

Memorandum 78-31

Subject: Study F-30.300 - Guardianship-Conservatorship Revision (Compromise of Claims of Minors and Incompetent Persons and Miscellaneous Matters)

This memorandum presents for Commission consideration a number of matters relating to the guardianship-conservatorship revision. The references to "Exposure Draft" are to the draft we sent to the State Bar Subcommittee for review and comment; you received a copy. Please bring that copy to the meeting.

MISCELLANEOUS MATTERS

Transitional provision for conservatees for whom guardian could have been appointed. Where a conservatorship has been established under existing law for a person on the ground that the person is one for whom a guardian could have been appointed, the conservatee lacks legal capacity. We need a transitional provision to cover this situation when the new law becomes operative. A staff recommended provision is set out in Exhibit 1 (buff) attached. Exhibit 1 also includes a conforming change in Exposure Draft Section 1476. For an analogous provision, see Section 1475 of the Exposure Draft (effect on guardianships of adults and married minors).

Review of exercise of powers and duties. In drafting the provisions relating to compromise of claims, the staff has noted that, in some instances, the Exposure Draft provides that a power or duty may be exercised or performed by the guardian or conservator without court approval, instruction, or confirmation, "but the exercise or performance of those powers and duties by the guardian or conservator is subject to review by the court upon the settlement of accounts." See Section 2520(a) of Exposure Draft. It would appear that the quoted language should not be included in each provision permitting exercise or performance of a power or duty by a guardian or conservator without prior court approval. Instead, a general provision should be included in the provisions relating to settlement of accounts. Accordingly, the staff recommends that Section 2625 of the Exposure Draft (accounting and review of sales or purchases of property) be generalized as set out in Exhibit 2 (pink) attached. This will permit the omission of the underscored language from Section 2520 and comparable provisions.

Authorization to deposit or invest money or property subject to withdrawal only upon authorization of the court. The Exposure Draft does not contain a provision that clearly authorizes a guardian or conservator to deposit or invest money or property subject to withdrawal only upon authorization of the court. Section 2328 of the Exposure Draft (which contains such an authorization) applies only in a proceeding to determine the amount of the bond of the guardian or conservator. The staff believes that there should be general authority to deposit money or other property subject to court control. Reference can then be made to this general authority in the provisions relating to payments made in compromise of claims. See Chapter 4 (commencing with Section 3600) (green pages attached). Accordingly, the staff recommends Exhibit 3 (white) attached.

ARTICLE 5. COMPROMISE OF CLAIMS AND ACTIONS; EXTENSION, RENEWAL, OR MODIFICATION OF OBLIGATIONS

A new Article 5, to be added to the chapter on powers and duties of guardians and conservators of the estate, is attached on the yellow pages. This article replaces Section 2533 of the Exposure Draft. Unfortunately, we did not leave sufficient room in the numbering of sections in the Exposure Draft for expansion in the chapter on powers and duties of guardians and conservators of the estate. We propose to remedy this defect by renumbering the sections in Chapter 5 and the first portion of Chapter 6 as set out in Exhibit 4 (gold) attached.

The new Article 5 (attached yellow pages) should be reviewed with care by the Commission. The article is generally consistent with prior decisions of the Commission, but has not previously been reviewed by the Commission. The substance of the article was developed by our consultant, Mr. Elmore.

CHAPTERS 2, 3, AND 4 OF PART 7 (MISCELLANEOUS PROTECTIVE PROCEEDINGS)

Chapters 2, 3, and 4 of Part 7 were not included in the Exposure Draft. They are attached on the green pages. The provisions have been completely redrafted and should be reviewed with care. We have the following comments concerning them.

Section 3500. Parent's right to compromise minor's claim

This chapter has been limited to the parent's right to compromise a claim; the right of a guardian or conservator is covered in the new Article 5 (previously referred to in this memorandum).

Section 3600. Order directing payment of expenses, costs, and fees

This section is mandatory. Section 3303 of the Exposure Draft is permissive and is inconsistent with and overlaps Section 3600. Section 3303 should be deleted as unnecessary and inconsistent.

§ 3601. Disposition of remaining balance

Subdivisions (b) and (c) are new and are added to make clear the alternatives available where there is an existing guardianship or conservatorship of the estate. The new provision proposed by the staff in Exhibit 3 also permits the guardian or conservator, after the money or other property has been paid to the guardian or conservator, to apply ex parte for authority to put the money or other property in a controlled deposit or investment. These provisions make it possible to restrict the remainder of this chapter (Sections 3610-3614) to cases where there is no guardianship or conservatorship of the estate and greatly to simplify the provisions.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

§ 1475.5. Effect on conservatorship of person for whom guardian could have been appointed

1475.5. 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 judicially determined to lack legal capacity as provided in Section 1831 unless otherwise ordered by the court.

