

Memorandum 86-48

Subject: Study L-1040 - Estate and Trust Code (Public Guardians--draft  
of tentative recommendation)

Attached to this memorandum is a redraft of provisions relating to the public guardian. The draft has been conformed to decisions already made by the Commission in connection with comparable provisions in the public administrator statute. We have received comments and suggested changes on the draft from the San Francisco public guardian, copies of which have been distributed for previous Commission meetings. The comments and suggestions are noted in the current draft following the provisions to which they relate.

Respectfully submitted,

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Assistant Executive Secretary

Staff Draft  
PUBLIC GUARDIANS

Welfare & Institutions Code §§ 8000-8015 (repealed)

SEC. \_\_. Chapter 1 (commencing with Section 8000) of Division 8 of the Welfare and Institutions Code is repealed.

Comment. Former Sections 8000 to 8015 are relocated to Part 5 (commencing with Section 2900) of Division 4 of the Estate and Trust Code. The disposition of the former provisions is indicated below.

<u>Former Provision</u>	<u>Est. &amp; Trust Code Section</u>
8000	2900
8001	2901
8002	2902
8003	2903
8004	2904
8005	2905
8006	
First sentence	2910
Second sentence	2911
Third sentence	2911, 2912
Fourth sentence	2912
Fifth sentence	2913(a)
8006.5	2913(b)
8007	2914
8008	2906
8009	2920
8010	2921
8011	2922
8012	2923
8013	2924
8015	2907

Estate and Trust Code §§ 2900-2924 (added)

SEC. \_\_\_\_\_. Part 5 (commencing with Section 2900) is added to Division 4 of the Estate and Trust Code, to read:

PART 5. PUBLIC GUARDIAN  
CHAPTER 1. OFFICE OF PUBLIC GUARDIAN

§ 2900. Creation of office

2900. (a) In any county the board of supervisors may by ordinance create the office of public guardian and such subordinate positions as may be necessary and fix compensation therefor.

(b) The board of supervisors may appoint a public guardian to fill the office and provide for appointment to the subordinate positions.

Comment. Section 2900 continues former Welfare and Institutions Code Section 8000 without substantive change.

§ 2901. Public administrator as public guardian

2901. The board of supervisors may by ordinance designate that the public administrator is ex officio public guardian.

Comment. Section 2901 continues former Welfare and Institutions Code Section 8001 without substantive change.

§ 2902. Termination of office

2902. The board of supervisors may by ordinance terminate the office of public guardian.

Comment. Section 2902 continues former Welfare and Institutions Code Section 8002 without substantive change.

§ 2903. Termination of public administrator as public guardian

2903. If the public administrator has been designated ex officio public guardian the board of supervisors may by ordinance terminate the designation and appoint another public guardian and all authority vests in the successor.

Comment. Section 2903 continues former Welfare and Institutions Code Section 8003 without substantive change.

§ 2904. Termination of public guardian and appointment of public administrator

2904. If the board of supervisors has not designated the public administrator as ex officio public guardian, but has appointed another to the office of public guardian, it may terminate the appointment and may by ordinance designate that the public administrator is ex officio public guardian and all authority vests in the successor.

Comment. Section 2904 continues former Welfare and Institutions Code Section 8004 without substantive change.

§ 2905. Termination of authority of public guardian

2905. The authority of the public guardian or ex officio public guardian ceases upon the termination of his or her tenure in office as public guardian or ex officio public guardian and his or her authority vests in his or her successor.

Comment. Section 2905 continues former Welfare and Institutions Code Section 8005 without substantive change.

§ 2906. Official bond

2906. The public guardian shall give an official bond in such amount as may be fixed, from time to time, by the board of supervisors. The bond shall be for the joint benefit of the guardianship or conservatorship estates and the county. The public guardian may not be required to give a bond in an individual estate.

Comment. Section 2906 continues former Welfare and Institutions Code Section 8008 without substantive change. See also Section 2912 (letters, oath, and bond).

§ 2907. Advance on expenses of public guardian

2907. (a) Necessary expenses of the public guardian in the conduct of any guardianship or any conservatorship estate may be advanced by the county. If so ordered by the board of supervisors, such expenses are a county charge, but the county shall be reimbursed therefor out of any funds or property of the estate by the public guardian.

(b) As a means of advancing necessary expenses to a public guardian who receives a salary in lieu of fees, the county board of supervisors may establish a revolving fund to be used by the public guardian. The revolving fund shall be established pursuant to Article 7 (commencing with Section 29460) of Chapter 2 of Division 3 of Title 3 of the Government Code.

Comment. Section 2907 continues former Welfare and Institutions Code Section 8015 without substantive change.

