonably prudent person might incur. See Section 2430 and Board of Regents State Univs. v. Davis, *supra* at 41, 533 P.2d at \_\_\_, 120 Cal. Rptr. at \_\_\_.

As to the compensation of the guardian or conservator and the attorney when court instructions are sought, see the Comment to Section 2640.

#### CROSS-REFERENCES

Allowance for ward or conservatee, § 2421

Compensation and expenses of guardian or conservator or attorney,  
§ 2623

Conveyance of property claimed to belong to another, §§ 2520-2528  
Death of ward or conservatee, expenses of last illness and funeral,  
§ 2631

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Effect of court authorization or approval, § 2103

Independent exercise of powers, § 2591(p), (q)

Order compelling payment of debts, § 2404

Request for special notice, § 2700

Review on settlement of accounts, § 2625

Submitting matters to

Arbitration, § 2406

Summary determination, § 2405

Support, maintenance, and education of ward, conservatee, and dependents, § 2420

§ 2431. Priority for wage claims

2431. (a) The payments provided for by this section are not required to be made to the extent that the making of such payments would impair the ability of the guardian or conservator to provide necessities of life to the ward or conservatee and to the spouse and minor children of the ward or conservatee.

(b) The guardian or conservator shall promptly pay wage claims for work done or services rendered for the ward or conservatee within 30 days prior to the date the petition for appointment or confirmation of the guardian or conservator was filed. The payments made pursuant to this subdivision shall not exceed six hundred dollars (\$600) to each claimant. If there is insufficient money to pay all the claims described in this subdivision up to six hundred dollars (\$600), the money available shall be distributed among such claimants in proportion to the amount of their respective claims.

(c) After the payments referred to in subdivision (b) have been made, the guardian or conservator shall pay wage claims for work done or services rendered for the ward or conservatee within 90 days prior to the date the petition for appointment or confirmation of the guardian or conservator was filed, excluding the claims described in subdivision (b). The payments made pursuant to this subdivision shall not exceed six hundred dollars (\$600) to each claimant. If there is insufficient money to pay all the claims described in this subdivision up to six hundred dollars (\$600), the money available shall be distributed among such claimants in proportion to the amounts of their respective claims.

(d) The guardian or conservator may require sworn claims to be presented. If there is reasonable cause to believe that the claim is not valid, the guardian or conservator may refuse to pay the claim in whole or in part but shall pay any part thereof that is not disputed without prejudice to the claimant's rights as to the balance of the claim. The guardian or conservator shall withhold sufficient money to cover the disputed portion until the claimant has had a reasonable opportunity to establish the validity of the claim by bringing an action, either in the claimant's own name or through an assignee, against the guardian or conservator.

(e) If the guardian or conservator neglects or refuses to pay all or any portion of a claim which is not in dispute, the court shall order the guardian or conservator to do so upon the informal application of any wage claimant or the assignee or representative of such claimant.

Comment. Section 2431 is based on former Section 1501a. The section is restated to clarify the provisions concerning priority and proration of payments. The "necessaries of life" standard used in subdivision (a) is drawn from the first sentence of former Section 1858 and replaces the "reasonable current needs" standard of former Section 1501a. Section 2430 (payment of debts generally) also uses the necessaries of life standard. The balance of the wage claim not given priority under Section 2431 would be payable under subdivision (a)(1) of Section 2430. Nothing in Section 2431 requires the guardian or conservator to obtain court authorization before making the payments required by this section.

CROSS-REFERENCES

Application must be verified, §§ 1430, 1450  
 Definitions  
     Conservator, § 2400  
     Court, § 1418  
     Guardian, § 2400  
 Independent exercise of powers, § 2591(p), (q)  
 Instructions from the court, § 2403  
 Order compelling payment of debts, § 2404  
 Request for special notice, § 2700  
 Submitting disputed claim for summary determination, § 2405

15/649

Article 4. Estate Management Powers Generally

§ 2450. Extent of court supervision

2450. (a) Unless this article specifically provides for a proceeding to obtain court authorization or requires court authorization, the powers and duties set forth in this article may be exercised or performed by the guardian or conservator without court authorization, instruction, approval, or confirmation. Nothing in this subdivision precludes the guardian or conservator from seeking court authorization, instructions, approval, or confirmation pursuant to Section 2403.

(b) Upon petition of the ward or conservatee, a creditor, or any other interested person, or upon the court's own motion, the court may limit the authority of the guardian or conservator under subdivision (a) as to a particular power or duty or as to particular powers or duties. Notice of the hearing on a petition under this subdivision shall be

given for the period and in the manner prescribed in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2450 is new. Under prior law, it was not always clear whether the guardian or conservator could act without prior court authorization when the particular provision was silent on the matter. Section 2450 makes clear that, unless the particular provision requires court authorization, or the court requires such authorization with respect to the particular power or duty under subdivision (b), the powers and duties specified in this article do not require court authorization. However, the exercise of all the powers in this article and the performance of all the duties in this article remain subject to the duty of the guardian or conservator to exercise ordinary care and diligence in the management of the estate. See Section 2401 and Comment thereto. See also Section 2403 permitting the guardian or conservator to seek court authorization, instructions, approval, or confirmation for particular transactions. Compare Section 591.2. Subdivision (b) also permits the court to impose other restrictions and conditions on the exercise of the powers and duties under this article.

The second sentence of subdivision (a) makes clear that a guardian or conservator may seek court authorization and instructions even though court authorization is not required before exercising a power. Examples of cases where such instructions might be sought can be found in the Comments to Sections 2451 and 2457. In a case where the guardian or conservator is doubtful as to the proper action to take, the guardian or conservator may wish to obtain authorization under Section 2403 before acting or failing to act rather than run the risk that the court will find on the settlement of the accounts that the guardian or conservator failed to use ordinary care and diligence in managing the estate. As to the compensation of the guardian or conservator and the attorney in connection with obtaining instructions concerning the exercise of a power where court authorization is not required by statute, see the Comment to Section 2640. See also Section 2103 (effect of court authorization or approval).

The court may add to the list of powers exercisable by the guardian or conservator without court authorization. See Article 11 (commencing with Section 2590) (independent exercise of powers).

Some powers prescribed in other articles of this chapter are also exercisable without prior court authorization. See, e.g., Sections 2420 (support, maintenance, and education of ward or conservatee and dependents), 2430 (payment of debts), 2431 (wage claims), 2500 (compromises), 2544 (sale of listed stock and bonds), 2545 (certain sales of tangible personal property), 2555 (certain leases), 2575 (investing in listed securities).

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451  
 Compromise of claims and actions, §§ 2500-2507  
 Conveyance or transfer of property claimed to belong to ward or conservatee or another, §§ 2520-2528  
 Definitions  
     Conservator, § 2400  
     Court, § 1418  
     Guardian, § 2400  
     Interested person, § 1424

Election of guardian or conservator of surviving spouse concerning  
 administration of community property in probate, §§ 202, 650  
 Extension, renewal, or modification of obligations, §§ 2500-2507  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700  
 Review on settlement of accounts, § 2625  
 Submitting matters to  
   Arbitration, § 2406  
   Summary determination, § 2405

043/198

§ 2451. Collection of debts and benefits

2451. The guardian or conservator may collect debts and benefits due to the ward or conservatee and the estate.

Comment. Section 2451 continues the substance of the first portion of the second sentence of former Section 1501 except that the word "shall" has been changed to "may." Nonetheless, the guardian or conservator remains subject to the duty to use ordinary care and diligence in managing the estate (Section 2401) and this duty ordinarily will require that the guardian or conservator take appropriate action to collect a debt or benefit. Where the potential recovery is less than the cost of the action needed to attempt to recover a debt, Section 2451 does not impose a duty on the guardian or conservator to act. In cases where there is a question concerning the propriety of initiating lawsuit to collect the debt, the guardian or conservator should obtain instructions from the court before commencing the action. See Section 2403 (instructions concerning management of estate) and the Comment to that section.

The word "benefits" is added to Section 2451 to make clear that the provision includes collection of benefits under such laws as the Federal Social Security Act or public assistance laws and benefits under private plans.

The power granted by Section 2451 may be exercised without court authorization. See Section 2450.

CROSS-REFERENCES

Abandonment of valueless property, § 2465  
 Acceptance of deed in lieu of foreclosure, § 2464  
 Compromise of claims and actions and extension or renewal of obligations, §§ 2500-2507  
 Contingent fee contract with attorney, § 2644  
 Definitions  
   Conservator, § 2400  
   Guardian, § 2400  
 Independent exercise of powers, § 2591  
 Representation in actions and proceedings, § 2462  
 Review on settlement of accounts, § 2625  
 Submitting matters to  
   Arbitration, § 2406  
   Summary determination, § 2405

§ 2452. Checks, warrants, and drafts

2452. The guardian or conservator may endorse and cash or deposit any checks, warrants, or drafts payable to the ward or conservatee which constitute property of the estate.

Comment. Section 2452 is new. In some instances, the check may not be property of the estate and hence is not covered by the power granted by this section. See, e.g., Sections 2421 (allowance for ward or conservatee), 2601 (wages of ward or conservatee). The power granted by Section 2452 may be exercised without court authorization. See Section 2450.

## CROSS-REFERENCES

## Definitions

Conservator, § 2400

Guardian, § 2400

045/223

§ 2453. Bank and savings accounts

2453. The guardian or conservator may deposit money belonging to the estate in a bank in this state or in a trust company authorized to transact a trust business in this state or may invest such money in an account in an insured savings and loan association or in shares of an insured credit union. The money may be withdrawn without order of court.

Comment. Section 2453 provides independent authority for the deposit or investment of money without court authorization. See Section 2450 (prior court authorization not required). Compare Section 2456 (accounts and deposits withdrawable only on court order) and Section 2328 (deposit or property subject to court control in determining amount of bond) and sections referred to in Comment to Section 2328. Section 2453 continues the substance of former Section 1513, but Section 2453 has been phrased to make clear that it provides independent authority without court authorization to make deposits in bank and savings accounts. The references to other provisions authorizing deposits that were found in former Section 1513 have been omitted as not relevant to a deposit made under Section 2453. The provision has not been continued which discharged the guardian or conservator from any further care or responsibility for the money while on deposit. The omission of this provision makes applicable the general requirement of use of ordinary care and diligence (Section 2401).

## CROSS-REFERENCES

## Definitions

Account in an insured savings and loan association, § 1406

Conservator, § 2400

Guardian, § 2400

Shares of an insured credit union, § 1443



§ 2454. Deposit of personal property with trust company

2454. The guardian or conservator may deposit personal property of the estate with a trust company authorized to transact a trust business in this state as provided in Section 2328 or as provided by the Banking Law, Division 1 (commencing with Section 99) of the Financial Code. Unless otherwise provided by court order, the personal property may be withdrawn without order of court.

Comment. Section 2454 is the same in substance as former Section 1514 except that a reference to Section 2328 (deposit subject to court control) has been added. The procedure to be followed by the guardian or conservator in exercising the power under Section 2454 is provided in the statutory provisions to which reference is made in the section. See the Comment to Section 2328. See also Section 2456 (deposits withdrawable only on court order).

## CROSS-REFERENCES

## Definitions

Conservator, § 2400

Guardian, § 2400

999/341

§ 2455. Deposit of securities in securities depository

2455. (a) Securities which constitute all or part of the estate may be deposited in a securities depository as defined in Section 30004 of the Financial Code which is either licensed under Chapter 2 (commencing with Section 30200) of Division 14 of the Financial Code or is exempted from such licensing by Section 30005 or 30006 of the Financial Code.

(b) If the securities have been deposited with a trust company pursuant to Section 2328 or Section 2454, the trust company may deposit the securities in a securities depository as provided in subdivision (a).

(c) The securities depository may hold securities deposited with it in the manner authorized by Section 775 of the Financial Code.

Comment. Section 2455 continues the substance of former Sections 1514.5 and 1520. The power granted by Section 2455 may be exercised without court authorization. See Section 2450.

§ 2456. Accounts and deposits withdrawable only on court order

2456. Upon application of the guardian or conservator, the court may, with or without notice, order that:

(a) All or a portion of the money of the estate be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state or be invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) All or a portion of the personal property of the estate be deposited with a trust company authorized to transact a trust business in this state, subject to withdrawal only upon authorization of the court.

Comment. Section 2456 is based on authority implied under former Sections 1405.1 and 1513 except that Section 2456 includes personal property in addition to money (former Sections 1405.1 and 1513) and securities (former Section 1405.1).

CROSS-REFERENCES

Definitions

Account in an insured savings and loan association, § 1406  
Conservator, § 2400  
Guardian, § 2400  
Shares of an insured credit union, § 1443  
Single-premium deferred annuity, § 1446  
Deposit of money, generally, § 2453  
Deposit of personal property, generally, § 2454  
Reduction in amount of bond, § 2328  
Request for special notice, § 2700

045/051

§ 2457. Maintaining home of ward or conservatee and dependents

2457. The guardian or conservator may maintain in good condition and repair the home or other dwelling of either or both of the following:

- (a) The ward or conservatee.
- (b) The persons legally entitled to such maintenance and repair from the ward or conservatee.

Comment. Section 2457 is new and makes specific a power implied in the duties of the guardian or conservator to provide for the support and maintenance of the ward or conservatee and dependents. The power may be

exercised without court authorization. See Section 2450. The power to add improvements is not included under this section. If there is doubt as to whether the particular project is permitted under this section, the guardian or conservator should seek court authorization under Section 2403. As to when a power should or should not be exercised, see Section 2401(b) and Comment thereto.

CROSS-REFERENCES

Definitions

- Conservator, § 2400
- Guardian, § 2400
- Order compelling guardian or conservator to furnish support and maintenance, § 2404
- Purchase of home for ward, conservatee, or dependents, § 2571
- Review on settlement of accounts, § 2625
- Support and maintenance generally, § 2420

999/339

§ 2458. Voting rights with respect to corporate shares or memberships or property

2458. With respect to any shares of stock of a domestic or foreign corporation held in the estate, any membership in a nonprofit corporation held by the estate, or any other property held in the estate, a guardian or conservator may do any or all of the following:

- (a) Vote in person, and give proxies to exercise, any voting rights with respect to such shares or memberships or property.
- (b) Waive notice of any meeting or give consent to the holding of any meeting.
- (c) Authorize, ratify, approve, or confirm any action which could be taken by shareholders, members, or property owners.

Comment. Section 2458 continues the substance of former Section 1517 except that the section is broadened to authorize action with respect to memberships in nonprofit corporations and to add "ratify, approve, or confirm" to subdivision (c). See also Corp. Code §§ 702(a) (guardian or conservator may vote shares), 705(a) (person entitled to vote shares may give proxy). The word "meeting" in subdivision (b) includes a meeting of shareholders, members, or property owners but is not so limited. Subdivision (c) permits authorization of action taken at a defectively noticed meeting by approval of the minutes of the meeting if such approval satisfies the requirements of the Corporations Code or other applicable law. The powers under Section 2458 may be exercised without court authorization. See Section 2450. As to when a power should or should not be exercised, see Section 2401(b) and the Comment thereto.

The court may grant the right to exercise additional powers without prior court authorization under Article 11 (commencing with Section 2590) (independent exercise of powers). These additional powers include

the power to exercise stock rights and stock options and the power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification, or adjustment affecting estate property. If the authority for independent exercise of such powers has not been granted, the guardian or conservator should obtain court authorization under an applicable provision or under Section 2403 (instructions) before exercising the powers. See also Section 2557 (exchange of stocks, bonds, or securities for different stocks, bonds, or securities).

CROSS-REFERENCES

Definitions

Conservator, § 2400

Guardian, § 2400

368/244

§ 2459. Life insurance; medical, retirement, and other plans and benefits

2459. (a) The guardian or conservator may obtain, continue, renew, modify, terminate, or otherwise deal in any of the following for the purpose of providing protection to the ward or conservatee or a person legally entitled to support from the ward or conservatee:

(1) Medical, hospital, and other health care policies, plans, or benefits.

(2) Disability policies, plans, and benefits.

(b) The conservator may continue in force any of the following in which the conservatee, or a person legally entitled to support, maintenance, or education from the conservatee, has or will have an interest:

(1) Life insurance policies, plans, or benefits.

(2) Annuity policies, plans, or benefits.

(3) Mutual fund and other dividend reinvestment plans initiated by the conservatee prior to the establishment of the conservatorship.

(4) Retirement, profit sharing, and employee welfare plans or benefits.

(c) The right to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights, or to take similar actions under any of the policies, plans, or benefits described in subdivision (b) may be exercised by the conservator only after authorization or direction by order of the court. To obtain such an

order, the conservator or other interested person shall petition under Article 10 (commencing with Section 2580).

(d) Notwithstanding subdivision (c), court authorization is not required for the conservator to borrow on the loan value of an insurance policy to pay the current premiums to keep the policy in force if the conservatee followed that practice prior to the establishment of the conservatorship.

(e) The guardian may give the consent provided in Section 10112 of the Insurance Code without authorization of the court, but the guardian may use funds of the guardianship estate to effect or maintain in force a contract entered into by the ward under Section 10112 of the Insurance Code only after authorization by order of the court. To obtain such an order, the guardian, the ward, or any other interested person shall file a petition showing that it is in the best interest of the ward or of the guardianship estate to do so. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Subdivision (a) of Section 2459 gives the guardian or conservator specific authority to deal freely with medical, hospital, and other health care policies, plans, or benefits and with disability policies, plans, and benefits. These policies, plans, and benefits are an alternative method of meeting expenses that will be charged against the estate. The authority under this subdivision can be exercised without court authorization. See Section 2450.

Subdivision (b) gives the conservator much more limited power with respect to life insurance, annuity policies, mutual funds, retirement, employee welfare plans, and the like. The authority under subdivision (b), which can be exercised without court authorization (Section 2450), is limited to continuing the plans in force. Subdivision (d) permits the conservator to borrow on the loan value of an insurance policy to pay the current premiums on the policy to keep the policy in force without court authorization if the conservatee followed that practice prior to the establishment of the conservatorship. However, absent a showing of such past practice, court authorization would be required to borrow on the loan value of the insurance policy to pay the current premiums. See subdivision (c).

The provision of subdivision (e) that the guardian may, with court authorization, use guardianship funds to effect or continue an insurance contract of the ward made under Section 10112 of the Insurance Code continues the substance of former Section 1518. The remainder of subdivision (e) is new. Under Section 10112 of the Insurance Code, a minor may, with written consent of a parent or guardian, contract for a life, disability, or annuity policy for the benefit of a limited class of persons.

The authority of the guardian or conservator under Section 2459 can be limited by specific court orders (Section 2450), and subdivision (c) requires court authorization under the provisions relating to substitute judgment for actions that would affect the expectancies of beneficiaries of insurance policies or other benefit plans.

As to when a power should or should not be exercised, see Section 2401(b) and the Comment thereto.

There was no express provision in former law on this subject, except the limited reference in former Section 1518 (continued in subdivision (e)) and a reference to necessary insurance for the proper protection of the estate in the additional powers which might be granted by the court under former Section 1853 (conservators).

CROSS-REFERENCES

Clerk sets petition for hearing, § 1451  
 Definitions  
     Conservator, § 2400  
     Court, § 1418  
     Guardian, § 2400  
 Duty to use ordinary care and diligence, § 2401  
 Instructions from the court, § 2403  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice of petition, § 2700  
 Review on settlement of accounts, § 2625

368/245

§ 2460. Liability and casualty insurance

2460. The guardian or conservator may insure:

- (a) Property of the estate against loss or damage.
- (b) The ward or conservatee, the guardian or conservator, and all or any part of the estate against liability to third persons.

Comment. Section 2460 expressly states the power of the guardian or conservator to secure liability and casualty insurance without first obtaining authorization from the court. See Section 2450 (authorization of court not required). Former law referred to this subject only in connection with the listing of "additional powers" which might be granted by the court under former Section 1853. In practice, however, the responsibility to obtain adequate insurance was recognized. See W. Johnstone & G. Zillgitt, California Conservatorships § 4.3, at 110, § 4.7, at 111, § 5.22, at 171 (Cal. Cont. Ed. Bar 1968). As to when a power should or should not be exercised, see Section 2401(b) and Comment thereto.

CROSS-REFERENCES

Definitions  
     Conservator, § 2400  
     Guardian, § 2400  
 Review on settlement of accounts, § 2625

§ 2461. Taxes and tax returns.

2461. (a) The guardian or conservator may prepare, execute, and file tax returns for the ward or conservatee and the estate and exercise options and elections and claim exemptions for the ward or conservatee or the estate under the applicable tax laws.

(b) Notwithstanding Section 2502, the guardian or conservator may pay, contest, and compromise taxes, penalties, and assessments upon the property of the estate and income and other taxes payable or claimed to be payable by the ward or conservatee or the estate.

Comment. Section 2461 is new. There was no express provision in former law on this subject, although an "additional power" that could be granted by the court under former Section 1853 included the power to pay or compromise claims for taxes. Court authorization or approval is not required to exercise the powers under Section 2461. See Section 2450. As to when a power should or should not be exercised, see Section 2401(b) and Comment thereto.

Subdivision (b) is not subject to the limitation on compromises provided in Section 2502 (compromise in excess of \$25,000 requires court approval). Under subdivision (b), the guardian or conservator may without court authorization make a compromise of taxes, penalties, and assessments in excess of \$25,000 and pay to the taxing authorities the amount required to be paid under the compromise.

## CROSS-REFERENCES

## Definitions

Conservator, § 2400

Guardian, § 2400

Instructions from the court, § 2403

Property tax refund, action to recover, Rev. & Tax. Code § 5140

368/257

§ 2462. Representation in actions and proceedings.

2462. Subject to Section 2463, unless another person is appointed for that purpose, the guardian or conservator may:

(a) Institute and maintain actions and proceedings for the benefit of the ward or conservatee or the estate.

(b) Defend actions and proceedings against the ward or conservatee or the estate.

Comment. Section 2462 continues the substance of the last sentence of former Section 1501 but is phrased in language drawn from former Section 1853. The reference to Section 2463 has been added for clarity since Section 2463 requires court authorization before an action for

partition is commenced. Court authorization is not required to exercise the powers under Section 2462. See Section 2450.

Section 2462 states the general principle that the conservator is authorized to bring or defend actions on behalf of the conservatee. See also Code Civ. Proc. § 372 and In re Marriage of Higgason, 10 Cal.3d 476, 484, 516, P.2d 289, \_\_\_ 110 Cal. Rptr. 897, \_\_\_ (1973) (minor or conservatee must appear by representative). See also Section 1208 (duty of guardian or conservator to represent ward or conservatee in probate estate proceeding). As to when a power should or should not be exercised, see Section 2401(b) and Comment thereto. See also the Comment to Section 2451.

#### CROSS-REFERENCES

Abandonment of valueless property, § 2465  
 Acceptance of deed in lieu of foreclosure, § 2464  
 Advances by guardian or conservator, § 2466  
 Compromise of claims and actions, §§ 2500-2507  
 Contingent fee contracts, § 2644  
 Conveyance of property claimed to belong to ward or conservatee or other person, §§ 2520-2528  
 Conveyance or transfer of property generally, § 2111  
 Court approval of minor's contract for attorney's fees, § 3302  
 Definitions  
     Conservator, § 2400  
     Guardian, § 2400  
 Election of guardian or conservator of surviving spouse concerning administration of community property in probate, §§ 202, 650  
 Independent exercise of powers, § 2591  
 Instructions from the court, § 2403  
 Review on settlement of accounts, § 2625  
 Service on guardian or conservator in estate proceeding, § 1208  
 Submitting matters to  
     Arbitration, § 2406  
     Summary determination, § 2405  
 Waiver of process, notice, or order to show cause in probate estate proceeding, § 1208

406/460

#### § 2463. Partition actions

2463. (a) The guardian or conservator may commence and prosecute an action for partition of real or personal property, or both, if the court has first made an order authorizing the guardian or conservator to do so. The court may make such an order ex parte on a petition filed by the guardian or conservator.

(b) The guardian or conservator may consent and agree, without an action, to a partition of the property and to the part to be set off to the estate, and may execute deeds or conveyances to the owners of the remaining interests of the parts to which they may be respectively entitled, if the court has made an order under Article 5 (commencing with Section 2500) authorizing the guardian or conservator to do so.



(c) If the ward or conservatee, or the guardian or conservator as such, is made a defendant in a partition action, the guardian or conservator may defend the action without authorization of the court.

Comment. Section 2463 continues the substance of former Sections 1506, 1507, and 1508 except that a reference to Article 5 (compromise of claims and actions) has been substituted for the notice provision of former Section 1507.

CROSS-REFERENCES

Consent to appointment of referee in partition action, Code Civ. Proc. §§ 872.010(b), 873.040  
 Conveyance of property generally, § 2111  
 Definitions  
     Conservator, § 2400  
     Court, § 1418  
     Guardian, § 2400  
 Independent exercise of powers, § 2591  
 Instructions from the court, § 2403  
 Petition must be verified, § 1450  
 Request for special notice, § 2700

968/916

§ 2464. Acceptance of deed in lieu of foreclosure

2464. (a) If it is to the advantage of the estate to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust, the guardian or conservator may, after authorization by order of the court and upon such terms and conditions as may be imposed by the court, accept a deed conveying the property to the ward or conservatee.