Comment. Section 1475.5 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. Board of Regents State Univ. v. Davis, 14 Cal.3d 33, 38 n.6, 47, 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 make decisions concerning necessary medical treatment unless the court orders otherwise. See Section 2404. See also Section 1831 and the Comment to Section 1475.

406/158

§ 1476. Amendment of letters of existing guardianships and conservatorships

1476. (a) Unless the court otherwise orders:

(1) The letters of guardianship in existence immediately preceding the operative date with respect to guardianships described in Section 1475 shall be amended at or before the time of the court's next biennial review as provided in Section 1850 to reflect that the conservatee lacks legal capacity.

(2) The letters of conservatorship in existence immediately preceding the operative date with respect to conservatorships described in Section 1475.5 shall be amended at or before the time of the court's next biennial review as provided in Section 1850 to reflect that the conservatee lacks legal capacity.

(b) Noncompliance with this section does not alter the effect of Section 1475 or 1475.5 and gives rise to no penalty.

Comment. Section 1476 implements Sections 1475 and 1475.5.

EXHIBIT 2

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

2625. Any sale or purchase of property or other transaction made without court approval, instruction, or confirmation is subject to review by the court upon the next succeeding accounting of the guardian or conservator. Upon such accounting and review, the court may hold the guardian or conservator liable for any violation of duties. 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 2501 imposes a duty to use ordinary prudence in exercising or performing powers and duties.

EXHIBIT 3

§ 2525.1. Deposits and investments withdrawable only on court order

2525.1. Upon ex parte application of the guardian or conservator, the court may make an order requiring 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 assets 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 2525.1 is based on authority implied under former Sections 1405.1 and 1513 except that Section 2525.1 includes personal assets in addition to money (former Sections 1405.1 and 1513) and securities (former Section 1405.1). Cf. Section 2328.

CROSS-REFERENCES

Definitions

Account in an insured savings and loan association, § 1406
 Conservator, § 2500
 Guardian, § 2500
 Shares of an insured credit union, § 1433
 Single-premium deferred annuity, § 1436
 Deposit of money, generally, § 2523
 Deposit of personal assets, generally, § 2524
 Reduction in amount of bond, § 2328

EXHIBIT 4

RENUMBERING OF EXPOSURE DRAFT CHAPTERS 5 AND 6 TO ACCOMMODATE
NEW ARTICLE ON COMPROMISE OF CLAIMS AND ACTIONS

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

- § 2350. Definitions
- § 2351. Care, custody, control, and education
- § 2352. Residence of ward or conservatee
- § 2353. Medical treatment of ward
- § 2354. Medical treatment of conservatee
- § 2355. Involuntary civil mental health treatment
- § 2356. Court ordered medical treatment
- § 2357. Additional conditions in order of appointment
- § 2358. 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 use ordinary prudence in management of estate
- § 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. 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 next of kin of conservatee

Article 3. Payment of Debts and Expenses

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

Article 4. Acts of Management Generally

- § 2450. Extent of court supervision
- § 2451. Collection of debts and benefits
- § 2452. Checks, warrants, and drafts
- § 2453. Deposit or investment of money
- § 2454. Deposit of personal assets with trust company
- § 2455. Deposit of securities in securities depository
- § 2456. Deposits or investments withdrawable only on court order [new
Section proposed in Exhibit 3 of Memorandum 78-31]
- § 2457. Maintaining home of ward or conservatee and dependents
- § 2458. Voting rights with respect to corporate shares or memberships
or property
- § 2459. Life insurance and medical, retirement, and other 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
[New article to be added to Exposure Draft]

- § 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, parentage, 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. Other statutes not affected
- § 2508. Conveyances by guardian or conservator

Article 6. Sales

[No change in numbering of sections in remainder of Exposure Draft chapter; remaining articles will be renumbered to reflect addition of new Article 5.]

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) 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 approval, instruction, or confirmation. Nothing in this subdivision precludes the guardian or conservator seeking court approval, instructions, or confirmation pursuant to Section 2503.

(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 continue to require court approval (see Sections 2501, 2502, 2503, and 2504). See also Code Civ. Proc. § 372 (compromise or settlement of pending action or proceeding). Subdivision (c) of Section 2500 is new and is comparable to subdivisions (b) and (c) of Section [2520].

CROSS-REFERENCES

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

Other statutes not affected, § 2507

Payment or delivery of property pursuant to compromise, §§ 3600-3601

Pending actions and proceedings, compromise or settlement, Code Civ.
Proc. § 372

404/402

§ 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 the modification of the terms of a lease of real property having an unexpired term of five years or less; but, except as otherwise provided in Section 2555, subdivision (a) does apply to the extension of the term of such a lease.

Comment. Section 2501 is new. See the Comment to Section 2500.

CROSS-REFERENCES

Conveyances by guardian or conservator, § 2508

Court authorized to approve transaction or matter, § 2505

404/673

§ 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 an amount in excess of either:

(a) Twenty-five thousand dollars (\$25,000).

(b) Ten percent of the then value of the estate less other liens, encumbrances, debts, or obligations of the estate.

Comment. Section 2502 is new. See the Comment to Section 2500.

CROSS-REFERENCES

Conveyances by guardian or conservator, § 2508
Court authorized to approve transaction or matter, § 2505

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.

CROSS-REFERENCES

Definitions

Conservator, § 2500
Guardian, § 2500

404/972

§ 2504. Support, parentage, wrongful death, and personal injury claims

2504. Court approval is required for the compromise or settlement of any of the following:

(a) A claim against the other spouse, a parent, an adult child, or other third person, or the guardian or conservator of such third person, 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.

(b) A claim to establish parentage.

(c) A claim for wrongful death of a person other than the ward or conservatee.

(d) A claim for personal injury to the ward or conservatee.

(e) A claim for invasion of privacy, or for violation of other personal right, of the ward or conservatee.

Comment. Section 2504 is new. See the Comment to Section 2500.

CROSS-REFERENCES

Definitions

Conservator, § 2500

Guardian, § 2500

404/793

§ 2505. Court authorized to approve transaction or matter

2505. (a) 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) Subject to subdivision (c), 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 the court in which the guardianship or conservatorship proceeding is pending.

(c) In a case where Part 6 (commencing with Section 3000) is applicable and 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 either of the following:

(1) The court in which the guardianship or conservatorship proceeding is pending.

(2) The proper court in a proceeding under Part 6 (commencing with Section 3000).

Comment. Section 2505, which is new, is included to clarify the court to which application for approval is to be made.

Note. Subdivision (c) will need to be reviewed after Part 6 is drafted. Part 6 relates to homestead and community property of incompetent spouse.

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.

404/798

§ 2507. Other statutes not affected

2507. Notwithstanding Sections 2500 to 2506, inclusive, whenever a particular statute requires, provides a procedure for, or dispenses with court approval, the provisions of that statute govern any case to which that statute applies.

Comment. Section 2507 is new and makes clear that this article has no effect on the provisions of Section 372 of the Code of Civil Procedure or another statute that may be applicable to a particular case.

404/931

§ 2508. Conveyances by guardian or conservator

2508. Whenever a court under this article or under a statute referred to in Section 2507 authorizes the transfer of real property of the guardianship or conservatorship estate, the conveyance shall be executed by the guardian or conservator. The conveyance shall refer to the order authorizing the transfer, and a certified copy of the order shall be recorded in the office of the recorder of each county in which the real property or any portion thereof lies. Conveyances so made convey all the right, title, interest, and estate of the ward or conservatee in the property at the time of conveyance.

Comment. Section 2508 continues the substance of the last portion of former Section 1530a.

CROSS-REFERENCES

Court authorized to approve transfer, § 2505

Definitions

Conservator, § 2500

Guardian, § 2500

TO BE INSERTED IN PRELIMINARY PORTION
OF TENTATIVE RECOMMENDATION

OTHER PROTECTIVE PROCEEDINGS

The guardianship and conservatorship statutes include a number of provisions that relate to transactions and situations not requiring a guardianship or conservatorship.¹ These provisions are compiled in a portion of the proposed law separate from the guardianship and conservatorship provisions. Many of the provisions are carried forward into the proposed law without substantive change. The major changes made by the proposed law are summarized below.²

Compromise of Minor's Disputed Claims

A parent or guardian of the estate of a minor has the right, with prior court approval, to compromise a disputed claim of the minor.³ The proposed law continues this right of the guardian of the estate and eliminates the requirement of court approval in some instances.⁴ The parent's right to compromise a minor's claim also is continued in the