(b) To obtain an order under this section, the guardian or conservator shall file a petition showing the advantage to the estate of accepting the deed. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2464 continues the substance of former Section 1515.5.

CROSS-REFERENCES

Appealable orders, § 2750  
 Clerk sets petition for hearing, § 1451  
 Definitions  
     Conservator, § 2400  
     Court, § 1418  
     Guardian, § 2400  
 Independent exercise of powers, § 2591  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468

§ 2465. Abandonment of valueless property

2465. The guardian or conservator may dispose of or abandon valueless property.

Comment. Section 2465 is based on a portion of former Section 1853 which authorized the court to give a conservator the power to dispose of valueless property. The power under Section 2465 may be exercised without authorization of the court. See Section 2450 and Comment thereto. As to when a power should or should not be exercised, see Section 2401(b) and Comment thereto. If the property has value, its disposition without court authorization is not permitted under Section 2465; court authorization is required for its sale or other disposition unless the disposition falls within one of the provisions--such as Section 2545--permitting disposition without court authorization.

## CROSS-REFERENCES

## Definitions

Conservator, § 2400

Guardian, § 2400

Instructions from the court, § 2403

Review on settlement of accounts, § 2625

406/459

§ 2466. Advances by guardian or conservator

2466. The guardian or conservator may advance personal funds for the benefit of the ward or conservatee or the estate and may reimburse such advances out of the income and principal of the estate first available. With court authorization or approval, interest on the amount advanced may be allowed at the legal rate payable on judgments.

Comment. Section 2466 continues the substance of the last sentence of former Section 1858 which applied to conservators and extends its provisions to guardians. The addition of "personal" funds of the guardian or conservator is clarifying. The provision allowing interest at the legal rate on judgments (seven percent) with court authorization or approval is new. Except for the allowance of interest, court authorization is not required under Section 2466. See Section 2450.

## CROSS-REFERENCES

## Definitions

Conservator, § 2400

Guardian, § 2400

Instructions from the court, § 2403

Review on settlement of accounts, § 2625

§ 2467. Care of estate pending delivery to personal representative

2467. (a) The guardian or conservator continues to have the duty of custody and conservation of the estate after the death of the ward or conservatee pending the delivery thereof to the personal representative of the ward's or conservatee's estate or other disposition according to law.

(b) The guardian or conservator has such powers as are granted to a guardian or conservator under this division as are necessary for the performance of the duty imposed by subdivision (a).

Comment. Subdivision (a) of Section 2467 is based on a portion of the first sentence of former Section 1755 (conservatorship) which is made generally applicable to both guardians and conservators. The phrase "or other disposition according to law" has been added. Subdivision (b) is new.

CROSS-REFERENCES

Definitions

Conservator, § 2400

Guardian, § 2400

Disposition of assets upon death of ward or conservatee, § 2631

Disposition of estate by public guardian, Welf. & Inst. Code § 8012

Review on settlement of accounts, § 2625

Termination of conservatorship on death of conservatee, § 1860

Termination of guardianship on death of ward, § 1600

404/395

Article 5. Compromise of Claims and Actions; Extension,  
Renewal, or Modification of Obligations

§ 2500. Authority to compromise claims and actions and to extend,  
renew, or modify obligations

2500. (a) Subject to subdivisions (b) and (c), the guardian or conservator may do any or all of the following:

(1) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the ward or conservatee, the guardian or conservator, or the estate.

(2) Extend, renew, or in any manner modify the terms of an obligation owing to or running in favor of the ward or conservatee or the estate.

(b) Unless this article or some other applicable statute requires court approval, the power set forth in subdivision (a) may be exercised

or performed by the guardian or conservator without court authorization, instruction, approval, or confirmation. Nothing in this subdivision precludes the guardian or conservator from seeking court authorization, instructions, approval, or confirmation pursuant to Section 2403.

(c) Upon petition of the ward or conservatee, a creditor, or any person interested in the estate, or upon the court's own motion, the court may limit the authority of the guardian or conservator under subdivision (a). Notice of the hearing on a petition under this subdivision shall be given for the period and in the manner prescribed in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. This article (Sections 2500-2508) is new. It replaces the somewhat brief treatment of the subject in former Section 1530a and supersedes that section and a portion of former Section 1501. Former Section 1530a authorized the guardian to do the acts described in subdivision (a) of Section 2500 with court approval. This new article takes a middle ground approach; the general requirement of court approval is not continued (subdivision (b) of Section 2500) but certain matters--including those specified in Sections 2501-2504--continue to require court approval. See also Code Civ. Proc. § 372 (court approval required for compromise or settlement of pending action or proceeding). Subdivisions (b) and (c) of Section 2500 are new and are comparable to Section 2450 (powers of estate management generally). Concerning those subdivisions, see the Comment to Section 2450. As to when a power should or should not be exercised, see Section 2401(b) and Comment thereto. See also Section 2101 and Comment to that section.

#### CROSS-REFERENCES

Abandonment of valueless property, § 2465  
 Acceptance of deed in lieu of foreclosure, § 2464  
 Clerk sets petition for hearing, § 1451  
 Conveyance of property claimed by another, §§ 2520-2528  
 Dedication or conveyance of real property or easement with or without consideration, § 2556  
 Definitions  
     Conservator, § 2400  
     Court, § 1418  
     Guardian, § 2400  
 Effect of court authorization or approval, § 2103  
 Independent exercise of powers, § 2591  
 Payment or delivery of property pursuant to compromise, §§ 3600-3601  
 Pending actions and proceedings, compromise or settlement, Code Civ. Proc. § 372  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Representation in actions or proceedings, §§ 2462, 2463  
 Request for special notice, § 2700  
 Review on settlement of accounts, § 2625  
 Statutes applicable to particular cases not affected, § 2507  
 Submitting matter to  
     Arbitration, § 2406  
     Summary determination, § 2405  
 Taxes, compromising, § 2461

§ 2501. Matters relating to real property

2501. (a) Except as provided in subdivision (b), court approval is required for a compromise, settlement, extension, renewal, or modification which affects:

- (1) Title to real property.
- (2) An interest in real property or a lien or encumbrance on real property.
- (3) An option to purchase real property or an interest in real property.

(b) Subdivision (a) does not apply to an extension, renewal, or modification of a lease of real property having an unexpired term of two years or less where, under the lease as extended, renewed, and modified, (1) the rental does not exceed seven hundred fifty dollars (\$750) a month and the term does not exceed two years or (2) regardless of the amount of the rental, the lease is from month to month.

Comment. Section 2501 is new. See the Comment to Section 2500. Section 2501 requires court approval because title to real property is involved and a court order approving the particular transaction may be required in order to satisfy requirements for title insurance. Subdivision (b) provides an exception to the requirement of court approval. The subdivision is consistent with Section 2555 (leases permitted without court authorization).

## CROSS-REFERENCES

Acceptance of deed in lieu of foreclosure, § 2464.  
 Appealable orders, § 2750  
 Conveyance of property claimed by another, §§ 2520-2528  
 Conveyance to complete contract, §§ 2520-2528  
 Conveyances by guardian or conservator, § 2111  
 Court authorized to approve transaction or matter, § 2505  
 Dedication or conveyance of real property or easement with or without consideration, § 2556  
 Independent exercise of powers, § 2591  
 Leases permitted without court order, § 2555  
 Partition of property, compromise, § 2463  
 Petition for approval, § 2506  
 Request for special notice, § 2700  
 Statutes applicable to particular cases not affected, § 2507

§ 2502. Compromise in excess of specified amounts

2502. Court approval is required for a compromise or settlement of a matter when the transaction requires the transfer or encumbrance of assets of the estate, or the creation of an unsecured liability of the estate, or both, in an amount or value in excess of twenty-five thousand dollars (\$25,000).

Comment. Section 2502 is new. See the Comment to Section 2500. Section 2502 permits compromises and settlements without court approval where the amount to be paid or charged against the estate is not more than \$25,000 unless court approval is otherwise required (as, for example, under Section 2501--matter affecting real property--or Section 372 of the Code of Civil Procedure--pending actions and proceedings). The section does not apply to a claim by the estate. Nor does the section apply to compromises of tax matters. See Section 2461.

## CROSS-REFERENCES

Appealable orders, § 2750  
 Conveyance or transfer by guardian or conservator, § 2111  
 Court authorized to approve transaction or matter, § 2505  
 Independent exercise of powers, § 2591  
 Petition for approval, § 2506  
 Request for special notice, § 2700  
 Statutes applicable to particular cases not affected, § 2507

404/674

§ 2503. Compromise of claim of ward or conservatee against guardian or conservator

2503. Court approval is required for:

(a) A compromise or settlement of a claim by the ward or conservatee against the guardian or conservator, whether or not the claim arises out of the administration of the estate.

(b) An extension, renewal, or modification of the terms of a debt or similar obligation of the guardian or conservator owing to or running in favor of the ward or conservatee or the estate.

Comment. Section 2503 is new. See the Comment to Section 2500. Section 2503 requires court approval because the section involves matters that place the guardian or conservator in a position where there may be a conflict of interest. See also Section 2101 and the Comment to that section. Cf. Civil Code § 2230 (transaction in which trustee has adverse interest to beneficiary).

CROSS-REFERENCES

Appealable orders, § 2750  
 Court authorized to approve transaction or matter, § 2505  
 Definitions  
   Conservator, § 2400  
   Guardian, § 2400  
 Petition for approval, § 2506  
 Request for special notice, § 2700  
 Statutes applicable to particular cases not affected, § 2507

404/972

§ 2504. Support, wrongful death, and personal injury claims

2504. Court approval is required for the compromise or settlement of any of the following:

(a) A claim for the support, maintenance, or education of (1) the ward or conservatee, or (2) a person whom the ward or conservatee is legally obligated to support, maintain, or educate, against any other person (including but not limited to the spouse or parent of the ward or the spouse, parent, or adult child of the conservatee).

(b) A claim of the ward or conservatee for wrongful death.

(c) A claim of the ward or conservatee for physical or nonphysical harm to the person.

Comment. Section 2504 is new. See the Comment to Section 2500. Section 2504 requires court approval because a claim of the type covered by the section often is a potential major asset of the estate.

CROSS-REFERENCES

Appealable orders, § 2750  
 Compromise of pending action or proceeding, Code Civ. Proc. § 372  
 Court authorized to approve transaction or matter, § 2505  
 Definitions  
   Conservator, § 2400  
   Guardian, § 2400  
 Independent exercise of powers, § 2591  
 Petition for approval, § 2506  
 Request for special notice, § 2700  
 Statutes applicable to particular cases not affected, § 2507

404/793

§ 2505. Court authorized to approve transaction or matter

2505. (a) Subject to subdivision (c), when the claim or matter is the subject of a pending action or proceeding, the court approval required by this article shall be obtained from the court in which the action or proceeding is pending.

(b) When the claim or matter is not the subject of a pending action or proceeding, the court approval required by this article shall be obtained from one of the following:

(1) The court in which the guardianship or conservatorship proceeding is pending.

(2) The superior court of the county where the ward or conservatee or guardian or conservator resides at the time the petition for approval is filed.

(3) The superior court of any county where a suit on the claim or matter properly could be brought.

(c) When the claim or matter is the subject of a pending action or proceeding that is not brought in a court of this state, court approval required by this article shall be obtained from either of the following:

(1) The court in which the action or proceeding is pending.

(2) The court in which the guardianship or conservatorship proceeding is pending.

Comment. Section 2505, which is new, is included to make clear to which court application for approval is to be made. Subdivision (c) applies to cases in the federal courts and in sister state courts or courts outside the United States.

#### CROSS-REFERENCES

Statutes applicable to particular cases not affected, § 2507

404/794

#### § 2506. Petition for approval of court in guardianship or conservatorship proceeding

2506. Where approval of the court in which the guardianship or conservatorship proceeding is pending is required under this article, the guardian or conservator shall file a petition with the court showing the advantage of the compromise, settlement, extension, renewal, or modification to the ward or conservatee and the estate. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2506 continues the substance of the third and fourth sentences of former Section 1530a. The requirement in former Section 1530a that the petition be verified is continued in Section 1450 and the requirement under the former section that the clerk set the petition for hearing is continued in Section 1451.

#### CROSS-REFERENCES

Proof of giving of notice, § 1468

Statutes applicable to particular cases not affected, § 2507



§ 2507. When another statute is controlling

2507. Notwithstanding Sections 2500 to 2506, inclusive:

(a) Whenever another statute requires, provides a procedure for, or dispenses with court approval of a compromise, settlement, extension, renewal, or modification, the provisions of that statute govern any case to which that statute applies.

(b) Whenever another statute provides that a compromise or settlement of an administrative proceeding is not valid unless approved in such proceeding, the approval shall be governed by that statute, and approval in the guardianship or conservatorship proceeding is not required.

Comment. Section 2507 is new. Subdivision (a) makes clear that this article has no effect on the provisions of Section 372 of the Code of Civil Procedure (compromise of pending action or proceeding) or another statute that may be applicable to a particular case. Where approval of a compromise or settlement of an administrative proceeding is required in such proceeding for the compromise or settlement to be valid (see, for example, Section 5001 of the Labor Code concerning compromise of a worker's compensation proceeding), subdivision (b) requires that approval of the compromise or settlement be obtained in the administrative proceeding rather than in the guardianship or conservatorship proceeding.

31/444

Article 6. Conveyance or Transfer of Property Claimed to Belong to Ward or Conservatee or Other Person§ 2520. Petition for order

2520. (a) The guardian or conservator or any claimant may file a petition requesting that the court make an order under this article in any of the following cases:

(1) Where the conservatee is bound by a contract in writing to convey real property or to transfer personal property, executed by the conservatee while competent or executed by the conservatee's predecessor in interest, and the contract is one that can be specifically enforced.

(2) Where the ward has succeeded to the interest of a person bound by a contract in writing to convey real property or to transfer personal property, and the contract is one that can be specifically enforced.

(3) Where the guardian or conservator or the ward or conservatee is in possession of, or holds title to, real or personal property, and the property or some interest therein is claimed to belong to another.

(4) Where the ward or conservatee has a claim to real or personal property title to or possession of which is held by another.

(b) The petition shall set forth facts upon which the claim is based.

Comment. Article 6 (commencing with Section 2520) supersedes former Sections 1537 and 1537.5. The article is drawn from Sections 850-853. Former Sections 1537, 1537.5, and 1852 made these sections applicable, with the exceptions noted below, to guardianship and conservatorship proceedings.

Paragraphs (1) and (2) of subdivision (a) of Section 8520 are comparable to the first sentence of former Section 1537. However, like Section 850, paragraphs (1) and (2) apply to specifically enforceable contracts to transfer personal property, thus expanding the scope of former Section 1537 which was limited to contracts to convey real property. Paragraph (3) is the same in substance as the first sentence of former Section 1537.5. Paragraph (4) is drawn from Section 851.5 and expands the application of former Section 1537.5 to include the situation where the ward or conservatee claims property held by another.

Subdivision (b) is the same in substance as a portion of the first sentence of Section 851 and the first sentence of Section 851.5.

CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Definitions

Court, § 1418

Conservator, § 2400

Guardian, § 2400

Petition must be verified, § 1451

Proof of giving of notice, § 1468

36/226

§ 2521. Notice of hearing

2521. (a) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(b) At least 30 days prior to the day of the hearing, the petitioner shall also cause notice of the hearing and a copy of the petition to be served in accordance with Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil Procedure on any person (other than the petitioner, guardian or conservator, or ward or conservatee) claiming an interest in, or having title to or possession of, the property.

Comment. Section 2521 is new and is drawn in part from Section 851.5 but is adapted for use in guardianship and conservatorship proceedings and does not include the posting and publication requirements of Section 851.5. Service on the guardian or conservator and the ward

or conservatee is not required under subdivision (b) because notice is required to those persons under subdivision (a). See Section 1460. Former Sections 1537, 1537.5, and 1852 made the notice and service requirements of Sections 851 and 851.5 applicable to guardianship and conservatorship proceedings of the type provided for in this article.

CROSS-REFERENCES

Proof of giving of notice, § 1468  
Request for special notice, § 2700

36/228

§ 2522. Continuance for preparation for hearing.

2522. Any interested person may request time for filing a response to the petition, for discovery proceedings, or for other preparation for the hearing, and the court shall grant a continuance for a reasonable time for any of such purposes.

Comment. Sections 2522, 2523, 2524, and 2525 are the same in substance as provisions of Section 851.5 (decedent's estate), but the provisions are expanded in Sections 2522, 2523, 2524, and 2525 to cover the case where an order is requested to authorize or require a conveyance or transfer to complete a contract. See Section 2520. Former Sections 1537.5 and 1852 made these provisions of Section 851.5 applicable to guardianship and conservatorship proceedings.

36/230

§ 2523. Filing of notice of lis pendens

2523. If the matter concerns real property, notice of the pendency of the proceeding may be filed pursuant to Section 409 of the Code of Civil Procedure.

Comment. See the Comment to Section 2522.

36/231

§ 2524. Denial of petition if objection based on venue made

2524. Any person having or claiming title to or an interest in the property which is the subject of the petition may, at or prior to the hearing, object to the hearing of the petition if the petition is filed in a court which is not the proper court under any other provision of law for the trial of a civil action seeking the same relief and, if such objection be established, the court shall not grant the petition.

Comment. See the Comment to Section 2522.

§ 2525. Abatement of petition if civil action pending

2525. If a civil action is pending with respect to the subject matter of a petition filed pursuant to this article and jurisdiction has been obtained in the court where the civil action is pending, the court shall abate the petition until the conclusion of the civil action.

Comment. See the Comment to Section 2522. See also Richer v. Superior Court, 63 Cal. App.3d 748, 756, 134 Cal. Rptr. 52, \_\_\_ (1976) ("[T]he pendency of a civil action in respect to the subject matter of a petition filed [under Section 851.5] does not automatically abate the petition, but places the power to abate in the probate court.")

§ 2526. Denial of petition if matter should be determined by civil action

2526. The court shall not grant a petition under this article if the court determines that the matter should be determined by a civil action.

Comment. Section 2526 is the same in substance as a provision of Section 852 (decendent's estate) but expands this provision to include a petition requesting an order authorizing or requiring a conveyance or transfer to complete a contract. Former Sections 1537, 1537.5, and 1852 made this provision of Section 852 applicable to guardianship and conservatorship proceedings.

§ 2527. Order

2527. Except as provided in Sections 2524, 2525, and 2526, if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the guardian or conservator or other person having title to or possession of the property to execute a conveyance or transfer to the person entitled thereto or granting other appropriate relief.

Comment. Section 2527 is the same in substance as a portion of the first sentence of Section 852. Former Sections 1537, 1537.5, and 1852 made this provision of Section 852 applicable to guardianship and conservatorship proceedings. See Comment to Section 2520.

## CROSS-REFERENCES

Appealable orders, § 2750

§ 2528. Execution of conveyance or transfer; effect of order

2528. (a) The guardian or conservator or other person ordered to execute a conveyance or transfer under Section 2527 shall execute the conveyance or transfer according to the terms of the order, and the court may enforce its execution by process.

(b) After entry of an order that the guardian or conservator or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

Comment. Section 2528 is the same in substance as a portion of the first sentence and the second sentence of Section 853. Former Sections 1537, 1537.5, and 1852 made Section 853 applicable to guardianship and conservatorship proceedings. See Comment to Section 2520. The provision of Section 853 that the order is prima facie evidence of the correctness of the proceedings and of the fiduciary's authority to act pursuant to the order has been omitted from Section 2527 as unnecessary since that is the effect of orders generally in guardianship and conservatorship proceedings. See *Estate of Kay*, 30 Cal.2d 215, 220, 181 P.2d 1, \_\_\_ (1947); 7 B. Witkin, Summary of California Law Wills and Probate § 234, at 5742 (8th ed. 1974); Evid. Code §§ 639, 666.

CROSS-REFERENCES

- Conveyance or transfer by guardian or conservator to refer to order, § 2111
- Effect of conveyance or transfer, § 2111
- Recording copy of order, § 2111

Article 7. Sales§ 2540. Extent of court supervision

2540. Except as otherwise provided in Sections 2544 and 2545, sales of real or personal property of the estate under this article are subject to authorization, confirmation, or direction of the court, as provided in this article.

Comment. Section 2540 continues the substance of a portion of the last clause of former Section 1530.

## CROSS-REFERENCES

Appealable orders, § 2750  
 Definition, court, § 1418  
 Effect of court authorization or approval, § 2103  
 Exchanges of property, § 2557  
 Independent exercise of powers  
   Credit sales, § 2591(1)  
   Options, § 2591(c)  
   Personal property generally, § 2591(d)  
   Real property generally, § 2591(d)  
 Notice to Director of Mental Health or Director of Developmental Services, § 1461  
 Request for special notice, § 2700  
 Sale by temporary conservator, § 2253

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§ 2541. Purposes for which sale may be made

2541. The guardian or conservator may sell real or personal property of the estate in any of the following cases:

(a) The income of the estate is insufficient for the comfortable and suitable support, maintenance, and education of the ward or conservatee (including care, treatment, and support of the ward or conservatee if a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) or of those legally entitled to support, maintenance, or education from the ward or conservatee.

(b) The personal property of the estate and the income from real property of the estate is insufficient to pay the debts referred to in Sections 2430 and 2431.

(c) It is for the advantage, benefit, and best interest of (1) the ward or conservatee, (2) the estate, or (3) the ward or conservatee and those legally entitled to support, maintenance, or education from the ward or conservatee.

Comment. Section 2541 continues the substance of former Section 1530 insofar as that section related to the cases where sale of real or personal property was authorized with the following revisions:

(1) A reference to the education of the ward or conservatee has been added.

(2) A reference to those legally entitled to support has been substituted for the former reference to family members the ward is legally obligated to support.

(3) A reference to the ward or conservatee being a patient in a state hospital under the jurisdiction of the State Department of Health or State Department of Developmental Services has been substituted for the former reference to the ward being "confined in a state hospital for the insane."

(4) A reference has been added to Sections 2430 (debts and expenses generally) and 2431 (wage claims) in subdivision (b).

#### CROSS-REFERENCES

Bond increase when real property sold, § 2330

Borrowing money and giving security to provide support, § 2551

Definitions

Conservator, § 2400

Guardian, § 2400

Disposition of proceeds of sale, § 2547

Review on settlement of accounts, § 2625

Sale by temporary conservator, § 2253

Sale or encumbrance of property when income is insufficient for support, § 2420

404/383

#### § 2542. Terms of sales

2542. (a) All sales shall be for cash or for part cash and part deferred payments. In no case shall credit exceed 20 years from the date of sale. Except as otherwise provided in Sections 2544 and 2545, the terms of sale are subject to the approval of the court.

(b) If real property is sold for part deferred payments:

(1) The guardian or conservator shall demand and receive from the purchaser a note and a mortgage or deed of trust on the property sold with such additional security as the court determines is necessary and

sufficient to secure the prompt payment of the amounts so deferred and the interest thereon.

(2) The mortgage or deed of trust shall be subject only to encumbrances existing at date of sale and such other encumbrances as the court may approve.

(c) If real or personal property of the estate sold for part deferred payments consists of an undivided interest, a joint tenancy interest, or any other interest less than the entire ownership, and the owner or owners of the remaining interests in the property join in the sale, the note and deed of trust or mortgage may be made to the ward or conservatee and the other owner or owners.

Comment. Section 2542 continues the substance of former Section 1532 with the addition of the reference to Sections 2544 and 2545 (sales not requiring court authorization) and the omission of the provision that required that the interest of the ward in the note and deed of trust or mortgage be in the same tenancy and in the same proportion as the interest of the ward in the property prior to sale. This provision has been omitted because it is often the case that cotenants have differing cost bases or other considerations which make it advantageous for one to sell for cash and another on deferred terms. In reviewing the transaction when it is submitted to the court for approval, the court will examine the transaction to ensure that it is fair to the ward or conservatee.

#### CROSS-REFERENCES

Bond increase when real property sold or encumbered, § 2330

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

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#### § 2543. Manner of sale

2543. (a) Sales may be at public auction or private sale, as the guardian or conservator deems best.

(b) Subject to Section 1469, unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or conservators, giving notice of sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of



property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by administrators, other than the Independent Administration of Estates Act, Article 2 (commencing with Section 591) of Chapter 8 of Division 3.

(c) The clerk of the court shall cause notice to be posted at the courthouse of the county where the proceedings are pending only in the following cases:

(1) Where posting of notice of hearing is required on a petition for the confirmation of a sale of real or personal property of the estate.

(2) Where posting of notice of a sale governed by Section 772 (sales of personal property) is required or authorized.

(3) In any case where posting of notice is ordered by the court.

Comment. Section 2543 continues the substance of former Section 1534 except for (1) the exclusion of the Independent Administration of Estates Act, (2) the addition of the reference to Section 1469 (Sections 1200 and 1201 not applicable to proceedings under this section), and (3) the addition of subdivision (c). The provisions of the Independent Administration of Estates Act, which became operative on July 1, 1975, are not appropriate for incorporation by reference.

Subdivision (b) of Section 2543 does not apply to sales under Section 2544 (listed stocks, bonds, and other securities and U.S. obligations) or 2545 (certain tangible personal property).

Subdivision (c) of Section 2543 states the rule as to when posting of notice at the courthouse is required. This rule prevails over the provisions adopted by reference in subdivision (b). Subdivision (c) is necessary because the general posting requirement has not been continued. See Section 1460(c).

#### CROSS-REFERENCES

Additional bond on real property transactions, § 2330

Conveyances or transfers by guardians or conservators, § 2111

Definitions

Conservator, § 2400

Guardian, § 2400

Notice to Director of Mental Health or Director of Developmental Services, § 1461

Request for special notice, § 2700

Sales by administrators, §§ 750-814

15648

§ 2544. Listed stocks, bonds, and securities; United States obligations

2544. (a) Except as specifically limited by order of the court, subject to Section 2541, the guardian or conservator may sell any of the

following without authorization, confirmation, or direction of the court:

(1) Direct obligations of the United States.

(2) Stocks, bonds, and other securities which are listed and subject to purchase and sale on an established stock or bond exchange in the United States.

(b) Sales under paragraph (2) of subdivision (a) shall be made on the established stock or bond exchange.

(c) Section 2543 does not apply to sales under this section.

Comment. Section 2544 is new and permits sales of United States government obligations and listed stocks, bonds, and other securities without court authorization, confirmation, or direction. As to when a power should or should not be exercised, see Section 2401(b) and Comment thereto. A sale under Section 2544 is subject to review on settlement of the accounts of the guardian or conservator. See Section 2625.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Effect of court authorization or approval, § 2103

Investment in government obligations, listed stocks, and other securities, § 2574

15/775

#### § 2545. Sale or other disposition of tangible personal property

2545. (a) Subject to subdivisions (b) and (c) and to Section 2541, the guardian or conservator may sell or exchange tangible personal property of the estate without authorization, confirmation, or direction of the court.

(b) The aggregate of the sales or exchanges made during any calendar year under this section may not exceed five thousand dollars (\$5,000).

(c) A sale or exchange of personal effects or of furniture or furnishings used for personal, family, or household purposes may be made under this section only if:

(1) In the case of a guardianship, the ward is under the age of 14 or, if 14 years of age or over, consents to the sale or exchange.

(2) In the case of a conservatorship, the conservatee either (i) consents to the sale or exchange or (ii) the conservatee does not have capacity to give such consent because giving such consent is beyond the capacity of the conservatee as determined in an order made pursuant to Section 1835.

(d) Subdivision (b) of Section 2543 does not apply to sales under this section. Failure of the guardian or conservator to observe the limitations of subdivision (b) or (c) does not invalidate the title of, or impose any liability upon, a third person who acts in good faith and without actual notice of the lack of authority of the guardian or conservator.

Comment. Section 2545 is new. There was no comparable provision of this type under former law. Section 2545 gives the guardian or conservator broader authority than exists in the case of a probate estate; Section 2545 applies whether or not the property is perishable or is property which may be disposed of without court order in a probate estate (see Section 770). The reference in subdivision (c) to furniture and furnishings does not include property in commercial use. Hence, consent is not required to sell furniture or furnishings in commercial use. The first sentence of subdivision (d) permits sale in such manner as the guardian or conservator considers best under the circumstances and the second sentence protects innocent third persons if the guardian or conservator acts in excess of the authority granted by the section. Sales of tangible personal property that do not fall within Section 2545 are made under the general provisions of this article (Sections 2541-2543). Exchanges of tangible personal property that do not fall within Section 2545 are made under Section 2557. Sales made under Section 2545 are subject to review on settlement of the accounts of the guardian or conservator. See Section 2625.

CROSS-REFERENCES

Definitions

Conservator, § 2400

Guardian, § 2400

Effect of court authorization or approval, § 2103

Sale by temporary conservator, § 2253

15/776

§ 2546. Mines and mining claims

2546. Agreements for the sale of, or for giving options to purchase, mining claims or real property worked as mines may be executed by the guardian or conservator only after authorization by order of the court. The proceedings to obtain such an order and, except as provided

in Section 1469, the proceedings thereunder shall conform, as nearly as may be, to the provisions of this code concerning similar proceedings by administrators.

Comment. Section 2546 is the same in substance as a portion of former Section 1538 except for the addition of the reference to Section 1469 (Sections 1200 and 1201 not applicable to proceedings under this section).

CROSS-REFERENCES

Appealable orders, § 2750

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Notice to Director of Mental Health or Director of Developmental Services, § 1461

Request for special notice, § 2700

15/777

§ 2547. Disposition of proceeds of sale

2547. The guardian or conservator shall apply the proceeds of the sale to the purposes for which it was made, as far as necessary, and the residue, if any, shall be managed as the other assets of the estate.

Comment. Section 2547 supersedes former Section 1536.

CROSS-REFERENCES

Additional bond on real property transactions, § 2330

Definitions

Conservator, § 2400

Guardian, § 2400

Purposes for which sale may be made, § 2541

Review on settlement of accounts, § 2625

15/778

§ 2548. Limitation of action to recover property sold

2548. No action for the recovery of any property sold by a guardian or conservator may be maintained by the ward or conservatee or by any person claiming under the ward or conservatee unless commenced within the later of the following times:

(a) Three years after the termination of the guardianship or conservatorship.

(b) When a legal disability to sue exists by reason of minority or otherwise at the time the cause of action accrues, within three years after the removal thereof.

Comment. Section 2548 continues the substance of former Section 1539.

CROSS-REFERENCES

Definitions

- Conservator, § 2400
- Guardian, § 2400
- Effect of court authorization or approval, § 2103
- Suit against sureties on bond, limitation period, § 2333

15/779

Article 8. Notes, Mortgages, Leases,  
Conveyances, and Exchanges

§ 2550. Court supervision

2550. Except as otherwise provided by statute, a guardian or conservator may borrow money, give security, lease, convey, or exchange property of the estate or to engage in any other transaction under this article only after authorization by order of the court. Such an order may be obtained in the manner provided in this article.

Comment. Section 2550 continues the substance of a portion of the last clause of former Section 1530. The court order authorizing the transaction may be obtained under this article or under some other applicable provision such as, for example, Section 2403 (authorization and instructions from court). For a provision permitting exchanges of certain tangible personal property without authorization of the court, see Section 2545.

CROSS-REFERENCES

- Appealable orders, § 2750
- Bond increase when real property encumbered, § 2330
- Definitions
  - Conservator, § 2400
  - Court, § 1418
  - Guardian, § 2400
- Effect of court authorization or approval, § 2103
- Independent exercise of powers, § 2591
- Request for special notice, § 2700
- Sale by temporary conservator, § 2253

§ 2551. Borrowing money and giving security therefor

2551. (a) In any case described in Section 2541 or Section 2552, the guardian or conservator, after authorization by order of the court, may borrow money upon a note or notes, either unsecured, or to be secured by a security interest or other lien on the personal property of the estate, or any part thereof, or to be secured by a mortgage or deed of trust on the real property of the estate, or any part thereof. Subject to Section 1469, the proceedings to obtain such an order shall conform, as nearly as may be, to the provisions of this code concerning similar proceedings by administrators.

(b) Upon any foreclosure or sale under a security interest, lien, mortgage, or deed of trust described in subdivision (a), if the proceeds of the sale of the encumbered property are insufficient to pay the note or notes, the security interest, lien, mortgage, or deed of trust, and the costs or expenses of sale, no judgment or claim for any deficiency shall be had or allowed against the ward or conservatee or the estate.

Comment. The first sentence of subdivision (a) of Section 2551 continues the substance of the first portion of former Section 1533, but a reference to Sections 2541 and 2552 has been substituted for "will benefit his ward" which appeared in former Section 1533 and the types of security that may be given have been made more specific. The second sentence of subdivision (a) continues the substance of a portion of former Section 1538 with the addition of the reference to Section 1469 (Sections 1200 and 1201 not applicable to proceedings under this section). Subdivision (b) continues the last sentence of former Section 1533.

## CROSS-REFERENCES

Appealable orders, § 2750  
 Bond increase when real property encumbered, § 2330  
 Definitions  
   Conservator, § 2400  
   Court, § 1418  
   Guardian, § 2400  
 Independent exercise of powers, § 2591  
 Request for special notice, § 2700

§ 2552. Refinancing or improving or repairing property

2552. (a) The guardian or conservator may give a security interest or other lien upon the personal property of the estate, or any part

thereof, or a mortgage or deed of trust upon the real property of the estate, or any part thereof, after authorization by order of the court as provided in Section 2551, for any of the following purposes:

(1) To pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on property of the estate.

(2) To erect, alter, or repair buildings or other structures upon, or otherwise to improve, the property proposed to be mortgaged or subjected to a deed of trust, or some part thereof.

(b) If property of the estate consists of an undivided interest in real or personal property, or any other interest therein less than the entire ownership, and it appears to be to the advantage of the estate to borrow money to improve, utilize, operate, or preserve the property jointly with the owner or owners of the other interests therein, or to pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on all of the property, the guardian or conservator, after authorization by order of the court as provided in Section 2551, may join with the owner or owners of such other interests in the borrowing of money and the execution of a joint and several note or notes and such security interest, lien, mortgage, or deed of trust as may be required to secure the payment of the note or notes. The note or notes may be for such sum as is required for the purpose.

Comment. Section 2552 continues a portion of the substance of former Section 1533.

CROSS-REFERENCES

Appealable orders, § 2750  
 Bond increase when real property encumbered, § 2330  
 Definitions  
     Conservator, § 2400  
     Court, § 1418  
     Guardian, § 2400  
 Independent exercise of powers, § 2591  
 Instructions from the court, § 2403  
 Request for special notice, § 2700

15/783

§ 2553. Order authorizing lease required

2553. Except as provided in Section 2555, leases may be executed by the guardian or conservator with respect to the property of the

estate only after authorization by order of the court. Subject to Section 1469, the proceedings to obtain such an order shall conform, as nearly as may be, to the provisions of this code concerning similar proceedings by administrators.

Comment. Section 2553 continues the substance of a portion of former Section 1538 with the addition of the reference to Section 1469 (Sections 1200 and 1201 not applicable to proceedings under this section).

CROSS-REFERENCES

Appealable orders, § 2750  
 Definitions  
     Conservator, § 2400  
     Court, § 1418  
     Guardian, § 2400  
 Independent exercise of powers, § 2591  
 Lease by temporary conservator, § 2253  
 Request for special notice, § 2700

15/784

§ 2554. Terms and conditions of leases

2554. (a) An order authorizing the execution of a lease shall set forth the minimum rental or royalty and the period of the lease, which shall be for such time as the court may authorize.

(b) The order may authorize other terms and conditions, including, with respect to a lease for the purpose of production of minerals, oil, gas, or other hydrocarbon substances, any of the following:

(1) A provision for the payment of rental and royalty to a depository.

(2) A provision for the appointment of a common agent to represent the interests of all the lessors.

(3) A provision for the payment of a compensatory royalty in lieu of rental and in lieu of drilling and producing operations on the land covered by the lease.

(4) A provision empowering the lessee to enter into any agreement authorized by Section 3301 of the Public Resources Code with respect to the land covered by the lease.

(5) A provision for pooling or unitization by the lessee.

(c) If the lease covers additional property owned by other persons or an undivided or other interest of the ward or conservatee less than



the entire ownership in the property, the lease may provide for division of rental and royalty in the proportion that the land or interest of each owner bears to the total area of the land or total interests covered by such lease.

(d) A lease for the purpose of production of minerals, oil, gas, or other hydrocarbon substances may be for a fixed period and any of the following:

(1) So long thereafter as minerals, oil, gas, or other hydrocarbon substances are produced in paying quantities from the property leased or mining or drilling operations are conducted thereon.

(2) If the lease provides for the payment of a compensatory royalty, so long thereafter as such compensatory royalty is paid.

(3) If the land covered by the lease is included in an agreement authorized by Section 3301 of the Public Resources Code, so long thereafter as oil, gas, or other hydrocarbon substances are produced in paying quantities from any of the lands included in any such agreement or drilling operations are conducted thereon.

Comment. Section 2554 continues the substance of former Section 1538.5.

#### CROSS-REFERENCES

Definition, court, § 1418

15/785

#### § 2555. Leases permitted without court authorization

2555. The guardian or conservator may lease real property without authorization of the court when (a) the rental does not exceed seven hundred fifty dollars (\$750) a month and the term does not exceed two years or (b) regardless of the amount of the rental, when the lease is from month to month.

Comment. Section 2555 continues the substance of former Section 1538.6 except that the term has been increased from one year to two years and the amount from \$250 to \$750 a month.

CROSS-REFERENCES

Definitions

Conservator, § 2400

Guardian, § 2400

Effect of court authorization or approval, § 2103

Instructions from the court, § 2403

Modification, extension, or renewal of leases, § 2501

Review on settlement of accounts, § 2625

15/787

§ 2556. Dedication or conveyance of real property or easement with or without consideration

2556. (a) If it is for the advantage, benefit, and best interests of the estate and those interested therein, the guardian or conservator, after authorization by order of the court, may do any of the following either with or without consideration:

(1) Dedicate or convey any real property of the estate or any interest therein to any public entity (including but not limited to the United States or any agency or instrumentality thereof) for any purpose.

(2) Dedicate or convey an easement over any real property of the estate to any person for any purpose.

(3) Convey, release, or relinquish to any public entity any access rights to any street, highway, or freeway from any real property of the estate.

(4) Consent as a lienholder to a dedication, conveyance, release, or relinquishment under paragraph (1), (2), or (3) by the owner of property subject to the lien.

(b) To obtain an order under this section, the guardian or conservator or any other interested person shall file a petition with the court. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2556 continues the substance of former Section 1515 with the addition of paragraph (4) of subdivision (a).

CROSS-REFERENCES

Appealable orders, § 2750  
 Clerk sets petition for hearing, § 1451  
 Community and homestead property, court authorization of transaction,  
 § 3101  
 Definitions  
     Conservator, § 2400  
     Court, § 1418  
     Guardian, § 2400  
 Independent exercise of powers, § 2591  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700

31554

§ 2557. Exchange of property

2557. (a) Whenever it is for the advantage, benefit, and best interests of the ward or conservatee and those legally entitled to support, maintenance, or education from the ward or conservatee, the guardian or conservator, after authorization by order of the court, may exchange any property of the estate for other property upon such terms and conditions as the court may prescribe. Such conditions may include the payment or receipt of part cash by the guardian or conservator.

(b) To obtain an order under this section, the guardian or conservator or any interested person may file a petition with the court. Except as provided in subdivision (c), notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) If the petition is for authorization to exchange stocks, bonds, or other securities as defined in Section 771 for different stocks, bonds, or other securities, the court, upon a showing of good cause, may order that the notice be dispensed with.

(d) After authorization by order of the court, the guardian or conservator may execute the conveyance or transfer to the person with whom the exchange is made to effectuate the exchange.

Comment. Section 2557 continues the substance of former Section 1540 except that the reference to those equally entitled to support, maintenance, or education from the ward or conservatee is substituted for the former reference to members of the ward's family the ward is legally bound to support and maintain. Instead of incorporating by reference the provisions of this code governing exchanges of property by

administrators as did former Section 1540, comparable provisions drawn from Section 360 are included in Section 2557. Notice may be dispensed with if an order is obtained under subdivision (c). In the case of any exchange, the court may extend or shorten the time for notice pursuant to Section 1462.

CROSS-REFERENCES

Appealable orders, § 2750  
Clerk sets petition for hearing, § 1451  
Conveyance or transfer by guardian or conservator, § 2111  
Definitions  
  Conservator, § 2400  
  Court, § 1418  
  Guardian, § 2400  
  Interested person, § 1424  
Exchange of tangible personal property, § 2545  
Independent exercise of powers, § 2591  
Petition must be verified, § 1450  
Proof of giving of notice, § 1468  
Request for special notice, § 2700

15/792

Article 9. Investments and Purchase of Property

§ 2570. Authority to invest generally; petition; hearing; order

2570. (a) The guardian or conservator, after authorization by order of the court, may invest the proceeds of sales and any other money of the estate as provided in the order.

(b) To obtain an order of the court authorizing a transaction under this section, the guardian or conservator, the ward or conservatee, or any other interested person may file a petition with the court.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. The court may order the notice be dispensed with.

(d) The court shall hear the petition and any objection thereto and may require such additional proof of the fairness and feasibility of the transaction as the court determines is necessary.

(e) If the required showing is made, the court may make an order authorizing the transaction and may prescribe in the order the terms and conditions upon which the transaction shall be made.

Comment. Subdivision (a) of Section 2570 provides general authority for the investment of surplus funds of the estate in real property

or tangible or intangible personal property. The subdivision supersedes the portion of former Section 1557 which authorized investments in real property or in any other manner most to the interest of the ward. An investment made under Section 2570 requires court authorization. Other provisions in this article and outside this article permit specific types of investments without the need for court authorization. For example, see Section 2453 (bank and savings accounts) and Section 2574 (United States and State of California obligations and listed stocks, bonds, and other securities).

Subdivision (b) is drawn from the first portion of former Section 1557 and expands the persons who were authorized to file a petition under former Section 1557. Subdivision (c) supersedes a portion of former Sections 1557 and 1557.1 and has the effect of requiring 15 rather than five days' notice of the hearing unless the court shortens the time of notice or dispenses with the notice. See Section 1462 (shortening time of notice). Subdivision (d) is drawn from former Section 1557.1 and is made generally applicable. Subdivision (e) is drawn from the last sentence of former Section 1557.1 and is made generally applicable.

#### CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, § 1470

Clerk sets petition for hearing, § 1451

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Interested person, § 1424

Effect of court authorization of approval, § 2103

Independent exercise of powers, § 2591

Petition must be verified, § 1450

Proof of giving of notice, § 1468

36/242

#### § 2571. Purchase of home for ward or conservatee or dependents

2571. When authorized by order of the court under Section 2570, the guardian or conservator may purchase:

(a) Real property in this state as a home for the ward or conservatee if such purchase is for the advantage, benefit, and best interest of the ward or conservatee.

(b) Real property as a home for those legally entitled to support and maintenance from the ward or conservatee if such purchase is for the advantage, benefit, and best interest of the ward or conservatee and of those legally entitled to support and maintenance from the ward or conservatee.

Comment. Section 2571 continues what appears to be the intended purpose of the authority granted by former Section 1557.1 insofar as that section authorized purchase of real property other than for investment purposes. A purchase under this section requires court authorization under Section 2570.

CROSS-REFERENCES

Definitions

- Conservator, § 2400
- Court, § 1413
- Guardian, § 2400
- Independent exercise of powers, § 2591
- Order authorizing purchase of real property, § 2572
- Purchase of home under Uniform Veterans' Guardianship Act, § 2913
- Request for special notice, § 2700

15/793

§ 2572. Order authorizing purchase of real property

2572. An order authorizing the guardian or conservator to purchase real property may authorize the guardian or conservator to join with the spouse of the ward or conservatee or with any other person or persons in the purchase of the real property, or an interest, equity, or estate therein, in severalty, in common, in community, or in joint tenancy, for cash or upon a credit or for part cash and part credit. When the court authorizes the purchase of real property, the court may order the guardian or conservator to execute all necessary instruments and commitments to complete the transaction.

Comment. Section 2572 continues the substance of a portion of former Section 1557.1.

CROSS-REFERENCES

Definitions

- Conservator, § 2400
- Court, § 1418
- Guardian, § 2400
- Independent exercise of powers, § 2591

15/794

§ 2573. Order authorizing investment in governmental bonds

2573. An order authorizing investment in bonds issued by any state of the United States or of any city, county, city and county, political subdivision, public corporation, district, or special district of any

state of the United States may authorize the guardian or conservator to select from among bonds issued by any such issuer, without specifying any particular issuer or issue of bonds, if the type of issuer is designated in general terms and the order specifies as to such bonds a minimum quality rating as shown in a recognized investment service, a minimum interest coupon rate, a minimum yield to maturity, and the date of maturity within a five-year range.

Comment. Section 2573 continues the substance of a portion of former Section 1557.

CROSS-REFERENCES

Definitions

Conservator, § 2400  
Guardian, § 2400

15/795

§ 2574. United States and State of California obligations; listed stocks, bonds, and other securities

2574. (a) Subject to subdivision (b), the guardian or conservator, without authorization of the court, may invest funds of the estate pursuant to this section in:

(1) Direct obligations of the United States, or of this state, having a maturity at the time of acquisition of not more than five years.

(2) United States Treasury bonds redeemable at par value on the death of the holder for payment of federal estate taxes, regardless of maturity date.

(3) Stocks, bonds, and other securities listed on an established stock or bond exchange in the United States which are purchased on such exchange.

(b) In making and retaining investments made under this section, the guardian or conservator shall conform to Section 2261 of the Civil Code and shall take into consideration the circumstances of the estate, indicated cash needs, and, if reasonably ascertainable, the date of the prospective termination of the guardianship or conservatorship.

(c) Nothing in this section limits the authority of the guardian or conservator to seek court authorization for any investment, or to make other investments with court authorization, as provided in this part.

Comment. Section 2574 is new. There were no comparable provisions under former law. Subdivision (a) eliminates the need for applying in advance for a court order in case of the investments or reinvestments described. Subdivision (b) refers to Section 2261 of the Civil Code (trustee's standard of care in investment of funds) but also specifically requires consideration of the circumstances of the estate (which may vary according to the circumstances of the particular guardianship or conservatorship involved) and consideration of the time when the protective proceedings will or will be likely to terminate. Section 2574 is consistent with Section 2544 which permits sale of United States government obligations and listed stocks, bonds, and other securities without authorization of the court but departs from comparable provisions relating to probate estates which require a court order for the sale of securities (Section 771). An investment in a government obligation, stock, bond, or security that is not one described in Section 2574 may be made only if court authorization is obtained under Section 2570. An investment made under Section 2574 is subject to court review on settlement of the accounts of the guardian or conservator. See Section 2625.

CROSS-REFERENCES

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Effect of court authorization or approval, § 2103

15/799

Article 10. Substituted Judgment

§ 2580. Petition for approval of proposed action

2580. (a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(1) Benefiting the conservatee or the estate.

(2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.

(3) Providing gifts for such purposes, and to such charities, relatives, friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:



(1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life.

(6) Exercising options of the conservatee to purchase or exchange securities or other property.

(7) Exercise the rights of the conservatee to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(i) Life insurance policies, plans, or benefits.

(ii) Annuity policies, plans, or benefits.

(iii) Mutual fund and other dividend investment plans.

(iv) Retirement, profit sharing, and employee welfare plans and benefits.

(8) Exercising the right of the conservatee to elect to take under or against a will.

(9) Exercising the right of the conservatee to renounce or disclaim any interest acquired by testate or intestate succession or by inter vivos transfer, including exercising the right of the conservatee to surrender the right to revoke a revocable trust.

(10) Exercising the right of the conservatee to revoke a revocable trust.

Comment. This article (commencing with Section 2580) is new and codifies the court-recognized doctrine of substituted judgment. See Estate of Christiansen, 248 Cal. App.2d 398, 56 Cal. Rptr. 505 (1967); Conservatorship of Wemyss, 20 Cal. App.3d 877, 98 Cal. Rptr. 85 (1971).

Section 2580 is drawn in part from a portion of Mass. Ann. Laws, Ch. 201, § 38 (Michie/Law. Co-op 1977 Supp.), as amended by 1976 Mass. Acts, Ch. 515, effective July 1, 1978. See also 20 Pa. Cons. Stat. Ann. § 5536(b) (Purdon 1977-78 Supp.); Uniform Probate Code § 5-408(3). See also Harris v. Harris, 57 Cal.2d 367, 369 P.2d 481, 19 Cal. Rptr. 793 (1962); Guardianship of Hall, 31 Cal.2d 158, 187 P.2d 396 (1947) (gifts of surplus income as donations for religious or charitable purposes).

Subdivision (a) of Section 2580 indicates the three general types of situations where substituted judgment may be exercised:

(1) Where the action proposed to be taken by the conservator is for the benefit of the conservatee or the estate.

(2) Where the proposed action is designed to minimize taxes (such as federal, state, or local income taxes or estate taxes) or expenses of administration during the lifetime and upon the death of the conservatee.

(3) Where there is a person to whom the conservatee probably would have made gifts or provided support from excess funds or assets or where there are charities or other objects of bounty which the conservatee had shown an inclination to support.

The nonexclusive listing in subdivision (b) of the types of actions which may be proposed in the petition is drawn in part from the Massachusetts and Pennsylvania statutes and from the Uniform Probate Code provision, supra. Under former law, the extent to which these types of actions could be authorized or required to be taken by the conservator, whether court authorization was required, and the relevant considerations in determining whether the action should be taken, were matters that were not covered by statute and the law was uncertain.

In the case of gifts of income from the conservatorship estate, this article supplements Section 2423 which authorizes payments of surplus income to relatives within the second degree of the conservatee under certain circumstances. Gifts of surplus income under this article are not limited to such relatives. See also Section 2557 (exchange of securities).