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1. E.g., Prob. Code §§ 1430 (minor's estate under \$2,500), 1430.5 (minor's estate between \$2,000 and \$20,000), 1431 (compromise of minor's disputed claim), 1432 (duty of parent to account to minor), 1444 (consent of court to permit hospital or medical care or enlistment in armed forces), 1509 (fees of attorney for minor), 1510 (disposition of money or other property paid or delivered pursuant to compromise or judgment for minor or incompetent), 1511 (payment of fees of attorney for minor), 1776-1783 (setting aside property for family of military and other personnel who are in missing status). See also Prob. Code §§ 1435.1-1435.18 (transfer or disposal of community property or homestead where spouse incompetent).
 2. See also discussion supra under "Community or Homestead Property of Incompetent Spouse."
 3. Prob. Code § 1431. Claims that are the subject of a pending action or proceeding are governed by Section 372 of the Code of Civil Procedure.
 4. See discussion supra under "Powers and Duties of Guardian or Conservator of the Estate."

proposed law but is limited to cases where the minor has no guardian of the estate.⁵

Proceeds of Compromise or Judgment for Minor or Incompetent Person

The guardianship statute contains provisions for the control of money or other property to be paid or delivered pursuant to a compromise of a minor's disputed claim, a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or a judgment for a minor or incompetent person.⁶ If the amount or value of the money or property is \$10,000 or less, the court has broad discretion to order that the money or other property be held subject to such conditions as the court deems to be in the best interest of the minor or incompetent person. If the amount or value is \$1,000 or less, the court may direct that the money or property be paid to a parent to be held in trust for the minor. If the amount or value is greater than \$10,000, the court's discretion is more narrowly circumscribed; the court must either (1) require that a guardian or conservator of the estate be appointed to receive the property or (2) require that any money be deposited in an account in a bank, trust company, insured credit union, or insured savings and loan institution, subject to withdrawal only upon order of the court.

The court should be permitted greater discretion in making the disposition of the proceeds of a compromise or judgment that is in the best interest of the minor or incompetent person. The proposed law increases to \$5,000 the amount the court may order be paid directly to the parent of a minor and increases to \$20,000⁷ the amount subject to broad court discretion.

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5. The proposed law also makes clear that a parent may, subject to court approval, execute a covenant not to enforce a judgment on a minor's disputed claim.
 6. Prob. Code § 1510.
 7. The amount was set at \$10,000 in 1963. 1963 Cal. Stats., Ch. 127, § 3. The increase will conform to the increase from \$10,000 to \$20,000 in 1973 (1973 Cal. Stats., Ch. 400, § 2) in Probate Code Section 1430.5. The authority given the court under the proposed law is similar to that given the court under existing Section 1430.5. Under that section, a guardianship may be terminated where the guardianship estate consists of money not exceeding \$20,000 and the court may order the money deposited in a court controlled account or may prescribe such other conditions for the control of the money as the court deems in the best interest of the minor.

Administration of Estate of Minor Without a Guardian

Existing law provides for administration of the small estate of a minor without the need for a guardian. Assets of \$2,000 or less can be paid directly to a parent to hold in trust for the minor until the minor reaches majority.⁸ Money in excess of \$2,000 (but not exceeding \$20,000) may, pursuant to a court order, be invested in an insured account in a financial institution, withdrawable only upon court order, without the creation of a guardianship.⁹

These provisions can provide a substantial saving over the cost of a guardianship in administering the estate of a minor. To increase the usefulness of the provisions, the proposed law increases the amount that may be paid to a parent in trust from \$2,000 to \$5,000¹⁰ and removes the minimum (\$2,000 under existing law) so that the court may order that an amount less than the minimum be invested in a court controlled account as an alternative to ordering it paid to a parent.¹¹ The proposed law also removes the \$20,000 limit on the amount that may be invested pursuant to court order in court controlled accounts without the creation of a guardianship.¹²

8. Prob. Code § 1430.

9. Prob. Code § 1430.5.

10. The provision of existing law requiring a parent receiving money belonging to a minor to account to the minor upon majority is expanded to include any property received pursuant to this provision. See Prob. Code § 1432.

11. This provision is consistent with Probate Code Section 1510, which places no minimum limit on the amount the court may order placed in a court controlled account.

12. This provision parallels Probate Code Section 1510, which places no maximum limit on the amount received from a compromise or judgment that the court may order deposited in a court controlled account.

CHAPTER 2. MONEY OR PROPERTY BELONGING TO MINORArticle 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 may 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 3601 or Article 2 (commencing with Section 3610) of Chapter 4.

Comment. Subdivision (a) of Section 3400 is new. Subdivision (b) continues a portion of former Section 1430. The reference to the "California Gifts of Securities to Minors Act" in former Section 1430 has not been continued. That act was repealed by 1959 Cal. Stats., Ch. 709, § 1. Minors who received gifts under that act prior to its repeal have reached majority and the reference to the act accordingly is obsolete.