#### CROSS-REFERENCES

Appointment of legal counsel for conservatee, § 1470

Definitions

Conservator, § 2400

Court, § 1418

Interested person, § 1424

Effect of court authorization or approval, § 2103

Election of guardian or conservator of surviving spouse concerning administration of community property in probate, §§ 202, 650

Petition must be verified, § 1450

Request for special notice, § 2700

Note. The staff proposes to amend Sections 202 and 650 of the Probate Code to make clear that the guardian or conservator may elect on behalf of a surviving spouse to have community property included in or excluded from administration of the estate of the deceased spouse without authorization of the court in which the guardianship or conservatorship proceeding is pending. The proposed amendment will be contained in the conforming revisions.

§ 2581. Notice of hearing of petition

2581. Notice of the hearing of the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 to all of the following:

(a) The persons required to be given notice under Chapter 3 (commencing with Section 1460) of Part 1.

(b) The persons required to be named in a petition for the appointment of a conservator.

(c) So far as is known to the petitioner, beneficiaries under any document executed by the conservatee which may have testamentary effect unless the court for good cause dispenses with such notice.

(d) So far as is known to the petitioner, the heirs presumptive of the conservatee.

(e) Such other persons as the court may order.

Comment. Section 2581 is new. Subdivision (d) requires notice to the "heirs presumptive of the conservatee"--those persons who, if the conservatee should die immediately, would in the present circumstances of things be the conservatee's heirs under the laws of intestate succession, but whose right of inheritance may be defeated by the contingency of some nearer heir being born.

## CROSS-REFERENCES

Appointment of legal counsel for conservatee, § 1470

Clerk sets petition for hearing, § 1451

Definitions

Conservator, § 2400

Court, § 1418

Notice to Director of Mental Health or Director of Developmental Services, § 1461

Proof of giving of notice, § 1468

Request for special notice, § 2700

§ 2582. Adequate provision for conservatee and dependents required

2582. The court may make an order authorizing or requiring the proposed action under this article only if the court determines that the proposed action will have no adverse effect on the estate or that the estate remaining after the proposed action is taken will be adequate to provide for the needs of the conservatee and for the support of those

legally entitled to support, maintenance, and education from the conservatee, taking into account the age, physical condition, standards of living, and all other relevant circumstances of the conservatee and those legally entitled to support, maintenance, and education from the conservatee.

Comment. Section 2582 recognizes that the conservatee and those legally entitled to support, maintenance, and education from the conservatee have first claim on the income and assets of the estate.

CROSS-REFERENCES

Definition, court, § 1413

16/882

§ 2583. Circumstances considered in determining whether to approve proposed action

2583. In determining whether to authorize or require a proposed action under this article, the court shall take into consideration all the relevant circumstances, including but not limited to:

- (a) The probability of the conservatee's recovery of sufficient capacity to make a disposition of the estate.
- (b) The past donative declarations, practices, and conduct of the conservatee.
- (c) The traits of the conservatee.
- (d) The relationship and intimacy of the prospective donees with the conservatee, their standards of living, and the extent to which they would be natural objects of the conservatee's bounty by any objective test based on such relationship, intimacy, and standards of living.
- (e) The wishes of the conservatee.
- (f) Any known estate plan of the conservatee (including, but not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated).
- (g) The manner in which the estate would devolve upon the conservatee's death, giving consideration to the age and the mental and physical condition of the conservatee, the prospective legatees, devisees, or heirs apparent of the conservatee, and the prospective donees.

- (h) The value, liquidity, and productiveness of the estate.
- (i) The minimization of current or prospective income, estate, inheritance, or other taxes or expenses of administration.
- (j) Changes of federal and state tax laws and other laws which would likely have motivated the conservatee to alter the conservatee's estate plan.
- (k) The likelihood from all the circumstances that the conservatee as a reasonably prudent person would take the proposed action if the conservatee had the capacity to do so.

Comment. Section 2583 gives the court discretion and flexibility in applying the doctrine of substituted judgment under the circumstances of the particular case. The listing in Section 2583 is not exclusive, and the weight to be given to any particular matter listed will depend upon the circumstances of the particular case. Subdivision (k) lists a relevant consideration absent a showing of contrary intent. See Estate of Christiansen, 248 Cal. App.2d 398, 414, 424, 56 Cal. Rptr. 505, 516, 522-23 (1967) (court will not assume that the conservatee is abnormally selfish unless that trait is established). A matter not listed may be significant in a particular case. For example, the conservatee may have received property from a parent with the understanding that the conservatee would leave the property to the descendants of that parent. Such an understanding would be a circumstance the court should take into account together with all other relevant circumstances.

CROSS-REFERENCES

Definition, court, § 1418  
 Production of conservatee's will and other relevant estate plan documents, § 2586

16/884.

§ 2584. Determination and order

2584. After hearing, the court, in its discretion, may approve, modify and approve, or disapprove the proposed action and may authorize or direct the conservator to transfer or dispose of assets or take other action as provided in the court's order.

Comment. Section 2584 is new.

CROSS-REFERENCES

Appealable orders, § 2750  
 Definitions  
     Conservator, § 2400  
     Court, § 1418

§ 2585. No duty to propose action

2585. Nothing in this article imposes any duty on the conservator to propose any action under this article, and the conservator is not liable for failure to propose any action under this article.

Comment. Section 2585 is included to make clear that a conservator is not liable for the failure to propose an estate plan or other action under this article even though the conservatee, if competent and acting as a reasonably prudent person, would have developed an estate plan or have taken other action in order to minimize taxes and expenses of administration. The remedy for a person who believes that some action should be taken by the conservator under this article is to petition under Section 2580 for an order requiring the conservator to take such action with respect to estate planning or gift giving as is set out in the petition.

## CROSS-REFERENCES

Definition, conservator, § 2400

Effect of court authorization or approval, § 2103

36/244

§ 2586. Production of conservatee's will and other relevant estate plan documents

2586. (a) As used in this section, "estate plan of the conservatee" includes but is not limited to the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated.

(b) Notwithstanding Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code (lawyer-client privilege), the court, in its discretion, may order that any person having possession of any document constituting all or part of the estate plan of the conservatee shall deliver such document to the court for examination by the court, and by the attorneys for the persons who have appeared in the proceedings under this article, in connection with the petition filed under this article.

(c) Unless the court otherwise orders, no person who examines any document produced pursuant to an order under this section shall disclose

the contents of the document to any other person; and, if such disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court.

Comment. Section 2586 is new and permits the court to require production of the conservatee's estate plan for confidential examination in proceedings under this article. Under the Evidence Code, the conservator is the holder of the lawyer-client privilege when the client has a conservator. See Evid. Code § 953(b). Under Evidence Code Section 912, the holder of the privilege may waive the lawyer-client privilege. Accordingly, there is no need to rely on Section 2586 if the conservator is willing to waive the lawyer-client privilege and have the lawyer produce the will or other document for consideration in the proceeding under this article. However, Section 2586 provides a procedural means for permitting examination of the will or other document and at the same time protecting the confidentiality of the document to the extent practical in cases where the document is not in the possession of the lawyer who drafted it for the conservatee or where the conservator refuses to waive the lawyer-client privilege or where it is desired to preserve the confidentiality of the document to the extent permitted by the section.

The court has discretion whether to order the production of a document under Section 2586. Such an order may not be needed in a case where consideration of the document is not reasonably necessary to the determination of the petition filed under Section 2580. The court might compel production of a document under Section 2586 but, after reviewing the document, return it to the custodian without further disclosure if the court determined further disclosure was not necessary because the contents of the document were not a significant factor to be considered in making a determination on the petition. The court might decline to order production of the document where the disclosure of its contents would be contrary to the express desire of the conservatee when competent. Cf. Civil Code § 1138.5 (disclosure of trust terms in proceeding to instruct trustee or make other determinations). Whether the document should be produced in the latter case depends on its importance as a factor to be considered in making the determination whether to authorize or require the action proposed in the petition.

*Vigne v. Superior Court*, 37 Cal. App.2d 346, 99 P.2d 589 (1940), held that the probate court lacked statutory authority to require the custodian of an incompetent ward's will (the custodian was not the lawyer who drafted the will) to deliver the will to the ward's guardian. Section 2586 provides a limited exception to this holding by permitting the court to compel such a custodian to deliver the will to the court for confidential consideration by the court and the attorneys in connection with a petition under this article.

#### CROSS-REFERENCES

Appealable orders, § 2750  
 Appointment of legal counsel for conservatee, § 1470  
 Definition, court, § 1418

Article 11. Independent Exercise of Powers

Comment. Article 11 (commencing with Section 2590) supersedes former Sections 1853 and 1854. Unlike the former sections which applied only to conservators, Article 11 applies both to guardians and conservators. The purpose of the article is to permit the court to authorize an experienced and qualified guardian or conservator to exercise one or more of the powers to which the article applies without the need to petition for court authorization in each instance a power is to be exercised. In appropriate cases, use of the authority under this article will save time and expense in the management of the estate while preserving adequate safeguards through the requirement of accounting. These provisions, which formerly were limited to conservators, are extended to guardians because the considerations that justify the granting of one of the specified powers to a conservator may justify granting the same power to a guardian in an appropriate case.

§ 2590. Order granting authority for independent exercise of powers

2590. The court may, in its discretion, make an order granting the guardian or conservator any one or more or all of the powers specified in Section 2591 if the court determines that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. Subject only to such requirements, conditions, or limitations as are specifically and expressly provided, either directly or by reference, in the order granting the power or powers, the guardian or conservator may exercise the granted power or powers without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as the ward or conservatee could do if possessed of legal capacity.

Comment. Section 2590 is based on a portion of former Section 1853 (portion of the first paragraph and the second sentence of the third paragraph).

The standard--that the court determine that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to grant the power or powers--has been added. Under this standard, in determining whether to make an order under this article, the court is to consider the circumstances of the particular case, the need for the grant of the power or powers, the qualifications of the guardian or conservator, and the expense of obtaining court authorization for each exercise of the power or powers requested in the petition filed under this article is denied.



The former provision that the powers may be exercised without regard to whether other requirements of this code have been complied with has been revised to allow such powers to be exercised in the same manner as the ward or conservatee could do if possessed of legal capacity. Thus, if sale of real property is authorized, it is not necessary to comply with Article 7 of this chapter since the ward or conservatee would not be required to do so if competent. However, the guardian or conservator remains subject to the general duty to use ordinary care and diligence in the management of the estate. Section 2401. The court may withdraw or limit a power previously granted under this article. See Section 2593.

Although, if so ordered, powers may be exercised under this article without notice, hearings, authorization, instruction, approval, or confirmation, any transaction not previously authorized, approved, or confirmed by the court is expressly made subject to review by the court on the next accounting of the guardian or conservator. See Section 2625.

CROSS-REFERENCES

- Appointment of legal counsel for ward or conservatee, § 1470
- Definitions
  - Conservator, § 2400
  - Court, § 1418
  - Guardian, § 2400
- Effect of court authorization or approval, § 2103
- Granting authority to independently exercise powers to guardian nominated by will, § 2108
- Instructions on exercise of granted powers, § 2595
- Request for special notice, § 2700

16/889

§ 2591. Powers that may be granted

2591. The powers referred to in Section 2590 are:

- (a) The power to contract for the guardianship or conservatorship and to perform outstanding contracts and thereby bind the estate.
- (b) The power to operate at the risk of the estate a business, farm, or enterprise constituting an asset of the estate.
- (c) The power to grant and take options.
- (d) The power to sell at public or private sale real or personal property of the estate.
- (e) The power to create by grant or otherwise easements and servitudes.
- (f) The power to borrow money and give security for the repayment thereof.

- (g) The power to purchase real or personal property.
- (h) The power to alter, improve, and repair or raze, replace, and rebuild property of the estate.
- (i) The power to let or lease property of the estate for any purpose (including exploration for and removal of gas, oil, and other minerals and natural resources) and for any period, including a term commencing at a future time.
- (j) The power to lend money on adequate security.
- (k) The power to exchange property of the estate.
- (l) The power to sell property of the estate on credit if any unpaid portion of the selling price is adequately secured.
- (m) The power to commence and maintain an action for partition.
- (n) The power to exercise stock rights and stock options.
- (o) The power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property.
- (p) The power to pay, collect, compromise, arbitrate, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship.
- (q) The power to employ attorneys, accountants, investment counsel, agents, depositaries, and employees and to pay the expense.

Comment. Section 2591 is based on the second paragraph of former Section 1853. Under former Section 1853, the court could authorize a conservator to exercise certain powers without the necessity of obtaining specific court authorization in each case. Under Section 2590, this authority is broadened to include guardians as well as conservators.

Except to the extent the court for good cause otherwise orders, a guardian nominated by will may, to the extent provided in the will, exercise any one or more of the powers listed in Section 2591 without notice, hearing, or court authorization, instructions, approval, or confirmation. See Section 2108.

Some of the powers listed in former Section 1853 are not listed in Section 2591 because they are codified in this division as powers exercisable without court authorization unless the power is restricted by the court. See Sections 2451 (power to collect debts and benefits), 2458 (power to vote shares and securities in person or by proxy), 2459 (power to continue insurance), 2460 (liability and casualty insurance), 2461 (taxes and tax returns), 2462 (power to maintain actions and proceedings, other than partition, and to defend actions and proceedings),

2465 (power to abandon property). The remaining powers from former Section 1853 are recodified in Section 2591. The power to commence and maintain an action for partition (which former Section 1853 included in the power to institute and maintain all actions) is retained in Section 2591 since court authorization otherwise would be required. Section 2463.

The listing of a power in this section does not require the guardian or conservator to obtain an order under this article in order to exercise the power. See Section 2595(b). In some instances, a power listed in this section may be exercised by the guardian or conservator without court authorization under another provision of this division. See, e.g., Section 2555 (certain leases permitted without court authorization). However, the power is listed in this section because, in other instances, exercise of the same power requires authorization, and an order under this article may permit exercise of the power without such court authorization. See Sections 2553 (leases generally), 2457 (repair and maintenance of home of ward or conservatee and dependents), 2500-2508 (compromise of claims and actions).

16/891

§ 2592. Petition

2592. (a) The guardian or conservator may apply by petition for an order under Section 2590.

(b) The application for the order may be included in the petition for the appointment of the guardian or conservator. In such case, the notice of hearing on the petition shall include a statement that the petition includes an application for the grant of one or more additional powers under this article and shall list the specific power or powers applied for.

(c) If the application for the order is made by petition filed after the filing of the petition for the appointment of the guardian or conservator, notice of the hearing on the petition shall be given for the period and in the manner prescribed in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2592 continues the substance of the third sentence of the third paragraph of former Section 1853 but adds the requirement of the second sentence of subdivision (b). Also, former Section 1853 required notice to be given to the conservatee; under Section 1460, notice must be given to the ward if over 14 or to the conservatee, but the court may for good cause dispense with such notice.

CROSS-REFERENCES

- Appointment of legal counsel for ward or conservatee, § 1470
- Clerk sets petition for hearing, § 1451
- Definitions
  - Conservator, § 2400
  - Guardian, § 2400
- Notice to Director of Mental Health or Director of Developmental Services, § 1461
- Petition must be verified, § 1450
- Proof of giving of notice, § 1468
- Request for special notice, § 2700

16/894

§ 2593. Withdrawal or subsequent limitation of powers

2593. (a) The court, on its own motion or on petition of any interested person, when it appears to be for the best interests of the ward or conservatee or the estate, may withdraw any or all of the powers previously granted pursuant to this article or may impose restrictions, conditions, and limitations on the exercise of such powers by the guardian or conservator.

(b) Notice of the hearing on a petition under this section shall be given for the period and in the manner prescribed in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Subdivision (a) of Section 2593 continues the substance of a portion of former Section 1854 except that subdivision (a) permits the court to continue the grant of the powers subject to such restrictions, conditions, and limitations as the court may order. Subdivision (b) is new.

CROSS-REFERENCES

- Clerk sets petition for hearing, § 1451
- Definitions
  - Conservator, § 2400
  - Court, § 1418
  - Guardian, § 2400
  - Interested person, § 1424
- Limitation of powers of guardian nominated by will, § 2108
- Petition must be verified, § 1450
- Proof of giving of notice, § 1468
- Request for special notice, § 2700

16/896

§ 2594. Contents of letters; when new letters required

2594. (a) When a power or powers are granted pursuant to this article, the letters of guardianship or conservatorship shall state the

power or powers so granted and the restrictions, conditions, or limitations, if any, prescribed in the order and shall refer to this article.

(b) When a power or powers are granted by a subsequent order, new letters shall be issued in the form described in subdivision (a).

(c) If the powers are withdrawn, or if the powers are restricted, conditioned, or limited by a subsequent order after they are granted, new letters shall be issued accordingly.

Comment. Subdivisions (a) and (b) of Section 2594 continue the substance of the fourth and fifth sentences of the third paragraph of former Section 1853 except that the requirement that the letters state any restrictions, conditions, or limitations is new. Subdivision (c) continues the substance of a portion of former Section 1854 except that it is conformed to Section 2593. See the Comment to that section.

16/899

§ 2595. Effect of article

2595. (a) The grant of a power or powers pursuant to this article does not affect the right of the guardian or conservator to petition the court as provided in Section 2403 or to petition the court under other provisions of this code, as to a particular transaction or matter, in the same manner as if the power or powers had not been granted pursuant to this article.

(b) Where authority exists under other provisions of law, either general or specific, for the guardian or conservator to do any act or to enter into any transaction described in Section 2591, the guardian or conservator may proceed under such other provisions of law and is not required to obtain authority under this article.

Comment. Subdivision (a) of Section 2595 continues the substance of the last sentence of former Section 1853 and makes clear that the guardian or conservator may submit any transaction or matter to the court in the same manner as if the power or powers had not been granted. See Section 2403 (instructions and confirmation). Subdivision (b) is new and is added to make clear that this article does not preclude the exercise of powers that may exist under other provisions of law. See the last paragraph of the Comment to Section 2591. This was not clear under prior law. Compare *Place v. Trent*, 27 Cal. App.3d 526, 530, 103 Cal. Rptr. 841, 843 (1972), with *Olson v. United States*, 437 F.2d 981, 985 (Ct. Cl. 1971). As to the compensation of the guardian or conservator and the attorney in connection with obtaining court instructions on exercise of powers granted under this article, see the Comments to Sections 2450 and 2640.

CROSS-REFERENCES

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Effect of court authorization or approval, § 2103

Guardian nominated by will, § 2108

16/959

CHAPTER 7. INVENTORY AND ACCOUNTS

Article 1. Definitions and General Provisions

§ 2600. Definitions

2600. As used in this chapter, unless the context otherwise requires:

(a) "Conservator" means the conservator of the estate.

(b) "Guardian" means the guardian of the estate.

Comment. Section 2600 is new. If one person is appointed as the conservator of the person and estate or as the guardian of the person and estate, that person has the powers and duties under this chapter.

16/962

§ 2601. Wages of ward or conservatee

2601. (a) Unless otherwise ordered by the court, if the ward or conservatee is at any time during the continuance of the guardianship or conservatorship employed:

(1) The wages or salaries for such employment are not a part of the estate and the guardian or conservator is not accountable for such wages or salaries.

(2) The wages or salaries for such employment shall be paid to the ward or conservatee and are subject to his or her control to the same extent as if the guardianship or conservatorship did not exist.

(b) Any court order referred to in subdivision (a) is binding upon the employer only after notice of the order has been received by the employer.

Comment. Section 2601 continues the substance of former Sections 1561 and 1910 but extends the provisions to minors.

CROSS-REFERENCES

Definitions

- Conservator, § 2600
- Court, § 1418
- Guardian, § 2600
- Payment of wages of minor to minor, Civil Code § 212
- Personal allowance for ward or conservatee, § 2421
- Request for special notice, § 2700
- Right of parent to minor child's earnings, Civil Code §§ 197, 211, 212, 5118

16/963

Article 2. Inventory and Appraisement of Estate

§ 2610. Filing inventory and appraisement

2610. (a) Within three months after appointment, or within such further time as the court for reasonable cause may allow, the guardian or conservator shall file with the clerk of the court an inventory and appraisement of the estate, made as of the date of the appointment of the guardian or conservator.

(b) The guardian or conservator shall take and subscribe to an oath that the inventory contains a true statement of all of the estate of the ward or conservatee of which the guardian or conservator has possession of knowledge. The oath shall be endorsed upon or annexed to the inventory.

(c) The property described in the inventory shall be appraised in the manner provided for the inventory and appraisement of estates of decedents. The guardian or conservator may appraise the assets which an executor or administrator could appraise under Section 605.

(d) If there is a conservatorship initiated pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) and no sale of the estate will occur:

(1) The inventory and appraisement required by subdivision (a) shall be filed within 90 days after appointment of the conservator.

(2) The property described in the inventory shall be appraised by the conservator and not by an inheritance tax referee.

Comment. Subdivision (a) of Section 2610 continues the substance of the first sentence of subdivision (a) of former Section 1550 and the

first sentence of subdivision (a) of former Section 1901. Subdivision (b) continues the oath requirement of the third sentence of subdivision (a) of former Section 1550 and the third sentence of former Section 1901, but the subdivision is drawn from Section 604 (estate of decedent). Subdivision (c) continues the substance of the remainder of the third sentence and also the fourth sentence of subdivision (a) of former Section 1550 and the comparable portion of former Section 1901. Subdivision (d) continues the substance of subdivision (b) of former Section 1550 and subdivision (b) of former Section 1901.

CROSS-REFERENCES

Affirmation in lieu of oath, Code Civ. Proc. § 2015.6  
 Declaration under penalty of perjury, Code Civ. Proc. § 2015.5  
 Definitions  
     Conservator, § 2600  
     Court, § 1418  
     Guardian, § 2600  
 Inventory and appraisement by  
     Guardian for particular property, § 2109  
     Guardian or conservator for nonresident, § 2107  
     Temporary guardian or conservator, § 2255  
 Request for special notice, § 2700

16/964

§ 2611. Sending copy to Director of Mental Health or Director of Developmental Services

2611. If the ward or conservatee is or has been during the guardianship or conservatorship a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the guardian or conservator shall mail a copy of the inventory and appraisement filed under Section 2610 to the director of the appropriate department at the director's office in Sacramento not later than 15 days after the inventory and appraisement is filed with the court. Compliance with this section is not required if an unrevoked certificate described in subdivision (c) of Section 1461 is on file with the court with respect to the ward or conservatee.

Comment. Section 2611 continues the fifth sentence of former Section 1550 and the fifth sentence of former Section 1901. The language has been revised to make clear that it is a copy of the inventory and appraisement filed under Section 2610 that is to be mailed to the director, a provision has been added that the mailing be not later than 15 days after the filing, and the last sentence has been added to conform to Section 1461.



CROSS-REFERENCES

Definitions

- Conservator, § 2600
- Court, § 1418
- Guardian, § 2600

Mailing

- Manner of, § 1465
- Personal delivery in lieu of, § 1466
- When complete, § 1465

16/965

§ 2612. Sending copy to county assessor

2612. If a timely request is made, the clerk of court shall mail a copy of the inventory and appraisalment filed under Section 2610 to the county assessor.

Comment. Section 2612 continues the substance of the second sentence of former Section 1550 and the second sentence of former Section 1901. The language has been revised to permit delivery by mail. See also Section 1466 (personal delivery in lieu of mailing).

CROSS-REFERENCES

- Definition, court, § 1418
- Manner of mailing, § 1465

16/966

§ 2613. Subsequently discovered or acquired property; supplemental inventory and appraisalment

2613. Whenever any property of the ward or conservatee is discovered that was not included in the inventory, or whenever any other property is inherited or acquired by the ward or conservatee (other than by the actions of the guardian or conservator in the investment and management of the estate), the guardian or conservator shall file a supplemental inventory and appraisalment for the property so discovered, inherited, or acquired, and like proceedings shall be followed with respect thereto as in the case of an original inventory.

Comment. Section 2613 continues the substance of the last sentence of subdivision (a) of former Section 1550 and the last sentence of subdivision (a) of former Section 1901. Wages or salary of the ward or conservatee from employment during the guardianship or conservatorship are not part of the estate unless otherwise ordered by the court. See Section 2601.

## CROSS-REFERENCES

## Definitions

Conservator, § 2600

Guardian, § 2600

17/017

§ 2614. Objections to appraisals

2614. (a) Within 30 days after the inventory and appraisal is filed, the guardian or conservator or any creditor or other interested person may file written objections to any or all appraisals. The clerk shall set the objections for hearing not less than 15 days after their filing.

(b) At least 10 days before the hearing, the party filing the written objections shall mail a notice of the time and place of the hearing and a copy of the objections to all of the following (other than the person filing the objections):

- (1) The guardian or conservator.
- (2) Relatives of the ward or conservatee within the second degree.
- (3) The inheritance tax referee.

(c) The court shall determine the objections and may fix the true value of any asset to which objection has been filed. For the purpose of this subdivision, the court may cause an independent appraisal or appraisals to be made by at least one additional appraiser at the expense of the estate or, if the objecting party is not the guardian or conservator and the objection is rejected by the court, the court may assess the cost of any such additional appraisal or appraisals against the objecting party.

Comment. Section 2614 continues former Section 1901.5 (conservators) and supersedes former Section 1550.1. The time for filing written objection has been increased from 15 to 30 days to provide sufficient time to file objection after receipt of notice pursuant to Section 2611 or 2702, which provide for notice of the filing of the inventory and appraisal to be given within 15 days after the filing. The former requirement that notice of hearing and a copy of the objections be "served" on the persons listed in subdivision (b) has been replaced by the requirement that such notice and copy be "mailed" to such persons. "Creditor" has been added to subdivision (a) for clarity.

CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, § 1470

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Interested person, § 1424

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

17/020

§ 2615. Consequences of failure to file inventory

2615. If a guardian or conservator fails to file any inventory required by this article within the time prescribed, the guardian or conservator is liable for damages for any injury to the estate, or to any interested person, resulting from the failure timely to file the inventory. Any damages awarded pursuant to this section are a charge upon the bond of the guardian or conservator. If the bond is insufficient, or if there is no bond, the damages are a charge against the personal assets of the guardian or conservator.

Comment. Section 2615 continues the substance of a portion of former Section 1902 and supersedes former Section 1551.

CROSS-REFERENCES

Definitions

Conservator, § 2600

Guardian, § 2600

Interested person, § 1424

Liability of guardian or conservator not limited to amount of bond, § 554

Nature of surety's liability, § 554

Removal of guardian or conservator for failure to file inventory, § 2650

17/021

§ 2616. Examination concerning assets of estate

2616. (a) A petition may be filed under this section by any one or more of the following:

- (1) The guardian or conservator.
- (2) The ward or conservatee.

(3) A creditor or other interested person, including persons having only an expectancy or prospective interest in the estate.

(b) The petition may allege any one or more of the following:

(1) A named person is suspected of having embezzled, concealed, smuggled, or falsely or fraudulently obtained or wrongfully disposed of any property of the ward or conservatee.

(2) A named person has in such person's possession, or has knowledge of, any instrument in writing belonging to the ward or conservatee.

(3) A named person asserts a claim against the ward or conservatee or the estate.

(4) The estate asserts a claim against a named person.

(c) Upon the filing of a petition under this section, the court may cite the named person to appear before the court, and the court and the petitioner may examine the named person under oath upon the matters recited in the petition. If the named person is not in the county where letters issued, the examination shall be made under this section but otherwise the procedure and the rights and duties of the parties shall be governed by the provisions of Sections 613, 614, and 615.

Comment. Section 2616 continues the substance of former Section 1903 and supersedes the somewhat narrower provisions of former Section 1552. The reference to Section 613 in former Section 1903 has been replaced by a reference to Sections 613, 614, and 615. This change is consistent with the broad general reference found in former Section 1552. The reference to Section 614 is a useful clarification since that section appears to authorize the use of written interrogatories as well as oral examination. Sections 614 and 615 also include provisions relating to the enforcement of the right of examination. The estate is liable for the necessary expenses of an examinee who appears and is found innocent. Section 613.

#### CROSS-REFERENCES

##### Definitions

- Conservator, § 2600
- Court, § 1418
- Guardian, § 2600
- Interested person, § 1424
- Petition must be verified, § 1450
- Production of conservatee's will or other document, § 2586

Article 3. Accounts

§ 2620. Presentation of account for settlement and allowance

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court, the guardian or conservator shall present the account of the guardian or conservator to the court for settlement and allowance.

(b) The account shall state the period covered by the account and contain a summary showing all of the following:

(1) If the first account, the amount of appraisal; if a subsequent account, the amount chargeable from the prior account.

(2) The amount of any supplemental appraisal filed within the period covered by the account.

(3) The amount of cash receipts, excluding principal items.

(4) The gains on sales or other increases in assets, if any.

(5) The amount of cash disbursements, excluding principal items.

(6) The losses on sales or other decreases in assets, if any.

(7) The amount of property on hand.

(c) The account shall contain itemized schedules showing receipts, disbursements, transactions, and balance of property on hand.

(d) The petition for approval of the account or a report accompanying the petition shall contain all of the following:

(1) Descriptions of all sales, purchases, changes in the form of assets, or other transactions occurring during the period of the account that are not otherwise readily understandable from the schedules.

(2) Explanations of any unusual items appearing in the account.

(3) Any additional information required by the court.

(e) The petition requesting approval of the account may include additional requests for authorization, instruction, approval, or confirmation authorized by this division.

(f) When an account is rendered by or on behalf of two or more joint guardians or conservators, the court, in its discretion, may settle and allow the account upon the verification of any of them.

Comment. Section 2620 supersedes former Sections 1553 and 1904. Subdivisions (a) and (f) continue the substance of former Section 1904. Subdivisions (b), (c), (d), and (e) are new. Subdivisions (b), (c), and (d) are drawn from local court rules. Subdivision (e) makes clear that the petition for approval of the account may include such additional requests as requests for compensation for services rendered by the guardian or conservator of the estate, compensation for services rendered by the attorney for the guardian or conservator of the person or estate, compensation for the guardian or conservator of the person, monthly personal allowance for the conservatee, monthly allowance for the support of the conservatee and the dependents of the conservatee, periodic payments to the guardian or conservator or attorney, or distribution of excess income to relatives of the conservatee. The courts generally prefer to determine these kinds of matters when an account is being settled. See W. Johnstone & G. Zillgitt California Conservatorships §§ 6.8, 6.26, 6.45 (Cal. Cont. Ed. Bar 1968).

CROSS-REFERENCES

Account must be verified, § 1450  
 Accounting upon removal of guardian or conservator, § 2653  
 Appealable orders, § 2750  
 Appointment of legal counsel for ward or conservatee, § 1470  
 Compensation of guardian or conservator or attorney, §§ 2640-2643  
 Definitions  
     Conservator, § 2600  
     Court, § 1418  
     Guardian, § 2600  
 Effect of court authorization or approval, § 2103  
 Nonresident ward or conservatee, § 2107  
 Removal for failure to render account, § 2650  
 Review of sales, purchases, and other transactions, § 2625  
 Settlement of accounts upon  
     Resignation or removal of guardian or conservator, § 2630  
     Termination of guardianship or conservatorship, § 2630

18/302

§ 2621. Notice of hearing

2621. Notice of the hearing on the account of the guardian or conservator shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. If notice is required to be given to the Director of Mental Health or Director of Developmental Services under Section 1461, the account shall not be settled or allowed unless notice has been given as provided in Section 1461.

Comment. The first sentence of Section 2621 is new; the second sentence is based on portions of former Sections 1554 and 1905. Unless

notice is given or waived as provided in Section 1461, if the account is settled without giving notice to the Director of Mental Health or the Director of Developmental Services in the cases where notice is required under Section 1461, the statute of limitations does not run against any claim of the State Department of Health or the State Department of Developmental Services against the estate for board, care, maintenance, or transportation of the ward or conservatee. See Section 1461(d).

CROSS-REFERENCES

Definitions

- Conservator, § 2600
- Guardian, § 2600
- Proof of giving of notice, § 1468
- Request for special notice of accounts, § 2700

18/303

§ 2622. Objections to account

2622. The ward or conservatee, any relative or friend of the ward or conservatee, or any creditor or other interested person may file written objections under oath to the account of the guardian or conservator, stating the items of the account to which objection is made and the basis for the objection.

Comment. Section 2622 is new. No comparable provision was contained in the former guardianship or conservatorship statute, but Section 2622 appears to codify prior practice. See W. Johnstone & G. Zillgitt, California Conservatorships § 6.42, at 253 (Cal. Cont. Ed. Bar 1968).

CROSS-REFERENCES

- Appointment of legal counsel for ward or conservatee, § 1470
- Definitions
  - Conservator, § 2600
  - Guardian, § 2600
  - Interested person, § 1424
- Effect of court authorization or approval, § 2103

18/304

§ 2623. Compensation and expenses of guardian or conservator

2623. The guardian or conservator shall be allowed all of the following:

- (a) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond

furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the court determines is just and reasonable).

(b) Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.

(c) All reasonable disbursements made before appointment as guardian or conservator.

(d) In the case of termination other than by the death of the ward or conservatee, all reasonable disbursements made after the termination of the conservatorship but prior to the discharge of the guardian or conservator by the court.

(e) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred prior to the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the executor or administrator of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.

Comment. Section 2623 continues the substance of subdivision (1) of former Section 1908 and supersedes the first paragraph of former Section 1556. The reference to the cost of a surety bond in subdivision (a) continues a provision found in the first portion of former Section 1908 and supersedes the similar provisions of former Section 1556.5. The reference to "such compensation for services rendered by the guardian or conservator of the person as the court determines is just and reasonable" has been added in subdivision (a) in accord with prior practice. See the Comment to Section 2620. The amount incurred in the performance of the duties of the guardian or conservator includes, for example, amounts paid for support, maintenance, or education of the ward or conservatee and of persons legally entitled to support, maintenance or education from the ward or conservatee. See Section 2420(c). See also Sections 2430-2431 (payment of debts).

#### CROSS-REFERENCES

Appealable orders, § 2750  
 Definitions  
     Conservator, § 2600  
     Court, § 1418  
     Guardian, § 2600  
 Independent exercise of powers, § 2591  
 Nonprofit charitable corporation as guardian or conservator, limitation on compensation for corporation and attorney, § 2104  
 Order authorizing periodic payments of compensation to guardian, conservator, or attorney, § 2643  
 Order fixing compensation for guardian, conservator, or attorney, §§ 2640-2642  
 Request for special notice, § 2700<sub>195-</sub>



§ 2624. Investment of funds

2624. Upon each accounting, the guardian or conservator shall show that, during the period covered by the account, all cash has been kept invested in interest bearing accounts or investments authorized by law except for such amounts of cash as are reasonably necessary for the orderly administration of the estate.

Comment. Section 2624 continues former Sections 1556.3 and 1912.

## CROSS-REFERENCES

## Definitions

Conservator, § 2600

Guardian, § 2600

405/589

§ 2625. Review of sales, purchases, and other transactions

2625. Any sale or purchase of property or other transaction not previously authorized, approved, or confirmed by the court is subject to review by the court upon the next succeeding accounting of the guardian or conservator occurring after the transaction. Upon such accounting and review, the court may hold the guardian or conservator liable for any violation of duties in connection with the sale, purchase, or other transaction. Nothing in this section shall be construed to affect the validity of any sale or purchase or other transaction.

Comment. Section 2625 generalizes the substance of former Sections 1519 and 1862 (accounting and review of sales or purchases of property).

Section 2620 requires disclosure of transactions occurring during the period covered by the account: Subdivision (c) requires that the account contain an itemized schedule showing the transactions, and subdivision (d)(1) requires a description of all sales, purchases, changes in the form of assets, or other transactions that are not readily understandable from the schedules. If the transactions have been previously authorized, approved, or confirmed by the court, they need not again be reviewed under Section 2625. See Section 2103 (effect of court authorization, approval, or confirmation). However, other transactions--those that did not require court authorization and those that required but were made without court authorization--are subject to review under Section 2625 at the time of the accounting.

The fact that a particular transaction is one that required prior court authorization which was not obtained does not preclude the court from approving and confirming the transaction at the time of the accounting or on a petition for approval and confirmation under Section

2403. See *Place v. Trent*, 27 Cal. App.3d 526, 103 Cal. Rptr. 841 (1972). However, if the transaction is one that required court authorization which was not obtained, the guardian or conservator should be prepared to give the same justification for the transaction at the time it is reviewed under Section 2625 that would have been required had authorization been sought before the transaction was made, and the guardian or conservator runs the risk that the court will not approve and confirm the transaction at the time of the accounting. A guardian or conservator may be surcharged for improper payments or other wrongful acts or omissions that cause pecuniary damage to the estate. See discussion in *W. Johnstone & G. Zillgitt, California Conservatorships* § 6.43, at 253 (Cal. Cont. Ed. Bar 1968). Nevertheless, unless the court determines that the transaction in question was improper because the guardian or conservator failed to use ordinary care and diligence (Section 2401) or for some other reason, the court should approve and confirm the transaction in connection with its review of the current account. On the other hand, if the court determines, for example, that there was a loss from the failure to use ordinary care and diligence as the court views that requirement as applied to the particular transaction when it is reviewed at the time of the accounting, the court may surcharge the guardian or conservator. Cf. *Estate of Hilde*, 112 Cal. App.2d 189, 246 P.2d 79 (1952) (administrator surcharged where estate property sold below appraised value without required court authorization).

CROSS-REFERENCES

Appealable orders, § 2750

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Review of periodic payments of compensation to guardian, conservator, or attorney, § 2432

18/307

§ 2626. Termination of proceeding upon exhaustion of estate

2626. If it appears upon the settlement of any account that the estate has been entirely exhausted through expenditures or disbursements which are approved by the court, the court, upon settlement of the account, shall order the proceeding terminated and the guardian or conservator forthwith discharged unless the court determines that there is reason to continue the proceeding.

Comment. Section 2626 continues former Sections 1559 and 1909, except that the authority for the court to continue the proceeding is new. Thus, for example, if it appears that the guardianship or conservatorship estate will be replenished by receiving new assets from some source, this section does not require termination of the proceeding.

CROSS-REFERENCES

Appealable orders, § 2750  
 Continuing jurisdiction of court to settle accounts, § 2630  
 Definitions  
     Conservator, § 2600  
     Court, § 1418  
     Guardian, § 2600  
 Effect of court authorization or approval, § 2103  
 Limitation of action against surety on bond, § 2334  
 Request for special notice, § 2700  
 Termination of proceeding on transfer of all assets out of state, § 2808

18/308

§ 2627. Settlement of accounts and release by ward; discharge of guardian

2627. (a) After a ward has reached majority, the ward may settle accounts with the guardian and give the guardian a release which is valid if obtained fairly and without undue influence.

(b) Except as otherwise provided by this code, a guardian is not entitled to a discharge until one year after the ward has attained majority.

Comment. Subdivision (a) of Section 2627 continues the substance of former Section 1592. Subdivision (b) continues the substance of former Section 1593.

The former guardian has the burden of showing that a release given by the ward pursuant to subdivision (a) is just and fair. *Smith v. Fidelity & Deposit Co.*, 130 Cal. App. 45, 56-57, 19 P.2d 1018, 1023 (1933). Such a release does not operate to discharge the guardian, however, since the discharge must be granted by the court. See *Cupp, McCarroll, & McClanahan, Guardianship of Minors*, in 1 California Family Lawyer § 16.75, at 661 (Cal. Cont. Ed. Bar 1962). See also Section 2630 (ward's majority does not cause court to lose jurisdiction to settle accounts).

CROSS-REFERENCES

Appealable orders, § 2750  
 Appointment of legal counsel for ward or conservatee, § 1470  
 Definitions  
     Court, § 1418  
     Guardian, § 2600  
 Effect of court authorization or approval, § 2103  
 Request for special notice, § 2700

Article 4. Accounts on Termination of Relationship§ 2630. Continuing jurisdiction of court

2630. The termination of the relationship of guardian and ward or conservator and conservatee by the death of either, by the ward attaining majority, by the determination of the court that the guardianship or conservatorship is no longer necessary, by the removal or resignation of the guardian or conservator, or for any other reason, does not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the guardian or conservator or for any other purpose incident to the enforcement of the judgments and orders of the court upon such accounts or upon the termination of the relationship.

Comment. Section 2630 continues the substance of the first sentence of former Section 1555 and the first sentence of former Section 1907. The last portion of the first sentence of former Section 1907 is continued in Section 2630 and is made applicable to guardianships. The reference to the removal or resignation of the guardian or conservator is new.

## CROSS-REFERENCES

Appealable orders, § 2750  
 Appointment of legal counsel for ward or conservatee, § 1470  
 Definitions  
   Conservator, § 2600  
   Court, § 1418  
   Guardian, § 2600

§ 2631. Death of ward or conservatee; disposition of assets

2631. (a) Upon the death of the ward or conservatee, the guardian or conservator may contract for and pay a reasonable sum for the expenses of the last illness and the funeral of the deceased ward or conservatee, or may pay the unpaid expenses of such last illness and funeral, in full or in part, to the extent reasonable, from any assets of the deceased ward or conservatee, other than real property or any interest therein, which are under the control of the guardian or conservator.

(b) When a claim for such expenses is presented to the guardian or conservator, the guardian or conservator shall endorse thereon an allowance or rejection, with the date thereof. If the claim is allowed, it

shall be presented to the court and the court shall in like manner endorse thereon an allowance or rejection. If the claim is approved by the court, the claim shall be filed with the clerk within 30 days thereafter.

(c) After payment of such expenses, the guardian or conservator may transfer any remaining assets in accordance with and subject to the provisions of Section 630. The value of the property of the deceased ward or conservatee, for the purpose of ascertaining the right to transfer under Section 630, shall be determined after the deduction of the expenses so paid.

Comment. Section 2631 continues the substance of former Sections 1560 and 1911. If the guardian or conservator pays expenses from assets of the ward or conservatee which are the subject of a specific gift by will, the gift is not thereby adeemed, and the rules of abatement set forth in Sections 750-753 apply. See Estate of Mason, 62 Cal.2d 213, 397 P.2d 1005, 42 Cal. Rptr. 13 (1965).

CROSS-REFERENCES

- Appealable orders, § 2750
- Care of estate after death of ward or conservatee, § 2467
- Definitions
  - Conservator, § 2600
  - Court, § 1418
  - Guardian, § 2600
- Disposition of estate by public guardian, Welf. & Inst. Code § 8012
- Termination of conservatorship on death of conservatee, § 1860
- Termination of guardianship on death of ward, § 1600

18/313

§ 2632. Account of dead or incompetent guardian or conservator

2632. (a) If the guardian or conservator dies or becomes incompetent, the account may be presented by:

(1) The executor or administrator of the deceased guardian or conservator.

(2) The conservator of the estate of the incompetent guardian or conservator.

(b) Upon petition of the successor of the deceased or incompetent guardian or conservator, the court shall compel such executor or administrator or the conservator of the estate of the incompetent guardian or

conservator to render the account and shall settle the account as in other cases.

(c) If the guardian or conservator dies and there is no executor or administrator, or if the guardian or conservator becomes incompetent and has no conservator of the estate, or if the guardian or conservator absconds, the court may compel the attorney for the deceased, incompetent, or absconding guardian or conservator or the attorney of record in the guardianship or conservatorship proceeding to render an account of the guardianship or conservatorship to the extent that information or records are available to the attorney. The account of the attorney need not be verified. A fee shall be allowed to the attorney by the court for this extraordinary service.

Comment. Section 2632 continues all of former Section 1555 except the first sentence (continued in Section 2630) and all of former Section 1907 except the first sentence (continued in Section 2630) and the last paragraph (continued in Section 2104).

CROSS-REFERENCES

Appealable orders, § 2750

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Joint guardians or conservators, § 2105

Nonprofit charitable corporation as guardian or conservator, limitation on fee or attorney, § 2104

Removal of guardian or conservator in case of incapacity, §§ 2650, 2653

38/453

CHAPTER 8. COMPENSATION OF GUARDIAN, CONSERVATOR,  
AND ATTORNEY

§ 2640. Petition by guardian or conservator of estate

2640. (a) At any time after the filing of the inventory and appraisal, but not before the expiration of three months from the issuance of letters, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:

(1) The guardian or conservator of the estate for services rendered in that capacity to that time.

(2) The guardian or conservator of the person for services rendered in that capacity to that time.

(3) The attorney for services rendered by the attorney to the guardian or conservator of the person or estate or both.

(b) Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order allowing (1) such compensation as the court determines is just and reasonable to the guardian or conservator of the estate for services rendered in that capacity or to the guardian or conservator of the person for services rendered in that capacity, or to both, and (2) such compensation as the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation so allowed shall thereupon be charged to the estate.

Comment. Section 2640 is based on former Section 1556 (second paragraph). The court may also authorize periodic payments on account to the guardian or conservator or attorney. See Section 2643.

The matter of compensation for services of the guardian or conservator and the attorney in connection with obtaining instructions from the court is left to the discretion of the court. The court has discretion, for example, whether to allow compensation where instructions are sought concerning (1) a transaction that does not require court authorization or (2) a transaction covered by a previously made order granting authority for independent exercise of powers. See, e.g., Sections 2450 (right to petition for instructions concerning exercise of estate management powers); 2595 (right to petition for instructions where order granting authority for independent exercise of powers made). See also the Comment to Section 2450.

If the guardian or conservator of the estate fails or refuses to petition under Section 2640 for an order fixing the compensation of the guardian or conservator of the person or the attorney, the guardian or conservator of the person or the attorney may petition for the order. See Sections 2641 (guardian or conservator of person) and 2642 (attorney). As to compensation of the guardian or conservator of the person, see the Comment to Section 2641.

CROSS-REFERENCES

Appealable orders, § 2750  
 Appointment of legal counsel for ward or conservatee, § 1470  
 Clerk sets petition for hearing, § 1451  
 Contingent fee contract with attorney, § 2644  
 Definition, court, § 1418  
 Fee for attorney rendering account for dead or incompetent guardian or conservator, § 2632  
 Independent exercise of powers, § 2591  
 Nonprofit charitable corporation as guardian or conservator, limit on compensation and on fee allowed attorney, § 2104  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700

31/784

§ 2641. Petition by guardian or conservator of person

2641. (a) At any time permitted by Section 2640 and upon the notice therein prescribed, the guardian or conservator of the person may petition the court for an order fixing and allowing compensation for services rendered to that time in such capacity.

(b) Upon the hearing, the court shall make an order allowing such compensation as the court determines just and reasonable to the guardian or conservator of the person for services rendered. The compensation allowed shall thereupon be charged against the estate.

Comment. Section 2641 is new. The section is comparable to Section 2642 and is in accord with prior practice. See W. Johnstone & G. Zillgitt, California Conservatorships § 6.26, at 244 (Cal. Cont. Ed. Bar 1968) ("The conservator of the person does not account to the court. . . . His petition for fees for his services may be part of the account of the conservator of the estate or he may file a separate petition for fees."). As under prior practice, the court has discretion whether to allow the guardian or conservator of the person compensations since allowance of compensation is required only where it is "just" to allow compensation.

CROSS-REFERENCES

Accounting, compensation for guardian of person, § 2623  
 Appealable orders, § 2750  
 Appointment of legal counsel for ward or conservatee, § 1470  
 Clerk sets petition for hearing, § 1451  
 Definitions, court, § 1418  
 Nonprofit charitable corporation as guardian or conservator, limit on compensation, § 2104  
 Periodic payment of compensation, § 2643  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700



§ 2642. Petition by attorney

2642. (a) At any time permitted by Section 2640 and upon the notice therein prescribed, an attorney who has rendered legal services to the guardian or conservator of the person or estate or both, including services rendered under Section 2632, may petition the court for an order fixing and allowing compensation for such services rendered to that time.

(b) Upon the hearing, the court shall make an order allowing such compensation as the court determines reasonable to the attorney for services rendered to the guardian or conservator. The compensation so allowed shall thereupon be charged against the estate.

Comment. Section 2642 is based on former Section 1556.1 (guardianships) and applies to both guardianships and conservatorships. The former law applicable to conservatorships was unclear. Former Section 1908 did not expressly provide for a direct petition by the attorney in case of conservatorships but referred to attorney's fees which may be included in the conservator's account. Arguably, former Section 1702 authorized a direct petition by the attorney in the case of a conservatorship. Direct petition by the attorney is provided for in probate estate procedure. See Section 911. See also discussion in Comment to Section 2640.

## CROSS-REFERENCES

Accounting, allowance for attorney's fees, § 2623  
 Appealable orders, § 2750  
 Appointment of legal counsel for ward or conservatee, § 1470  
 Clerk sets petition for hearing, § 1451  
 Contingent fee contracts, § 2644  
 Definition, court, § 1418  
 Fee for attorney rendering account for dead or incompetent guardian or conservator, § 2632  
 Nonprofit charitable corporation as guardian or conservator, limit on fee for attorney, § 2104  
 Periodic payments of compensation, § 2643  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700

39384

§ 2643. Order authorizing periodic payments of compensation to guardian or conservator or attorney

2643. (a) On petition by the guardian or conservator of the person or estate or both, the court may by order authorize periodic

payments on account to any one or more of the following persons for the services rendered by such person during the period covered by each payment:

- (1) The guardian of the person.
- (2) The guardian of the estate.
- (3) The conservator of the person.
- (4) The conservator of the estate.
- (5) The attorney for the guardian or conservator of the person or estate or both.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The petition shall describe the services to be rendered on a periodic basis and the reason why authority to make periodic payments is requested. In fixing the amount of the periodic payment, the court shall take into account the services to be rendered on a periodic basis and the reasonable value of such services. The guardian or conservator of the estate may make the periodic payments authorized by the order only if the services described in the petition are actually rendered. The payments made pursuant to the order are subject to review by the court upon the next succeeding accounting of the guardian or conservator of the estate to determine that the services were actually rendered and that the amount paid on account was not unreasonable, and the court shall make an appropriate order if the court determines that the amount paid on account was either excessive or inadequate in view of the services actually rendered.

Comment. Section 2643 is new and permits the court, for example, to authorize the guardian or conservator of the estate to make a payment each month on account to the attorney for services rendered during the immediately preceding month.