§ 3401. Delivery of money or property to parent

3401. Money or other property belonging to a minor or to the guardianship estate of a minor may be paid or delivered 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 both of the following requirements are satisfied:

(a) 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.

(b) 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 a five thousand dollar total estate limit is substituted in Section 3401 for the references in former Section 1430 to two thousand and two thousand five hundred dollars.

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)

405/399

§ 3402. Effect of written receipt of parent

3402. The written receipt of the parent giving the written assurance under Section 3400 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.

405/400

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 3601 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 minimum (\$2,000) and maximum (\$20,000) limits for application of this article have been removed. 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 Section 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 certain financial institutions in lieu of guardianship in the same manner as money paid pursuant to a compromise 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, or a judgment in favor of, a minor or incompetent person. Compare Sections 3412 and 3413 with Section 3611.

Subdivision (a) of Section 3410 is drawn from former Section 1430.5. Subdivision (b) is based on the introductory clause of the first sentence of former Section 1430.5.

405/401

§ 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 a portion of the first sentence of former Section 1430.5 except that the provision permitting the guardian to file the petition has been added. Subdivision (b) is new.

CROSS-REFERENCES

Definition, guardian of the estate, § 1424

Petition must be verified, § 1450

Payment or delivery of property pursuant to compromise or judgment,
§§ 3600-3612

§ 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 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 former minimum amount 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 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
Guardian of the estate, § 1424
Guardianship of the estate, § 1424
Shares of an insured credit union, § 1433
Single-premium deferred annuity, § 1436
Proper court, § 3411

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§ 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 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
Guardian of the estate, § 1424
Money belonging to the minor, § 3410
Shares of an insured credit union, § 1433
Single-premium deferred annuity, § 1436
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 against a third person and does not have a guardian of the estate, the following persons have the right to compromise, or execute a covenant not to sue on or a covenant not to enforce judgment on, the claim:

(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 by the superior court of the county where the minor resides upon the filing of a petition.

(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 that the limitation of the section to cases where the minor has no guardian of the estate is new and a reference is added to "a covenant not to enforce judgment on" the claim. This reference 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.

Where the minor has a guardian of the estate, the guardian (rather than the parent) has authority to compromise the claim. See Sections 2500-2508. 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
- Guardian of the estate, § 1424
- Shares of an insured credit union, § 1433
- Single-premium deferred annuity, § 1436

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

Article 1. General Provisions

§ 3600. Order directing payment of expenses, costs, and fees

3600. Upon approval of 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 approval of a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or giving judgment for a minor or incompetent person, providing for the payment or delivery of money or other property for the benefit of the minor or incompetent person, the court making the order or giving judgment, and as a part thereof, shall make a further order authorizing and directing a parent of the minor, the guardian ad litem, or the guardian of the estate of the minor or conservator of the estate of the incompetent person, or the payer of any money to be paid for the benefit of the minor or incompetent person, to pay, from the money or other property to be paid or delivered, 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.

Comment. Section 3600 continues the substance of a portion of the third paragraph of former Section 1510 (and supersedes former Section 1511) except that the reference to a covenant not to enforce judgment has been added.

CROSS-REFERENCES

Definitions

Conservator of the estate, § 1412

Guardian of the estate, § 1424

§ 3601. Disposition of remaining balance

3601. (a) If there is not an existing 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 3600) 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 an existing 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 3600) shall be paid or delivered to the guardian or conservator of the estate. Upon ex parte 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 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 [2525.1].

(c) Upon petition of the guardian or conservator or 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 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 3601 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

Definitions

- Account in an insured savings and loan association, § 1406
- Application or petition must be verified, § 1450
- Clerk sets petition for hearing, § 1451
- Conservator of the estate, § 1412
- Conservatorship of the estate, § 1412
- Guardian of the estate, § 1424
- Guardianship of the estate, § 1424
- Shares of an insured credit union, § 1433
- Single-premium deferred annuity, § 1436

Article 2. Disposition of Money or Other Property
Where No Existing 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 not an existing 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 3600) 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 3601. 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

Definitions

Conservatorship of the estate, § 1412

Guardianship of the estate, § 1424

Disposition of money or property where existing guardianship or conservatorship, § 3601(b), (c)

§ 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 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, the court, in its discretion, may make an order under subdivision (a) or subdivision (b) or subdivision (c) or subdivision (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). 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, § 1433
Single-premium deferred annuity, § 1436
Duty of parent to account, § 3300

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§ 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."