An order under Section 2643 may be particularly useful in the case of a large estate where there may be tax advantages arising from making periodic payments of compensation. Where the guardian or conservator of the person is compensated, periodic payments may be desired if the guardian or conservator needs to be compensated on a regular basis. Periodic payments also avoid a number of problems that exist when payment is delayed until the time of the accounting of the guardian or conservator. The periodic payment provides funds to cover overhead

expenses the attorney has paid in connection with providing the services during the period covered by the payment. Periodic payments avoid the difficult problem of determining the value of the loss of use of money caused by delay in payment and protect against variations in the value of money which may be significant in a period of double digit inflation. Where services are rendered on a periodic basis, Section 2643 provides a means to deal with these problems without the need to make frequent accountings merely to permit payment of accrued compensation to the guardian or conservator or attorney.

The periodic payments are "on account." The actual compensation will be determined at the time the court reviews the account of the guardian or conservator. At that time, the payments are subject to review by the court in light of the services actually rendered. If the total of the periodic payments is inadequate to reflect the just and reasonable compensation to the guardian or conservator or reasonable attorney fees, the court should make an order allowing additional compensation or fees for the services actually rendered. If the amount paid is unreasonably high in view of the services actually rendered, the court should make an appropriate order. Such an order might be one that requires the guardian or conservator to credit the excess paid against the amount to be paid for future services.

CROSS-REFERENCES

- Appealable orders, § 2750
- Clerk sets petition for hearing, § 1451
- Compensation and expenses of guardian or conservator, § 2623
- Definition, court, § 1418
- Independent exercise of powers, § 2591(g)
- Nonprofit charitable corporation as guardian or conservator, limit on compensation and on fee of attorney, § 2104
- Petition must be verified, § 1450
- Proof of giving of notice, § 1468
- Request for special notice, § 2700

38/671

§ 2644. Contingent fee contract with attorney

2644. (a) When it is to the advantage, benefit, and best interest of the ward or conservatee or the estate, the guardian or conservator of the estate, after authorization by order of the court, may contract in advance of the rendering of the services with an attorney for a contingent fee for the attorney's services in representing the ward or conservatee or the estate in connection with a matter that is of a type that is customarily the subject of a contingent fee contract.

(b) To obtain an order under this section, the guardian or conservator shall file a petition showing the advantage to the ward or conservatee or the estate of the proposed contingent fee contract. A copy of

the proposed contingent fee contract shall be attached to the petition.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2644 is new. The section makes clear that the guardian or conservator, with prior court authorization, may make a contingent fee contract with an attorney in advance of the rendering of the services.

#### CROSS-REFERENCES

Appealable orders, § 2750  
Clerk sets petition for hearing, § 1451  
Court approval of minor's contract for attorney's fees, § 3302  
Definition, court, § 1418  
Independent exercise of powers, § 2591  
Petition must be verified, § 1450  
Proof of giving of notice, § 1468  
Request for special notice, § 2700

18/314

### CHAPTER 9. REMOVAL OR RESIGNATION

#### Article I. Removal of Guardian or Conservator

##### § 2650. Causes for removal

2650. A guardian or conservator may be removed for any of the following causes:

(a) Failure to use ordinary care and diligence in the management of the estate.

(b) Failure to file an inventory or to render an account within the time allowed by law or by court order.

(c) Continued failure to perform duties.

(d) Incapacity to perform duties suitably.

(e) Gross immorality or conviction of a felony.

(f) Having an interest adverse to the faithful performance of duties.

(g) In the case of a guardian of the person or a conservator of the person, failure to comply with the provisions of Section 2356 (involuntary civil mental health treatment).

(h) In the case of a guardian of the estate or a conservator of the estate, insolvency or bankruptcy of the guardian or conservator.

(i) In any other case in which the court in its discretion determines that removal is in the best interests of the ward or conservatee; but, in considering the best interests of the ward, if the guardian was nominated under Section 1500 or 1501, the court shall take that fact into consideration.

Comment. Section 2650 continues the substance of the portions of former Sections 1580 and 1951 enumerating the causes for removal of a guardian or conservator with several exceptions. The procedure for removal is specified in Sections 2651-2653. The provisions for removal of a guardian when it is "no longer necessary that the ward should be under guardianship" and for removal of a conservator when the conservatorship is "no longer required" are not continued. In such cases, termination of the guardianship or conservatorship is the appropriate remedy, and not removal. See Sections 1601 (guardianship) and 1863 (conservatorship). The provision for removal of a guardian or conservator for failure to use ordinary care and diligence supersedes the former provision for removal for waste, mismanagement of the estate, or abuse of the trust. The duty to use ordinary care and diligence is imposed by Section 2401.

The reference in former Section 1580 to a guardian appointed by will or by deed has been revised to refer to nomination of a guardian since a nomination concept has been substituted for the former appointment scheme.

Former Sections 1580 (removal of guardian) and 1951 (removal of conservator) provided that such removal could be ordered after notice and hearing substantially as provided in former Section 1755, which related to termination of a conservatorship. The relevant portions of former Section 1755 have been superseded by Sections 1861-1863 (termination of conservatorship), and by Sections 2651-2653, which provide the procedure for removal of a guardian or conservator.

#### CROSS-REFERENCES

Definition, court, § 1418

Removal for failure to

Account under Uniform Veterans' Guardianship Act, § 2909

Furnish sufficient or additional surety, § 2334

Produce conservatee for court investigator, § 1853

Temporary guardian or conservator, § 2258

18/315

#### § 2651. Petition for removal

2651. The ward or conservatee, or any relative or friend of the ward or conservatee, or any interested person may apply by petition to the court to have the guardian or conservator removed. The petition shall state facts showing cause for removal.

Comment. Section 2651 is comparable to Section 1861 (termination of conservatorship).

CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, §§ 1470-1472

Definitions

Court, § 1418

Interested person, § 1424

Petition must be verified, § 1450

18/316

§ 2652. Notice of hearing

2652. (a) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of hearing shall be mailed to the following persons (other than the petitioner):

(1) In the case of a guardianship, to the persons specified in Section 1511.

(2) In the case of a conservatorship, to the conservatee and to the persons specified in Section 1822.

(b) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of hearing shall be served on the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as the court may order. If the guardian or conservator cannot with reasonable diligence be so served, the court may dispense with service.

Comment. Section 2652 is comparable to Section 1862 (termination of conservatorship). The court has authority under Section 2654 to suspend the powers of the guardian or conservator pending notice and hearing.

CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

Request for special notice, § 2700

When service by mail deemed complete, § 1467

§ 2653. Hearing and judgment

2653. (a) The guardian or conservator, the ward or conservatee, any relative or friend of the ward or conservatee, and any interested person, may appear at the hearing and support or oppose the petition.

(b) If the court determines that cause for removal of the guardian or conservator exists, the court shall revoke the letters of guardianship or conservatorship and shall enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, shall order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto.

Comment. Section 2653 is comparable to the second sentence of subdivision (a) of Section 1863 (termination of conservatorship). There is no right to jury trial in removal proceedings. See Section 1452. Subdivision (b) is based in part on the first sentence of former Section 1581. The court continues to have jurisdiction for the purpose of the guardian's or conservator's account despite the removal. See Section 2630. As to the account of an incompetent or absconding guardian or conservator, see Section 2632.

CROSS-REFERENCES

Appealable orders, § 2750

Appointment of counsel to represent ward or conservatee, §§ 1470-1472

Appointment to fill vacancy, § 2110

Definitions

Court, § 1418

Interested person, § 1424

Revoking letters for failure to furnish additional or sufficient surety, § 2334

27/407

§ 2654. Surrender of estate and suspension of powers pending hearing

2654. (a) Whenever it appears that the ward or conservatee or the estate may suffer loss or injury during the time required for notice and hearing under this article, the court, on its own motion or on petition, may do either or both of the following:

(1) Suspend the powers of the guardian or conservator pending notice and hearing to such extent as the court deems necessary.

(2) Compel the guardian or conservator to surrender the estate to a custodian designated by the court.

(b) If the court suspends powers of the guardian or conservator under subdivision (a), the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

Comment. Subdivision (a) of Section 2654 continues the substance of former Section 1952 and supersedes a portion of former Section 1581. Subdivision (b) is new.

CROSS-REFERENCES

Definition, court, § 1418  
Petition must be verified, § 1450  
Request for special notice, § 2700  
Suspension of powers when petition for further surety or for bond filed, § 2334

38/456

Article 2. Resignation of Guardian or Conservator

§ 2660. Resignation of guardian or conservator

2660. A guardian or conservator may at any time file with the court a petition tendering the resignation of the guardian or conservator. The court may allow such resignation when it appears proper, to take effect at such time as the court may fix, and may make any order as may be necessary to deal with the guardianship or conservatorship during the period prior to the appointment of a new guardian or conservator and the settlement of the accounts of the resigning guardian or conservator.

Comment. Section 2660 is drawn in part from Section 1125.1 (resignation of trustee) and supersedes former Section 1953 and the first portion of former Section 1582. Section 2660 continues the substance of former Section 1953 except that the resignation takes effect at such time as the court may fix rather than upon settlement of the accounts of the guardian or conservator. The court may appoint a successor to the resigning guardian or conservator after notice and hearing. See Section 2110. The court may appoint a temporary guardian or conservator if necessary. The court continues to have jurisdiction for the purpose of the guardian's and conservator's account despite the resignation. See Section 2630.

CROSS-REFERENCES

Definition, court, § 1418  
Joint guardians or conservators, § 2105  
Petition must be verified, § 1450  
Temporary guardian or conservator, resignation, § 2258



CHAPTER 10. REQUESTS FOR SPECIAL NOTICE§ 2700. Request for special notice

2700. (a) At any time after the issuance of letters of guardianship or conservatorship, the ward if over 14 years of age or the conservatee, any relative or creditor of the ward or conservatee, or any other interested person, in person or by attorney, may file with the clerk of the court a written request for special notice of the filing or commencing of any one or more or all of the following:

- (1) Petitions to direct, authorize, approve, or confirm the sale, lease, encumbrance, conveyance, or exchange of property.
- (2) Petitions for transfer of the proceeding to another county.
- (3) Inventory and appraisal of the estate, including any supplemental inventory and appraisal.
- (4) Accounts of the guardian or conservator.
- (5) Petitions for the authorization to commence an action for the partition of property.
- (6) Petitions for allowances of any nature payable from the estate of the ward or conservatee.
- (7) Petitions for the investment of funds of the estate or for the purchase of real property.
- (8) Petitions for the removal, suspension, or discharge of the guardian or conservator.
- (9) Proceedings for the final termination of the guardianship or conservatorship proceedings.
- (10) Petitions to direct or allow payment of a debt or claim or to fix, direct, authorize, or allow payment of attorney's fee.
- (11) Petitions to fix, direct, authorize, or allow payment of the compensation or expenses of a guardian or conservator.
- (12) Petitions to direct, authorize, approve, or modify payments for the support, maintenance, or education of the ward or conservatee or a person legally entitled to support, maintenance, or education from the ward or conservatee.

(13) Petitions filed pursuant to Section 2423 (payment of surplus income to relatives of conservatee) or Article 10 (commencing with Section 2580) of Chapter 6 (substituted judgment).

(14) Petitions filed pursuant to Section 2359 or Section 2403 (authorization, instruction, approval, or confirmation by court).

(15) Petitions filed pursuant to Article 11 (commencing with Section 2590) of Chapter 6 (independent exercise of powers).

(16) Petitions filed under Section 2520 (conveyance or transfer of property claimed to belong to ward or conservatee or other person).

(17) Petitions filed pursuant to Article 5 (commencing with Section 2500) of Chapter 6 (compromise of claims and actions or extension, renewal, or modification of obligations).

(18) Petitions to fix the residence and domicile of the ward or conservatee at a place not within this state.

(19) Petitions to remove property to another jurisdiction.

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent. If the request is for all of the matters referred to in subdivision (a), the request may refer generally to the provisions of this section.

(c) A copy of the request shall be served on the guardian or conservator or on the attorney for the guardian or conservator.

(d) The original of the request when filed with the clerk shall be accompanied by a written admission or proof of service.

Comment. Subdivisions (a), (c), and (d) of Section 2700 continue the substance of former Sections 1600 and 2002, with the addition of express provision for special notice of the matters listed in paragraph (3) and paragraphs (10)-(17) of subdivision (b). Subdivision (a) in its first clause is based on former Section 2002, but the balance is derived from former Section 1600. The provision in paragraph (7) of subdivision (a) for special notice of petitions for the purchase of real property is drawn from the third sentence of former Section 1557.1.

Paragraphs (10), (11), and (12) of subdivision (a) are specific provisions that are included within the broad scope of paragraph (6) of that subdivision but are included to make clear that special notice may be requested of petitions described in those paragraphs. The inclusion of the specific paragraphs does not limit the broad scope of paragraph (6).

The first sentence of subdivision (b) continues the substance of the first sentence of former Section 2003 and supersedes that sentence

and the first clause of the first sentence of Section 1601. The second sentence of subdivision (b) is new but continues existing practice. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.10, at 31 (Cal. Cont. Ed. Bar 1968).

If a petition is one listed in Section 2700 and special notice of the petition is requested, special notice must be given under this chapter even though the particular provision under which the petition is filed permits an ex parte petition. See, e.g., Section 2463 (authorization to commence partition action). However, if the action can be taken without court authorization, no notice is required. See also the Comment to Section 2702 relating to the sale of perishable property and certain other property.

The ward, if over 14 years of age, or conservatee may request special notice under Section 2700 and must be given such notice if requested, whether or not the court has dispensed with notice to the ward or conservatee under Section 1460.

#### CROSS-REFERENCES

Appointment of counsel for ward or conservatee, §§ 1470-1472

Definitions

Court, § 1418

Interested person, § 1424

27/411

#### § 2701. Modification or withdrawal of request; new request

2701. (a) A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request and is deemed to be withdrawn at a date three years from the date it was filed.

(b) A new request for special notice may be served and filed at any time as provided in the case of an initial request.

Comment. Section 2701 continues the substance of the second, third, and fourth sentences of former Section 2003, except that the request for special notice is deemed withdrawn three years from the date it was filed, rather than three years from the date it was served as under former law. The former guardianship statute contained no express provision comparable to Section 2701.

27/412

#### § 2702. Petitioner required to give requested special notice

2702. In any case to which a request for special notice applies, the party filing the petition, report, or account, or commencing the proceeding, shall give written notice of the filing or commencement, together with the time and place set for the hearing thereon, by mailing

the notice to the person named in the request at the address set forth in the request, or by causing the notice to be personally delivered to such person, at least 15 days before the time set for the hearing or within such shorter time as the court may order. In the case of an inventory and appraisal of the estate, a written notice of the filing of the inventory and appraisal shall be so mailed or personally delivered not later than 15 days after the inventory and appraisal is filed with the court.

Comment. Section 2702 supersedes the last portion of former Section 1601 and all of former Section 2004. Section 2702 continues the substance of former Section 2004 except that the time for giving the notice has been increased from 10 to 15 days and the provision for shortening the time for the notice is new.

The provision of former Section 1601 that no notice is required when the petition is for the sale of perishable or certain other property is not continued. Section 2543 provides that the manner of sale shall conform to the procedure used for sales by administrators and Section 770 permits an administrator to sell perishable property and other personal property which will depreciate in value if not disposed of promptly, or which will incur loss or expense by being kept, without notice. Accordingly, there is no need to continue the provision of former Section 1601 that no notice is required in such cases. Notice would, however, be required of a petition for approval of a sale of such property under Section 770.

The provision of former Section 1601 which required a copy of the petition, application, account, or proceeding to accompany the notice has not been continued. No comparable requirement was contained in the conservatorship statute.

CROSS-REFERENCES

Definition, court, § 1413  
 "Petition" includes an application, § 1430  
 Proof of giving of notice, § 2703

27/413

§ 2703. Proof of giving of notice

2703. (a) Proof of mailing or of personal delivery of the notice required by Section 2702 shall be made at or before the hearing.

(b) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order, and such order, when it becomes final, is conclusive upon all persons.

Comment. Section 2703 continues the substance of former Sections 1602 and 2005. For discussion of a provision similar to subdivision (b), see the Comment to Section 1468. As to the manner of proof of giving of notice, see Section 1468.

CROSS-REFERENCES

Definition, court, § 1418

27/415

CHAPTER 11. APPEALS

§ 2750. Appealable orders

2750. An appeal may be taken from the making of, or the refusal to make, a judgment, order, or decree doing any of the following:

(a) Granting or revoking letters of guardianship or conservatorship except letters of temporary guardianship or temporary conservatorship.

(b) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, conveyance, or exchange of property.

(c) Adjudicating the merits of any claim under Article 5 (commencing with Section 2500) (compromise of claim or action or extension, renewal, or modification of obligation) or Article 6 (commencing with Section 2520) (conveyance or transfer of property claimed to belong to ward or conservatee or other person) of Chapter 6.

(d) Settling an account of a guardian or conservator.

(e) Instructing or directing a guardian or conservator.

(f) Granting permission to the guardian or conservator to fix the residence and domicile of the ward or conservatee at a place not within this state.

(g) Directing or allowing payment of a debt or claim or fixing, directing, authorizing, or allowing payment of an attorney's fee.

(h) Fixing, directing, authorizing, or allowing payment of the compensation or expenses of a guardian or conservator.

(i) Directing, authorizing, approving, or modifying payments for the support, maintenance, or education of the ward or conservatee or a person legally entitled to support, maintenance, or education from the ward or conservatee.

(j) Granting or denying a petition under Section 2423 (payment of surplus income to relatives of conservatee) or under Article 9 (commencing with Section 2580) of Chapter 6 (substituted judgment).

(k) Transferring the assets of the guardianship or conservatorship estate to a guardian, conservator, committee, or comparable fiduciary in another jurisdiction.

Comment. Section 2750 supersedes former Sections 1630 (guardianship) and 2101 (conservatorship). The introductory portion of Section 2750 and subdivisions (a), (d), and (e) continue the substance of former Section 1630 (guardianship) with the addition of the exception in subdivision (a) to make clear that an appeal may not be taken from an order granting or revoking letters of temporary guardianship or temporary conservatorship. Subdivisions (b), (c), and (g) through (i) are new and are adapted from Section 1240 (estates in probate). Subdivisions (f), (j), and (k) are also new.

Section 2750 has the effect of broadening appealable orders in guardianship while narrowing appealable orders in conservatorship. See, e.g., Guardianship of Jacobson, 30 Cal.2d 312, 182 P.2d 537 (1947) (order for allowance of counsel fees to guardian not appealable); but see Conservatorship of Smith, 9 Cal. App.3d 324, 88 Cal. Rptr. 119 (1970) (appeals in conservatorship limited).

CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, §§ 1470-1472

27/416

§ 2751. Stay

2751. (a) Except as provided in subdivisions (b) and (c), an appeal pursuant to Section 2750 stays the operation and effect of the judgment, order, or decree.

(b) For the purpose of preventing injury or loss to person or property, the trial court may direct the exercise of the powers of the guardian or conservator, or may appoint a temporary guardian or conservator of the person or estate, or both, to exercise the powers, from time to time, as though no appeal were pending. All acts of the guardian or conservator, or temporary guardian or temporary conservator, pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal.

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

Comment. Subdivisions (a) and (b) of Section 2751 continue the substance of former Sections 1631 (guardianship) and 2102 (conservatorship) and broaden the guardianship provisions to apply to all appeals in guardianship. Cf. Gold v. Superior Court, 3 Cal.3d 275, 475 P.2d 193,

90 Cal. Rptr. 161 (1970) (stay provisions in guardianship limited to appeal from order appointing guardian for incompetent person). Any problems caused by broadening the stay provisions are subject to the trial court's continuing jurisdiction.

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 6 B. 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.

CROSS-REFERENCES

Temporary guardians and conservators, §§ 2250-2258

27/417

§ 2752. Reversal of order appointing guardian or conservator

2752. If an order appointing a guardian or conservator is reversed on appeal for error, all lawful acts of the guardian or conservator performed after qualification and prior to the reversal are as valid as though the order were affirmed.

Comment. Section 2752 continues the substance of former Section 1632 (guardianship); there was no comparable provision for conservatorship. Although appeal of an order appointing a guardian or conservator ordinarily stays the order pursuant to Section 2751, there may be an interval between appointment and determination of the appeal during which the guardian or conservator acts. See Section 2751(b).

CROSS-REFERENCES

Effect of court authorization, approval, or confirmation, § 2103

27/418

CHAPTER 12. TRANSFER OF ASSETS OUT OF STATE

§ 2800. "Foreign guardian or conservator" defined

2800. As used in this chapter, "foreign guardian or conservator" means a guardian, conservator, committee, or comparable fiduciary in another jurisdiction.

Comment. Section 2800 is a new provision included to avoid needless repetition in this chapter.

§ 2801. Order for transfer of assets out of state

2801. Subject to the limitations and requirements of this chapter, the court in which the guardianship of the estate or conservatorship of the estate is pending may order the transfer of some or all of the assets of the estate to a foreign guardian or conservator in another jurisdiction outside of California where the ward or conservatee resides at the time the petition for the order authorizing the transfer is filed.

Comment. Section 2801 is based on portions of former Sections 1603 (guardianship) and 2051 and 2052 (conservatorship), but Section 2801 is confined to the transfer of some or all of the assets of the estate while the former provisions provided for the "transfer of the proceeding." Section 2801 permits transfer of assets to "another jurisdiction outside of California where the ward or conservatee resides at the time the petition" is filed, whereas former Section 2052 permitted transfer to "any other state in which the conservatee resides at the time of the application for the transfer." Section 2801 thus permits transfer of assets to a foreign jurisdiction that is not another state. In this respect, Section 2801 is consistent with the statute relating to the transfer of some or all of the assets of a trust to another jurisdiction outside of California. See Sections 1139-1139.7. For the procedure for removal of assets to another jurisdiction by a nonresident guardian or conservator or similar fiduciary where there is no California guardian or conservator, see Sections 3800-3803.

## CROSS-REFERENCES

Appealable orders, § 2750

Definition, foreign guardian or conservator, § 2300

405/584

§ 2802. Who may petition for transfer

2802. A petition for an order authorizing a transfer may be filed by any of the following:

- (a) The guardian of the estate or the conservator of the estate.
- (b) The ward or conservatee.
- (c) A foreign guardian or conservator.

Comment. Section 2802 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship) except that the list of persons who may file a petition has been expanded to include the ward or conservatee. See also former Section 1603 (guardianship).



CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, § 1470  
Definition, foreign guardian or conservator, § 2800

405/583

§ 2803. Contents of petition

2803. The petition shall set forth all of the following:

(a) The name and address of:

(1) The foreign guardian or conservator, who may but need not be the guardian or conservator appointed in this state.

(2) The ward or conservatee.

(3) The guardian or conservator, so far as known to the petitioner.

(b) The names, ages, and addresses, so far as they are known to the petitioner, of the spouse and of relatives of the ward or conservatee within the second degree.

(c) A brief description of the character, condition, value, and location of the property comprising the assets sought to be transferred.

(d) A statement whether the foreign guardian or conservator has agreed to accept the transfer of the assets. If the foreign guardian or conservator has so agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(e) A statement of the manner and by whom the foreign guardian or conservator was appointed.

(f) A general statement of the qualifications of the foreign guardian or conservator.

(g) The amount of bond, if any, of the foreign guardian or conservator.

(h) A general statement of the nature and value of the assets of the ward or conservatee already under the management and control of the foreign guardian or conservator.

(i) The name of the court having jurisdiction of such foreign guardian or conservator or of the accounts of such foreign guardian or conservator or, if none, the court in which a proceeding may be had with respect to the guardianship or conservatorship if the assets are transferred.

(j) Whether there is any pending civil action in this state against the guardian or conservator, the ward or conservatee, or the estate.

(k) A statement of the reasons for the transfer.

Comment. Section 2803 is drawn primarily from Section 1139.2 (transfer of trust assets out of state) and in part from former Section 2052 (transfer of conservatorship proceeding out of state). See also former Section 1603 (guardianship). The information required to be included in the petition is needed so that the court can decide whether the requirements of Section 2806 are satisfied.

CROSS-REFERENCES

Definition, foreign guardian or conservator, § 2800  
Petition must be verified, § 1450

405/582

§ 2804. Notice of hearing

2804. At least 30 days before the hearing, the petitioner shall mail a notice of the time and place of the hearing and a copy of the petition to each person (other than the petitioner) required to be listed in the petition at the address stated in the petition.

Comment. Section 2804 continues the substance of the second sentence of former Section 2053 (conservatorship) except that the provision requiring the clerk to set the petition for hearing is continued in Section 1451 and the time for mailing notice is increased from 10 to 30 days to conform to the time provided in Section 1139.3 (transfer of trust assets out of state). See also former Section 1603 (guardianship).

CROSS-REFERENCES

Clerk sets petition for hearing, § 1451  
Mailing  
Manner of, § 1465  
Personal delivery in lieu of, § 1466  
When complete, § 1465  
Proof of giving of notice, § 1468  
Request for special notice, § 2700

405/581

§ 2805. Opposition to petition

2805. Any of the following may appear and file written objections to the petition:

- (a) Any person required to be listed in the petition.
- (b) Any creditor of the ward or conservatee or of the estate.

- (c) Any relative or friend of the ward or conservatee.
- (d) Any other interested person.

Comment. Section 2805 continues the substance of the third sentence of former Section 2053 (conservatorship) and expands the list of those who may appear and object by adding any relative or friend of the ward or conservatee and any other interested person. See also former Section 1603 (guardianship).

CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, § 1470  
Definition, interested person, § 1424

405/505

§ 2806. Order for transfer

2806. The court may grant the petition and order the guardian or conservator to transfer some or all of the assets of the estate to the foreign guardian or conservator if the court determines all of the following:

- (a) The transfer would promote the best interests of the ward or conservatee and the estate.
- (b) The substantial rights of creditors or claimants in this state will not be materially impaired by the transfer.
- (c) The foreign guardian or conservator is qualified, willing, and able to administer the assets to be transferred.

Comment. Section 2806 is drawn from Section 1139.4 (transfer of trust assets out of state) and former Section 1572 (removal of ward's property from state) and supersedes the fourth sentence of former Section 2053 (conservatorship). See also former Section 1603 (guardianship). Important elements in determining whether "the transfer would promote the best interests of the ward or conservatee and the estate" are whether the transfer will facilitate the economical and convenient administration of the estate and whether the guardianship or conservatorship estate will be administered by a competent fiduciary in the other jurisdiction.

CROSS-REFERENCES

Appealable orders, § 2750  
Definitions  
Court, § 1418  
Foreign guardian or conservator, § 2800

§ 2807. Manner of transfer; conditions

2807. If a transfer is ordered, the court may direct the manner of transfer and impose such terms and conditions as may be just.

Comment. Section 2807 is drawn from the first sentence of Section 1139.5 (transfer of trust assets out of state). It supersedes the last two sentences of former Section 2053 (conservatorship). See also former Section 1603 (guardianship).

CROSS-REFERENCES

Definitions

Court, § 1418

Foreign guardian or conservator, § 2800

405/503

§ 2808. Termination of guardianship or conservatorship

2808. (a) If the court's order provides for the transfer of all of the assets of the estate to the foreign guardian or conservator, the court, upon settlement of the final account, shall order the guardianship of the estate or the conservatorship of the estate terminated upon the filing with the clerk of the court of a receipt for such assets executed by the foreign guardian or conservator.

(b) Unless notice is waived, a copy of the final account of the guardian or conservator and of the petition for discharge, together with a notice of the hearing thereon, shall be mailed at least 30 days before the date of the hearing to all persons required to be listed in the petition for transfer, including the foreign guardian or conservator.

Comment. Section 2808 is based on former Section 2055 (conservatorship). See also former Section 1603 (guardianship). As to the termination of the proceeding and discharge of the guardian or conservator when the estate is exhausted, see also Section 2626. If there is California real property being administered in the California proceeding, it may be necessary to continue the California proceeding for the purpose of administering such property. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.28, at 45 (Cal. Cont. Ed. Bar 1968).

CROSS-REFERENCES

Appealable orders, § 2750

Definitions

Court, § 1418

Foreign guardian or conservator, § 2800

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

Request for special notice, § 2700

PART 5. UNIFORM VETERANS' GUARDIANSHIP ACT

§ 2900. Short title

2900. This part may be cited as the "Uniform Veterans' Guardianship Act."

Comment. Section 2900 continues former Section 1666.

405/497

§ 2901. Definitions

2901. As used in this part:

(a) "Person" means an individual, a partnership, a corporation, or an association.

(b) "Veterans Administration" means the Veterans Administration, its predecessors, or successors.

(c) "Income" means moneys received from the Veterans Administration and revenue or profit from any property wholly or partially acquired therewith.

(d) "Estate" means income on hand and assets acquired partially or wholly with "income."

(e) "Benefits" means all moneys paid or payable by the United States through the Veterans Administration.

(f) "Administrator" means the Administrator of Veterans Affairs of the United States or successor.

(g) "Ward" means a beneficiary of the Veterans Administration.

(h) "Guardian" means any fiduciary for the estate of a ward.

Comment. Section 2901 continues former Section 1650, except that the definition of "guardian" in subdivision (h) has been narrowed to refer to a guardian of the estate only. Since former Sections 1663 and 1664 relating to involuntary commitment have not been continued, the Uniform Veterans' Guardianship Act no longer contains provisions relating to guardianship of the person.

969/001

§ 2902. Manner of appointment of guardian

2902. Whenever, pursuant to any law of the United States or regulation of the Veterans Administration, it is necessary, prior to payment

of benefits that a guardian be appointed, the appointment may be made in the manner provided in this part.

Comment. Section 2902 continues former Section 1651.

CROSS-REFERENCES

Definitions

Benefits, § 2901

Guardian, § 2901

Veterans Administration, § 2901

969/002

§ 2903. Petition; filing; contents

2903. (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.

(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 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.

Comment. Section 2903 continues former Section 1652.

CROSS-REFERENCES

Appointment of legal counsel for ward, § 1470

Definitions

Benefits, § 2901

Guardian, § 2901

Person, § 2901

Veterans Administration, § 2901

Ward, § 2901

Petition must be verified, § 1450

969/003

§ 2904. Evidence of necessity for guardian of minor

2904. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or the administrator's authorized representative, setting forth the age of the minor as shown by the records of the Veterans Administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the Veterans Administration is prima facie evidence of the necessity for the appointment.

Comment. Section 2904 continues former Section 1653.

CROSS-REFERENCES

Definitions

Administrator, § 2901

Guardian, § 2901

Veterans Administration, § 2901

969/004

§ 2905. Evidence of necessity for guardian for incompetent

2905. Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or the administrator's duly authorized representative, that such person has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans Administration and that the appointment of a guardian is a condition precedent to the payment of any moneys due the ward by the Veterans Administration, is prima facie evidence of the necessity for the appointment.

Comment. Section 2905 continues former Section 1654.

CROSS-REFERENCES

Definitions

- Administrator, § 2901
- Guardian, § 2901
- Veterans Administration, § 2901
- Ward, § 2901

969/006

§ 2906. Notice

2906. Upon the filing of a petition for the appointment of a guardian under this part, notice of the time and place of hearing on the petition shall be given as provided in Section 1511. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

Comment. Section 2906 continues the substance of former Section 1655. Concerning the last sentence of Section 2906, see the Comment to Section 2908.

CROSS-REFERENCES

Definitions

- Guardian, § 2901
- Veterans Administration, § 2901
- Ward, § 2901
- Proof of giving of notice, § 1468

969/007

§ 2907. Fitness of appointee; bond

2907. (a) Before making an appointment under the provisions of this part, the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed.

(b) Upon the appointment being made, the guardian shall execute and file the bond required by law. Where a bond is tendered by a guardian with personal sureties, such sureties shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and that they are each worth the sum named in the bond as the penalty thereof over and above all their debts and liabilities and exclusive of property exempt from execution.

Comment. Section 2907 continues former Section 1656.



CROSS-REFERENCES

Bonds, §§ 2320-2337

Definitions

Court, § 1418

Guardian, § 2901

969/008

§ 2908. Petitions and accounts; notices and hearings

2908. (a) Every guardian who has received or shall receive on account of the ward any moneys or other thing of value from the Veterans Administration shall file with the court annually, or at such other intervals as are directed by the court, in addition to such other accounts as may be required by the court, a full, true, and accurate account of all moneys or other things of value so received by the guardian, all earnings, interest or profits derived therefrom and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in hands of the guardian at the date of the account and how invested.

(b) At the time of filing in the court any account, a true copy thereof shall be sent by the guardian to the office of the Veterans Administration having jurisdiction over the area in which the court is located. The clerk shall fix a time and place for the hearing on the account, not less than 15 days nor more than 30 days from the date the account is filed, unless a different available date be stipulated in writing. Not less than 15 days prior to the date fixed for the hearing, written notice of the time and place of hearing shall be mailed to the office of the Veterans Administration having jurisdiction over the area in which the court is located and to the guardian and to any others entitled to notice under subdivision (c) of Section 1460 or who have requested special notice pursuant to Chapter 10 (commencing with Section 2700) of Part 4.

(c) If the guardian is accountable for property derived from sources other than the Veterans Administration, the guardian is accountable as is or may be required under the applicable law of this state pertaining to the property of wards or conservatees who are not beneficiaries of the Veterans Administration, and as to such other property is

§ 2909

entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section.

Comment. Section 2908 continues former Section 1657 except that the former reference to "others entitled to notice" is clarified in subdivision (b) to refer to those persons specified in subdivision (c) of Section 1460. Sections 2906, 2910, 2911, 2912, 2913, and 2915 incorporate the procedure under subdivision (b) of Section 2908. Uniform language incorporating the procedure under Section 2908 has been substituted in these sections to replace the varying language formerly used in the various provisions from which the sections were derived.

CROSS-REFERENCES

Account must be verified, § 1450

Definitions

Court, § 1418

Guardian, § 2901

Veterans Administration, § 2901

Ward, § 2901

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

969/009

§ 2909. Penalty for failure to account

2909. If a guardian fails to file with the court any account as required by this part, or by an order of the court, when any account is due or within 30 days after citation issues as provided by law, or fails to furnish the Veterans Administration a true copy of any account as required by this part, such failure shall in the discretion of the court be ground for the removal of the guardian.

Comment. Section 2909 continues former Section 1658.

CROSS-REFERENCES

Causes for removal of guardian or conservator, § 2650

Definitions

Court, § 1418

Guardian, § 2901

Veterans Administration, § 2901

§ 2910. Compensation of guardians

2910. Compensation payable to guardians shall not exceed five percent of the income of the ward during the year, except that, in any case in which five percent of the money received during such period is less than twenty-five dollars (\$25), the court may in its discretion, and without a showing of extraordinary services by the guardian, allow a reasonable compensation, not to exceed twenty-five dollars (\$25). In the event of extraordinary services rendered by such guardian, the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of the ward reasonable premiums paid by the guardian to any corporate surety upon the guardian's bond.

Comment. Section 2910 continues former Section 1659. "Veterans Administration" has been substituted for "bureau" in former Section 1659. Concerning the provision for sending a copy of the petition and giving notice of the hearing to the Veterans Administration, see the Comment to Section 2908.

## CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

## Definitions

Court, § 1418

Estate, § 2901

Guardian, § 2901

Income, § 2901

Veterans Administration, § 2901

Ward, § 2901

Petition must be verified, § 1450

Proof of giving of notice, § 1468

§ 2911. Investments

2911. (a) Every guardian shall invest the surplus funds of the ward's estate in such securities or property as authorized under the laws of this state, or may deposit funds of the estate with any bank in this state or with a trust company authorized to transact a trust business in this state or in an account in an insured savings and loan association, but only upon prior order of the court. A signed duplicate or certified copy of the petition for authority to invest shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

(b) Notwithstanding subdivision (a), the funds may be invested, without court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States.

Comment. Section 2911 continues former Section 1660. Subdivision (a) has been revised to permit deposit with a "trust company" as well as a "bank." The requirement that the bank be "in this state" is new. Concerning the last sentence of subdivision (a) of Section 2911, see the Comment to Section 2908.

CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Definitions

Account in an insured savings and loan association, § 1406

Court, § 1418

Estate, § 2901

Guardian, § 2901

Veterans Administration, § 2901

Ward, § 2901

Petition must be verified, § 1450

Proof of giving of notice, § 1468

§ 2912. Maintenance and support of person other than ward

2912. A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person other than the ward, except upon petition to and authorization by order of the court after a

hearing. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration, in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

Comment. Section 2912 continues former Section 1661. Concerning the last sentence of Section 2912, see the Comment to Section 2908.

CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Definitions

Court, § 1418

Estate, § 2901

Guardian, § 2901

Income, § 2901

Veterans Administration, § 2901

Petition must be verified, § 1450

Proof of giving of notice, § 1468

969/026

§ 2913. Purchase of home for ward

2913. (a) The court may authorize the purchase of real property in this state in which the guardian has no interest, but only as a home for the ward, or to protect the interest of the ward, or (if the ward is not a minor) as a home for the ward's dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon petition. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

(b) Before authorizing such investment, the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This section does not limit the right of the guardian on behalf of the ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such be

necessary to protect the ward's interests and upon prior order of the court in which the guardianship is pending, to agree with cotenants of the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty.

Comment. Section 2913 continues former Section 1661.5 except that the former language permitting the court to authorize the purchase of "the entire fee simple title to real estate" has been replaced by the reference to "real property." Thus, for example, purchase of a share in cooperative housing could be authorized under this section. Concerning the last sentence of subdivision (a) of Section 2913, see the Comment to Section 2908.

CROSS-REFERENCES

Definitions

- Court, § 1418
- Guardian, § 2901
- Veterans Administration, § 2901
- Ward, § 2901
- Petition must be verified, § 1450
- Proof of giving of notice, § 1468
- Purchase of home for ward or conservatee or dependents, § 2571

969/028

§ 2914. Furnishing copies of record without charge

2914. When a copy of any public record is required by the Veterans Administration to be used in determining the eligibility of any person to participate in benefits made available by the Veterans Administration, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on the applicant's behalf or the authorized representative of the Veterans Administration with a certified copy of such record.

Comment. Section 2914 continues former Section 1662.

CROSS-REFERENCES

Definitions

- Benefits, § 2901
- Person, § 2901
- Veterans Administration, § 2901

§ 2915. Certificate of majority or competency; discharge of guardian and release of sureties

2915. A certificate by the Veterans Administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the Veterans Administration, and that the guardianship is no longer necessary as a condition to the payment of any moneys due the ward by the Veterans Administration, is prima facie evidence that the guardianship is no longer necessary. Upon hearing after such notice as the court may require and the determination by the court that the guardianship is no longer necessary, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908, upon approval of the final account, and upon delivery to the ward of the assets due to the ward from the guardian, the guardian shall be discharged and the guardian's sureties released.

Comment. Section 2915 continues the substance of former Section 1662.5 except that the former references to majority and competency have been replaced by that fact that the guardianship is no longer necessary and the court determines the notice, if any, to be given at the hearing. Concerning the first portion of the last sentence of Section 2915, see the Comment to Section 2908.

CROSS-REFERENCES

Definitions

Court, § 1418  
 Guardian, § 2901  
 Veterans Administration, § 2901  
 Ward, § 2901

§ 2916. Application of part

2916. The provisions of this part relating to surety bonds and the administration of estates of wards apply to all "income" and "estate" as defined in Section 2901 whether the guardian has been appointed under this part or under any other law of this state, special or general, prior or subsequent to the enactment of this part.

Comment. Section 2916 continues former Section 1665.

CROSS-REFERENCES

Bonds, §§ 2320-2337, 2907

Definitions

Estate, § 2901

Guardian, § 2901

Income, § 2901

969/039

§ 2917. Law applicable to exercise of powers and duties of guardian

2917. The powers and duties of a guardian appointed under this part apply only to "income" and "estate" as defined in Section 2901. Except where inconsistent with this part, the laws of this state relating to guardian and ward or conservator and conservatee, as the case may be, and the judicial practice relating thereto, including the right of appeal, apply to the exercise of those powers and duties and to the settlement of accounts.

Comment. The first sentence of Section 2917 is new and codifies the intent of the former law. See Estate of Vaell, 158 Cal. App.2d 204, 322 P.2d 579 (1958).

The second sentence is based on the second sentence of former Section 1669 and superseded former Section 2151. The reference in former Section 1669 to trial by jury is not continued, and the extent to which provisions of law outside this part are applied under this part has been restricted. For example, the provisions of Part 3 (conservatorship) relating to appointment of a court investigator, right to counsel, biennial review of the conservatorship by the court, and the like, are not applied to proceedings under the Uniform Veterans' Guardianship Act. These revisions reflect the fact that former Sections 1663 and 1664 (commitment to Veterans Administration facility) have not been continued, and the act now merely provides for administration of Veterans Administration benefits when the beneficiary has been certified incompetent by the Veterans Administration. See Estate of Vaell, *supra*.

It should be noted that a guardian or conservator appointed under the general provisions of California law (apart from this part) must comply with the provisions of this part relating to surety bonds and the administration of estates so far as "income" and "estate" (as defined in Section 2901) are concerned. See Section 2916. See also Section 2908 (combined account for property derived from Veterans Administration and other sources permitted).

CROSS-REFERENCES

Definitions

Estate, § 2901

Guardian, § 2901

Income, § 2901



§ 2918. Uniform law; effectuation of uniformity

2918. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Comment. Section 2918 continues former Section 1667.

PART 6. MANAGEMENT OR DISPOSITION OF COMMUNITY OR HOMESTEAD  
PROPERTY WHERE SPOUSE LACKS LEGAL CAPACITY

This part is not included in this draft. The part is attached to Memorandum 78-58 (to be prepared for September 1978 meeting).

PART 7. AUTHORIZATION OF MEDICAL TREATMENT OF ADULT  
WITHOUT CONSERVATORSHIP

This part is not included in this draft. The part is attached to Memorandum 78-57 (to be prepared for September 1978 meeting).

PART 8. OTHER PROTECTIVE PROCEEDINGSCHAPTER 1. GENERAL PROVISIONS§ 3300. Parent must account to minor for money received

3300. A parent who receives any money or property belonging to a minor under any provision of this part shall account to the minor for the money or other property when the minor reaches the age of majority.

Comment. Section 3300 is based on former Section 1432, but Section 3300 expands the scope of the former section to include property other than money and to cover money or other property received under any of the provisions of this part, not just the provisions of this part that continue the substance of former Sections 1430, 1430.5, and 1431.

31/495

§ 3301. Consent of court to permit hospital or medical care or enlistment in armed forces

3301. Whenever it appears to the satisfaction of the superior court by 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 3301 is the same as former Section 1444.

## CROSS-REFERENCES

Application must be verified, § 1450  
Hospital, medical, or dental care without parent's consent, Civil Code  
§§ 25.5-34.10

31/496

§ 3302. Approval of contract for attorney's fees for minor; fees in absence of contract

3302. A contract for attorney's fees for services in litigation, made by or on behalf of a minor, is void unless the contract is approved by the court in which the litigation is pending or the court having jurisdiction of the guardianship estate of the minor, upon petition of any person interested. When no such contract is approved and a judgment

is recovered by or on behalf of a minor, the attorney's fees chargeable against the minor shall be fixed by the court rendering the judgment.

Comment. Section 3302 is the same as former Section 1509 except that "guardianship" has been inserted before "estate." Section 3302 is not limited to cases in which a guardian of the estate of the minor has been appointed. Although former Section 1509 was located in Chapter 7 of Division 4 (powers and duties of guardian), its application likewise was not limited to cases in which a guardian of a minor had been appointed. See, e.g., Leonard v. Alexander, 50 Cal. App.2d 385, 122 P.2d 984 (1942); 1 B. Witkin, California Procedure Attorneys § 86, at 92 (2d ed. 1970).

CROSS-REFERENCES

Order for payment of fee to attorney, § 3601  
Definition, interested person, § 1424

31/499

CHAPTER 2. MONEY OR PROPERTY BELONGING TO MINOR

Article 1. Total Estate Not in Excess of \$5,000

§ 3400. "Total estate of the minor" defined

3400. (a) As used in this article, "total estate of the minor" includes both the money and other property belonging to the minor and the money and other property belonging to the guardianship estate, if any, of the minor.

(b) In computing the "total estate of the minor" for the purposes of this article, all of the following shall be deducted:

(1) "Custodial property" held pursuant to the California Uniform Gifts to Minors Act, Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Any money or property subject to court order pursuant to subdivision (c) of Section 3602 or Article 2 (commencing with Section 3610) of Chapter 4.

Comment. Subdivision (a) of Section 3400 is new. Subdivision (b) continues the substance of the second sentence of former Section 1430.

31/450

§ 3401. Delivery of money or property to parent

3401. (a) Where a minor does not have a guardian of the estate, money or other property belonging to the minor may be paid or delivered

§ 3401

to a parent of the minor entitled to the custody of the minor to be held in trust for the minor until the minor reaches majority if the requirements of subdivision (c) are satisfied.

(b) Where the minor has a guardian of the estate, all the money and other property belonging to the guardianship estate may be paid or delivered to a parent entitled to the custody of the minor to be held in trust for the minor until the minor reaches majority if the requirements of subdivision (c) are satisfied.

(c) This section applies only if both of the following requirements are satisfied:

(1) The total estate of the minor, including the money and other property to be paid or delivered to the parent, does not exceed five thousand dollars (\$5,000) in value.

(2) The parent to whom the money or other property is to be paid or delivered gives the person making the payment or delivery written assurance, verified by the oath of such parent, that the total estate of the minor, including the money or other property to be paid or delivered to the parent, does not exceed five thousand dollars (\$5,000) in value.

Comment. Sections 3400, 3401, and 3402 continue the substance of former Section 1430 except that the former provisions have been simplified and broadened by substituting a five thousand dollar total estate limit in Section 3401 for the references in former Section 1430 to two thousand and two thousand five hundred dollars.

Subdivision (a) applies only where the minor has no guardian of the estate. If the minor has a guardian of the estate, the money would be paid to the guardian not to a parent.

Subdivision (b) is designed to permit the entire guardianship estate to be paid over to a parent without the need for a court order when the requirements of subdivision (c) are satisfied. Such payment would not avoid the need for the termination of the guardianship by the court. See Section 2626.

CROSS-REFERENCES

Definition, total estate of the minor, § 3400  
Duty of parent to account to minor, § 3300  
Payment of money belonging to the minor, §§ 3412(c), 3413(c)  
Payment or delivery of proceeds of compromise or judgment, § 3611(d)  
Right of parent to minor child's earnings, Civil Code § 197

§ 3402. Effect of written receipt of parent

3402. The written receipt of the parent giving the written assurance under Section 3401 shall be an acquittance of the person making the payment of money or delivery of other property pursuant to this article.

Comment. See the Comment to Section 3401.

Article 2. Property in the Form of Money§ 3410. Application of article; computing "money belonging to the minor"

3410. (a) This article applies to both of the following cases:

(1) Where the minor has a guardian of the estate and the sole asset of the guardianship estate is money.

(2) Where the minor has no guardian of the estate and there is money belonging to the minor.

(b) This article does not apply to, and there shall be excluded in computing "money belonging to the minor" for the purpose of this article, all of the following:

(1) Money or property which is or will be held as "custodial property" pursuant to the California Uniform Gifts to Minors Act, Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Any money or property subject to court order pursuant to subdivision (c) of Section 3602 or Article 2 (commencing with Section 3610) of Chapter 4.

Comment. Sections 3410-3413 continue the substance of former Section 1430.5 except that the former minimum (\$2,000) and maximum (\$20,000) limits on its scope have not been continued. See the Comment to Section 3412. The authority under former Section 1430.5 for the court to "prescribe such other conditions as the court in its discretion deems to be in the best interests of the minor" has been continued in Sections 3412 and 3413 and is limited, as under former Section 1430.5, to cases where the amount is not in excess of \$20,000. Where the amount exceeds \$20,000, authority has been added for the court to require that the money be deposited or invested in court controlled accounts in certain financial institutions in lieu of guardianship in the same manner as money paid pursuant to a compromise of a claim of, or a judgment in

favor of, a minor or incompetent person. Compare Sections 3412 and 3413 with Section 3611. Where the amount is \$5,000 or less, authority has been added to permit the court to order the amount to be paid to a parent to be held in trust for the minor during minority in the same manner as money paid pursuant to a compromise of a claim of, or a judgment in favor of, a minor or incompetent person. Compare Sections 3412 and 3413 with Section 3611.

Section 3410 is drawn from the introductory clause of the first sentence of former Section 1430.5.

31/453

§ 3411. Filing of petition

3411. (a) A parent of a minor entitled to custody of the minor, the guardian of the estate of the minor, or the person holding the money belonging to the minor may file a petition requesting that the court make an order under this article.

(b) The petition shall be filed in the superior court of:

(1) The county where the minor resides if the minor has no guardian of the estate.

(2) The county having jurisdiction of the guardianship estate if the minor has a guardian of the estate.

Comment. Subdivision (a) of Section 3411 continues the substance of a portion of the first sentence of former Section 1430.5.

CROSS-REFERENCES

Petition must be verified, § 1450

Payment or delivery of property pursuant to compromise or judgment,  
§§ 3600-3612

31/454

§ 3412. Order of court where guardianship of estate

3412. If the minor has a guardian of the estate and the sole asset of the guardianship estate is money, the court may order that the guardianship of the estate be terminated and, if the court so orders, the court in its discretion shall also order any one or more of the following:

(a) That the money be deposited in a bank in this state or a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) If the money of the guardianship estate does not exceed twenty thousand dollars (\$20,000), that the money be held on such other conditions as the court in its discretion determines to be in the best interests of the minor.

(c) If the money of the guardianship estate does not exceed five thousand dollars (\$5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

Comment. Section 3412 applies only where the minor has a guardian of the estate. Where the minor has no guardian of the estate, Section 3413 applies. See the Comment to Section 3410. The authorization in subdivision (a) to invest in a single-premium deferred annuity is new and is comparable to Section 3611 (disposition of money received pursuant to compromise or settlement). The minimum amount under former Section 1430.5 for application of this article--\$2,000--has been omitted so that the court can order any amount deposited in a court controlled account as an alternative to ordering it paid to a parent. Subdivision (c) has been added to give the court the alternative of ordering direct payment to a parent to hold the money in trust for the minor during minority where the amount does not exceed \$5,000. Subdivision (c) is comparable to subdivision (d) of Section 3611.

Where the money of the guardianship estate does not exceed \$5,000, the court, in its discretion, may make an order under subdivision (a), (b), or (c). Where the money does not exceed \$20,000, the court has discretion to make an order under subdivision (a) or (b). Where the money exceeds \$20,000, the court may make an order only under subdivision (a).

Where the total estate of the minor (as defined in Section 3400) does not exceed \$5,000, money of the guardianship estate may be paid directly to a parent under Section 3401 without obtaining a court order under this article or a petition may be filed under this article to obtain a court order under Section 3412. This article provides the guardian who is reluctant to turn over the money to a parent to hold in trust for the minor with the alternative of requesting that the court order the amount deposited or invested under subdivision (a) of Section 3412.

#### CROSS-REFERENCES

##### Definitions

Account in an insured savings and loan association, § 1406  
Shares of an insured credit union, § 1443  
Single-premium deferred annuity, § 1446  
Proper court, § 3411



§ 3413. Order of court where no guardianship of estate

3413. If the minor has no guardian of the estate and there is money belonging to the minor, the court may order that a guardian of the estate be appointed and that the money be paid to the guardian or the court may order any one or more of the following:

(a) That the money be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state or invested in an account of an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) If the money belonging to the minor does not exceed twenty thousand dollars (\$20,000), that the money be held on such other conditions as the court in its discretion determines to be in the best interests of the minor.

(c) If the money belonging to the minor does not exceed five thousand dollars (\$5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

Comment. Section 3413 applies only where the minor does not have a guardian of the estate. Where the minor has a guardian of the estate, Section 3412 applies. See the Comment to Section 3410. Section 3413 is similar to Section 3412. See the Comment to Section 3412.

## CROSS-REFERENCES

Definitions

Account in an insured savings and loan association, § 1406  
 money belonging to the minor, § 3410  
 Shares of an insured credit union, § 1443  
 Single-premium deferred annuity, § 1446  
 Proper court, § 3411

CHAPTER 3. COMPROMISE BY PARENT OF MINOR'S DISPUTED CLAIM§ 3500. Parent's right to compromise minor's claim

3500. (a) When a minor has a disputed claim for damages, money, or other property and does not have a guardian of the estate, the following persons have the right to compromise, or to execute a covenant not to

sue on or a covenant not to enforce judgment on, the claim, unless the claim is against such person or persons:

(1) Either parent if the parents of the minor are not living separate and apart.

(2) The parent having the care, custody, or control of the minor if the parents of the minor are living separate and apart.

(b) The compromise or covenant is valid only after it has been approved, upon the filing of a petition, by the superior court of either of the following counties:

(1) The county where the minor resides when the petition is filed.

(2) Any county where suit on the claim or matter properly could be brought.

(c) Any money or other property to be paid or delivered for the benefit of the minor pursuant to the compromise or covenant shall be paid and delivered in the manner and upon the terms and conditions specified in Chapter 4 (commencing with Section 3600).

(d) A parent having the right to compromise the disputed claim of the minor under this section may execute a full release and satisfaction, or execute a covenant not to sue on or a covenant not to enforce judgment on the disputed claim, after the money or other property to be paid or delivered has been paid or delivered as provided in subdivision (c). If the court orders that all or any part of the money to be paid under the compromise or covenant be deposited in a bank or in a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, the release and satisfaction or covenant is not effective for any purpose until the money has been deposited or invested as directed in the order of the court.

Comment. Section 3500 continues the substance of former Section 1431 except (1) the limitation of the section to cases where the minor has no guardian of the estate is new, (2) a reference is added to "a covenant not to enforce judgment on" the claim, and (3) the court authorized to approve the compromise or covenant has been expanded to include the superior court of "any county where suit on the claim or matter properly could be brought." The reference to a covenant not to enforce judgment is added to permit a parent to compromise a final

judgment that is not fully collectible. While the action is pending, compromise of a judgment that is not final is governed by Section 372 of the Code of Civil Procedure. The extension which permits approval by the superior court in any county in which a suit could be brought on the claim or matter makes Section 3500 consistent with Section 2505 (compromise by guardian or conservator).

Where the minor has a guardian of the estate, the guardian (rather than the parent) has authority to compromise the claim. See Sections 2500-2507. If the claim is the subject of pending litigation, the minor must appear in the action either by a guardian of the estate or by a guardian ad litem, and in such case Section 372 of the Code of Civil Procedure provides for compromise of the claim. The requirement of former Section 1431 that the petition be verified is continued in Section 1450.

CROSS-REFERENCES

Definitions

Account in an insured savings and loan association, § 1406

Shares of an insured credit union, § 1443

Single-premium deferred annuity, § 1446

31/459

CHAPTER 4. PAYMENT OR DELIVERY OF PROPERTY PURSUANT TO COMPROMISE OR JUDGMENT FOR MINOR OR INCOMPETENT

Article 1. General Provisions

§ 3600. Application of article

3600. This article applies whenever both of the following conditions exist:

(a) A court approves: (1) a compromise of, or the execution of a covenant not to sue on or a covenant not to enforce judgment on, a minor's disputed claim or (2) approves a compromise of a pending action or proceeding to which a minor or incompetent person is a party or (3) gives judgment for a minor or incompetent person.

(b) The compromise, covenant, or judgment provides for the payment or delivery of money or other property for the benefit of the minor or incompetent person.

Comment. Section 3600 continues the substance of a portion of the third paragraph of former Section 1510 except that the reference to a covenant not to enforce judgment has been added.

§ 3601. Order directing payment of expenses, costs, and fees

3601. (a) The court making the order or giving the judgment referred to in Section 3600, as a part thereof, shall make a further order authorizing and directing that such reasonable expenses (medical or otherwise and including reimbursement to a parent, guardian, or conservator), costs, and attorney's fees, as the court shall approve and allow therein, shall be paid from the money or other property to be paid or delivered for the benefit of the minor or incompetent person.

(b) The order required by subdivision (a) may be directed to the following:

(1) A parent of the minor, the guardian ad litem, or the guardian of the estate of the minor or the conservator of the estate of the incompetent person.

(2) The payer of any money to be paid pursuant to the compromise, covenant, or judgment for the benefit of the minor or incompetent person.

Comment. Section 3601 continues the substance of a portion of the third paragraph of former Section 1510 and supersedes former Section 1511.

CROSS-REFERENCES

Application of Section, § 3600

Approval of contract for attorney's fees for minor, § 3302

Fixing fees for attorney of minor, § 3302

§ 3602. Disposition of remaining balance

3602. (a) If there is no guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in Article 2 (commencing with Section 3610).

(b) Except as provided in subdivision (c), if there is a guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and

allowed by the court under Section 3601) shall be paid or delivered to the guardian or conservator of the estate. Upon application of the guardian or conservator, the court, making the order or giving the judgment referred to in Section 3600 or the court in which the guardianship or conservatorship proceeding is pending may, with or without notice, make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section 2456.

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may for good cause shown order that all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares or an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court. If the petition is by a person other than the guardian or conservator, notice of hearing on a petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 3602 is based on a portion of the third paragraph of former Section 1510 except that subdivisions (b) and (c) are added to make clear the alternatives available where there is an existing guardianship or conservatorship of the estate.

CROSS-REFERENCES

- Application of section, § 3600
- Application or petition must be verified, § 1450
- Clerk sets petition for hearing, § 1451
- Definitions:
  - Account in an insured savings and loan association, § 1406
  - Shares of an insured credit union, § 1443
  - Single-premium deferred annuity, § 1446

Article 2. Disposition of Money or Other Property  
Where No Guardianship or Conservatorship

§ 3610. Disposition of remaining balance

3610. When money or other property is to be paid or delivered for the benefit of a minor or incompetent person under a compromise, covenant, order or judgment and there is no guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in this article.

Comment. Section 3610 is new and makes clear that this article applies only where there is not an existing guardianship or conservatorship of the estate. The section is consistent with subdivision (a) of Section 3602. For provisions relating to the authority of a parent, guardian, conservator, or guardian ad litem to compromise claims and actions, see Sections 2500-2508 and 3500 and Code of Civil Procedure Sections 372 and 373.5.

CROSS-REFERENCES

Disposition of money or property where existing guardianship or conservatorship, § 3602(b), (c)

31/464

§ 3611. Order of court

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance

of any other property delivered or to be delivered be held on such conditions as the court determines to be in the best interests of the minor or incompetent person.

(c) If the remaining balance of the money and other property to be paid or delivered does not exceed twenty thousand dollars (\$20,000) in value, that all or any part of the money and other property be held on such other conditions as the court in its discretion determines to be to the best interests of the minor or incompetent person.

(d) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars (\$5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

Comment. Section 3611 continues the substance of the first paragraph of former Section 1510 except that the upper limit for the application of subdivision (c) has been increased from \$10,000 to \$20,000 and the upper limit for the application of subdivision (d) has been increased from \$1,000 to \$5,000.

Where the money and other property to be paid or delivered does not exceed \$5,000 and is for the benefit of a minor, the court, in its discretion, may make an order under subdivision (a), (b), (c), or (d). Where the amount does not exceed \$20,000, the court has discretion to make an order under subdivision (a) or subdivision (b) or subdivision (c), but not under subdivision (d). Where the amount exceeds \$20,000, the court may make an order under subdivision (a) or subdivision (b). See also Section 3401 (direct payment to parent without court order).

CROSS-REFERENCES

Definitions

- Account in an insured savings and loan association, § 1406
- Shares of an insured credit union, § 1443
- Single-premium deferred annuity, § 1446
- Duty of parent to account, § 3500

31/466

§ 3612. Reservation of jurisdiction where minor

3612. Notwithstanding any other provision of law and except to the extent the court orders otherwise, the court making the order under Section 3611 shall have continuing jurisdiction of the money and other

property paid, delivered, deposited, or invested under this article until the minor reaches the age of 18 years.

Comment. Section 3612 supersedes a portion of the second paragraph of former Section 1510. The provision of former law for the court to provide in its order that it retains jurisdiction has been revised to confer such jurisdiction automatically unless the court orders otherwise. The court's continuing jurisdiction has been extended to include "other property."

31/467

CHAPTER 5. PERSONAL PROPERTY OF ABSENTEES

Comment. Chapter 5 (commencing with Section 3700) continues former Chapter 2.5 (commencing with Section 1776) of Division 5, enacted as part of the P.O.W.-M.I.A. Family Relief Act of 1972. See 1972 Cal. Stats., Ch. 988, § 10. For related provisions, see Chapter 3 (commencing with Section 295) of Division 2a (administration of estates of absentees).

31/468

§ 3700. Definitions

3700. As used in this chapter:

(a) "Absentee" is defined in Section 1403.

(b) "Eligible spouse" means the spouse of an absentee who has not commenced an action or proceeding for judicial or legal separation, divorce, annulment, adjudication of nullity, or dissolution of the marriage of the spouse and the absentee.

(c) "Family of an absentee" means an eligible spouse, if any, or if no eligible spouse, the child or children of an absentee, equally, or if no child or children, the parent or parents of an absentee, equally, and the guardian of the estate or conservator of the estate of any person bearing such relationship to the absentee.

(d) "Secretary concerned" is defined in Section 1440.

Comment. Section 3700 continues the substance of former Section 1776.

31/469

§ 3701. Setting aside personal property of absentee

3701. Upon petition as provided in this chapter, the court may set aside to the family of an absentee personal property of the absentee



situated in this state for the purpose of managing, controlling, encumbering, selling, or conveying, or otherwise engaging in any transaction with respect to the property, if the court determines that to do so will be in the best interest of the absentee, including the interest of the absentee in providing for shelter, food, health care, education, transportation, or the maintenance of a reasonable and adequate standard of living for the family of the absentee. The absentee's interest in the property set aside shall not exceed twenty thousand dollars (\$20,000).

Comment. Section 3701 continues the substance of former Section 1777 but increases the amount that may be set aside from \$5,000 to \$20,000 and makes clear that the court may set aside property of the absentee in order to provide for the support of the dependents of the absentee. This accomplishes the purpose of the legislation which is not only to avoid "prejudice to the estates of such missing persons" but also to avoid "difficulty and hardship to their families [caused] by their inability to consummate transactions, such as to sell property, withdraw funds, cash checks, transfer securities and the like, upon which the families are dependent." 1972 Cal. Stats., Ch. 988, § 9. Cf. Section 295.1 (administration of estate of absentee); C. Stephenson & G. Cole, Supplement to 1 California Decedent Estate Administration § 3.31, at 36 (Cal. Cont. Ed. Bar 1976) (intended to provide for support of dependents of absentee).

CROSS-REFERENCES

Definitions

Absentee, § 1403  
 Family of an absentee, § 3700

31/470

§ 3702. Who may petition

3702. A petition that personal property of an absentee be set aside as provided in this chapter may be filed by any of the following persons:

(a) A person in whose favor the personal property of the absentee may be set aside.

(b) A person to whom the absentee has issued a general power of attorney while serving in the armed forces of the United States or while an employee of any agency or department of the United States, provided the power of attorney was valid and effective at the time issued, regardless whether it has expired or terminated.

Comment. Section 3702 continues the substance of a portion of the first sentence of former Section 1778.

CROSS-REFERENCES

Definition, absentee, § 1403

31/471

§ 3703. Contents of petition.

3703. (a) The petition shall contain all of the following:

(1) A statement that the petition is filed under this chapter.

(2) In its caption, the last known military rank or grade and the social security account number of the absentee.

(3) A specific description and estimate of the value of all of the absentee's property, wherever situated (including all sums due the absentee from the United States).

(4) A designation of the property to be set aside, and the facts establishing that setting aside the property is necessary and in the best interest of the absentee.

(5) If the property is to be set aside for the benefit of the spouse of the absentee, an allegation that the spouse is an eligible spouse.

(6) So far as known to the petitioner, the names and residences of all persons comprising the family of the absentee, and an allegation whether a guardian of the estate or a conservator of the estate of any member of the family of the absentee has been appointed.

(b) There shall be attached to the petition 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 the delegate of the secretary or head that the absentee is in missing status. The certificate shall be received as evidence of that fact and the court shall not determine the status of the absentee inconsistent with the status shown in the certificate.

Comment. Section 3703 continues the substance of former Section 1778, with the exception of the statement of persons entitled to file the petition, the requirement that the court find that the spouse is an eligible spouse and the requirement that the petition contain a showing that this chapter is applicable and a prayer for relief. The statement

of persons entitled to file the petition is continued in Section 3702. The requirement that the court find that the spouse is an eligible spouse is continued in Section 3705. The requirement that the petition contain a showing that the chapter is applicable has been replaced by a requirement that the petition include a statement that it is filed under this chapter; the detailed listing in Section 3703 of the required contents of the petition will contain the information necessary to show that the chapter is applicable. The requirement of a prayer for relief has been omitted as unnecessary.

CROSS-REFERENCES

Definitions

- Absentee, § 1403
- Eligible spouse, § 3700
- Family of an absentee, § 3700
- Petition must be verified, § 1450

31/472

§ 3704. Notice of hearing

3704. (a) Notice of the nature of the proceedings and the time and place of the hearing shall be given by the petitioner at least 15 days before the hearing date by all of the following means:

- (1) By mail, together with a copy of the petition, to all persons comprising the family of the absentee.
- (2) By delivery by a method that would be sufficient for service of summons in a civil action; together with a copy of the petition, to the secretary concerned or to the head of the United States department or agency concerned.
- (3) By publication pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proceedings will be held.

(b) Whenever notice to an officer or agency of this state or of the United States would be required under Section 1461 or Section 1822 upon petition for appointment of a conservator, like notice shall be given of the petition under this chapter.

Comment. Section 3704 continues the substance of former Section 1779, with the exception of the last sentence, which is continued in Section 3705, and the requirement that the court set the petition for hearing which is superseded by Section 1451 (clerk shall set petition for hearing). The reference to appointment of a guardian of an incompetent person in former Section 1779 has been replaced by a reference in

subdivision (b) to appointment of a conservator, and a specific reference to the relevant section of the conservatorship statute has been added.

CROSS-REFERENCES

Definitions

- Absentee, § 1403
- Family of an absentee, § 3700
- Secretary concerned, § 1440

31/473

§ 3705. Hearing and order

3705. (a) Upon the hearing of the petition, any officer or agency of this state or the United States or the authorized delegate of the officer or agency, or any relative or friend of the absentee, may appear and support or oppose the petition.

(b) If the court determines that the allegations of the petition are true and correct, the court may order set aside to the family of the absentee personal property of the absentee situated in California (excluding any sums due the absentee from the United States) in which the absentee's interest does not exceed twenty thousand dollars (\$20,000). The property set aside shall be specified in the order.

(c) No bond shall be required of any person to whom property of the absentee has been set aside by the court pursuant to this chapter.

Comment. Subdivision (a) of Section 3705 continues the substance of the last sentence of former Section 1779. Subdivisions (b) and (c) continue the substance of former Section 1780 but the amount that may be set aside is increased from \$5,000 to \$20,000.

CROSS-REFERENCES

Definitions

- Absentee, § 1403
- Family of an absentee, § 3700

31/474

§ 3706. Jurisdiction of court not affected by size of absentee's estate

3706. A determination by the court that the value of all of the absentee's property, wherever situated, exceeds twenty thousand dollars (\$20,000) or that the absentee owns or has an interest in real property,

§ 3707

wherever situated, does not deprive the court of jurisdiction to set aside to the family of the absentee personal property of the absentee situated in California in which the absentee's interest does not exceed twenty thousand dollars (\$20,000), and the court shall order set aside such personal property to the family of the absentee if the court finds that all of the other provisions of this chapter have been complied with. The property set aside shall be specified in the order.

Comment. Section 3706 continues the substance of former Section 1781 but the amount has been increased from \$5,000 to \$20,000. Cf. Section 295.1 (administration of estate of absentee where estate consists of no real property and is less than \$5,000).

CROSS-REFERENCES

Definitions

- Absentee, § 1403
- Family of an absentee, § 3700

31/775

§ 3707. Joint tenancy property

3707. For the purposes of this chapter, any property or interest therein or lien thereon that the absentee holds as joint tenant shall be included in determining the property of the absentee and its value. The joint tenancy interest may be set aside to the family of the absentee as provided in this chapter but may only be set aside to a member of the absentee's family who was a joint tenant with the absentee in the property.

Comment. Section 3707 continues the substance of former Section 1782.

CROSS-REFERENCES

Definitions

- Absentee, § 1403
- Family of an absentee, § 3700

31/776

§ 3708. Accounting

3708. (a) Within six months after the absentee has returned to the controllable jurisdiction of the military department or civilian agency or department concerned, or within six months after the determination of

death of the absentee by the secretary concerned or the head of the department or agency concerned or the delegate of the secretary or head, the former absentee or the personal representative of the deceased absentee may, by motion in the same proceeding, require the person or persons to whom the property of the absentee was set aside to account for the property and the proceeds, if any. The time of return to the controllable jurisdiction of the military department or civilian department or agency concerned or the determination of the time of death of the absentee shall be determined by the court under 37 United States Code, Section 556, or 5 United States Code, Section 5566. An official written report or record of the military department or civilian department or agency that the absentee has returned to its controllable jurisdiction or is deceased shall be received as evidence of that fact.

(b) This section does not in any manner derogate the finality and conclusiveness of any order, judgment, or decree previously entered in the proceeding.

Comment. Section 3708 continues the substance of former Section 1783.

#### CROSS-REFERENCES

##### Definitions

Absentee, § 1403

Secretary concerned, § 1440

31/777

#### CHAPTER 6. REMOVAL OF PROPERTY OF NONRESIDENT

##### § 3800. Petition for removal

3800. (a) If a nonresident has a duly appointed, qualified, and acting guardian, conservator, committee, or comparable fiduciary in the place of residence and if no proceeding for guardianship or conservatorship of the nonresident is pending or contemplated in this state, the nonresident fiduciary may petition to have property owned by the nonresident removed to the place of residence.

(b) The petition for removal of property of the nonresident shall be filed in the superior court of the county in which the nonresident is or has been temporarily present or in which the property of the nonresident, or the principal part thereof, is situated.

Comment. Section 3800 continues the substance of portions of former Section 1572. The reference to the "state of residence" has been changed to "place of residence" since the place of residence may be a foreign nation as well as a foreign state.

CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Petition must be verified, § 1450

Transfer of assets of pending guardianship to another jurisdiction,  
§§ 2800-2808

31/778

§ 3801. Notice

3801. (a) The petition shall be made upon 15 days' notice, by mail or personal delivery, to all of the following persons:

(1) The executor or administrator or other person in whose possession the property may be.

(2) Persons in this state, known to the petitioner, who are obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident.

(b) The petition shall be made upon such additional notice, if any, as the court may order.

Comment. Section 3801 continues the substance of the first sentence of former Section 1573 except that 15 rather than 10 days' notice is required.

31/779

§ 3802. Certificate of nonresident fiduciary

3802. The nonresident fiduciary shall produce and file one of the following certificates:

(a) A certificate that the fiduciary is entitled, by the laws of the place of appointment of the fiduciary, to the possession of the estate of the nonresident in such state. The certificate shall be under the hand of the clerk and seal of the court from which the appointment of the fiduciary was derived and shall show a transcript of the record of appointment and that the fiduciary has entered upon the discharge of the duties of the fiduciary.

(b) A certificate that the fiduciary is entitled, by the laws of the place of residence, to custody of the estate of the nonresident,

without the appointment of any court. The certificate shall be under the hand of the clerk and seal of either (1) the court in the place of residence having jurisdiction of estates of persons that have a guardian, conservator, committee, or comparable fiduciary or (2) the highest court in the place of residence. In the case of a foreign country, the certificate shall be attested by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States.

Comment. Section 3802 continues the substance of the last sentence of former Section 1573. The persons authorized to attest the certificate in the case of a foreign country are expanded in conformity with Evidence Code Section 1530 (statement certifying genuineness of attestation to accuracy of copy of a writing).

31/780

§ 3803. Order for removal

3803. (a) Upon the petition, if the court determines that removal of the property will not conflict with any restriction or limitation on the property or impair the right of the nonresident to the property or the rights of creditors or claimants in this state, the court shall make an order granting to the nonresident fiduciary leave to remove the property of the nonresident to the place of residence unless good cause to the contrary is shown.

(b) The order is authority to the fiduciary to sue for and receive the property in his or her own name for the use and benefit of the nonresident.

(c) The order is a discharge of the executor, administrator, or other person in whose possession the property may be at the time the order is made and of the person obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident, upon filing with the clerk of the court the receipt of the nonresident fiduciary for the property and transmitting a duplicate receipt, or a certified copy of the receipt, to the court, if any, from which the appointment of the nonresident fiduciary was derived.

Comment. Section 3803 continues the substance of former Section 1574 and a portion of former Section 1572.



## OPERATIVE DATE

SEC. 4. This act becomes operative on January 1, 1981 except that prior to that date the Judicial Council and the courts may adopt any rules necessary so that this act may become operative on January 1, 1981.

## NO LOCAL REIMBURSEMENT

SEC. 5. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be an appropriation made by this act because the Legislature has determined that the savings in costs to be realized by the enactment of this act will offset any increased costs that might result from the enactment of this act.

II. RULES OF CONSTRUCTION FOR THE PROBATE CODE

An act to add Sections 6, 7, 8, 9, 10, and 11 to the Probate Code, relating to construction of the Probate Code.

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

Probate Code § 6 (added). Construction of code

SECTION 1. Section 6 is added to the Probate Code, to read:

6. Unless the provision or context otherwise requires, the following general provisions and rules of construction govern the construction of this code.

Comment. Section 6 is a standard provision in various California codes. E.g., Evid. Code § 4; Veh. Code § 6.

Probate Code § 7 (added). References to statutes

SEC. 2. Section 7 is added to the Probate Code, to read:

7. Whenever any reference is made to any portion of this code or to any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.

Comment. Section 7 is a standard provision in various California codes. E.g., Evid. Code § 6; Veh. Code § 10.

Probate Code § 8 (added). "Division," "part," "chapter," "article," "section," "subdivision," and "paragraph"

SEC. 3. Section 8 is added to the Probate Code, to read:

8. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Part" means a part of the division in which that term occurs.

(c) "Chapter" means a chapter of the part in which that term occurs.

(d) "Article" means an article of the chapter in which that term occurs.

(e) "Section" means a section of this code.

(f) "Subdivision" means a subdivision of the section in which that term occurs.

(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.

Comment. Section 8 is similar to Evidence Code Section 7.

Probate Code § 9 (added). Tenses

SEC. 4. Section 9 is added to the Probate Code, to read:

9. The present tense includes the past and future tenses; and the future, the present.

Comment. Section 9 is a standard provision in various California codes. E.g., Evid. Code § 8; Veh. Code § 12.

Probate Code § 10 (added). Construction of singular and plural

SEC. 5. Section 10 is added to the Probate Code, to read:

10. The singular number includes the plural; and the plural, the singular.

Comment. Section 10 is a standard provision in various California codes. E.g., Evid. Code § 10; Veh. Code § 14.

Probate Code § 11 (added). Constitutionality

SEC. 6. Section 11 is added to the Probate Code, to read:

11. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

Comment. Section 11 is the same in substance as Section 3 of the Evidence Code and Section 1108 of the Commercial Code.