#### CROSS-REFERENCES

Definitions

Property § 62

### CHAPTER 2. APPOINTMENT OF PUBLIC GUARDIAN

#### § 2910. Application for appointment

2910. The public guardian may apply for appointment as guardian or conservator of the person and estate or person or estate of any of the following persons:

(a) Any person in the county or in a county-owned facility in another county who is a patient under the provisions of the Welfare and Institutions Code.

(b) Any person in the county who is a recipient of aid under any provision of the Welfare and Institutions Code, if it appears that the person requires a guardian or conservator.

(c) Any person in the county who requires a guardian or conservator and for whom there is no person qualified and willing to act as guardian or conservator.

Comment. Section 2910 restates the first sentence of former Welfare and Institutions Code Section 8006 without substantive change.

#### CROSS-REFERENCES

Definitions

Conservator § 1410

Trust company as fiduciary § 300

#### § 2911. Where person or property ordered into possession or control of public guardian

2911. If after notice to the public guardian the court orders any person or estate into the possession or control of the public guardian, the public guardian shall apply for appointment as guardian or conservator of the person or estate.

Comment. Section 2911 restates the second sentence and a portion of the third sentence of former Welfare and Institutions Code Section 8006, with the addition of the requirement of notice to the public guardian.

#### CROSS-REFERENCES

##### Definitions

Conservator § 1410

Note. The San Francisco public guardian objects to this provision. Existing W & I Code Section 8006 provides that a public guardian and conservator "may act" as guardian or conservator of any person or estate ordered into his hands by the court. However, draft E & T Code Section 2911 provides that in such a situation the public guardian "shall apply" for appointment as guardian or conservator. The public guardian objects that, "The common law principle that 'no person shall be held to act as a fiduciary without his consent' is applicable to the conservator/conservatee relationship."

The staff notes that since the time the public guardian raised this objection, we have revised the draft to limit a court order to the public guardian to cases where there has been prior notice to the public guardian. This parallels the way we resolved a similar concern in connection with the duties of the public administrator. In any case, although one sentence of existing W & I Code Section 8006 does state that the public guardian "may act", the very next sentence goes on to state that "Where the ... guardianship or conservatorship of a person and estate has been ordered into his hands by the court, letters of guardianship or conservatorship shall be procured." (emphasis added)

#### § 2912. Letters, oath, and bond

2912. If the public guardian is appointed as guardian or conservator:

(a) The public guardian shall procure letters of guardianship or conservatorship in the same manner and by the same proceedings as letters of guardianship or conservatorship are issued to other persons.

(b) The official bond and oath of the public guardian are in lieu of the guardian or conservator's bond and oath on the grant of letters of temporary guardianship, letters of guardianship, letters of temporary conservatorship, or letters of conservatorship.

Comment. Section 2912 continues the third and fourth sentences of former Welfare and Institutions Code Section 8006 without substantive change. See also Section 2906 (official bond).

#### CROSS-REFERENCES

##### Definitions

Conservator § 1410

§ 2913. Taking possession or control of property

2913. (a) The public guardian may take prompt possession or control of property within the county of persons referred to the public guardian for guardianship or conservatorship if the property is being wasted, uncared for, lost, or misappropriated.

(b) A public guardian who takes possession or control of property pursuant to this section is entitled to costs incurred for the protection of the property, together with a reasonable fee for services, in case of the subsequent appointment of another person as guardian or conservator of the estate. The costs and fee are a proper and legal charge of the estate of the ward or conservatee.

Comment. Subdivision (a) of Section 2913 continues the fifth sentence of former Welfare and Institutions Code Section 8006, with the addition of misappropriation as a ground for taking possession or control. Subdivision (b) restates former Welfare and Institutions Code Section 8006.5, eliminating the maximum and minimum fees.

CROSS-REFERENCES

Definitions

Conservatee § 1411

Conservator § 1410

Property § 62

Notes. What sort of referral is referred to here? The San Francisco public guardian states that "Referral means a written or, in an emergency case, a telephone request for immediate and necessary action to protect the estate of a proposed conservatee." This seems to imply the referral can come from any source, and not just the court ordering an estate into the hands of the public administrator.

We have revised language and eliminated maximum and minimum fees, consistent with Commission decisions concerning comparable public administrator provisions.

We have added "misappropriation" to subdivision (a) pursuant to a suggestion of the San Francisco public guardian, who states "While the public guardian attempts to obtain a temporary conservatorship upon determination that a proposed conservatee's estate needs immediate protection, this may not always be possible logistically. That is, schedules of courts and judges often do not permit the immediate hearing of a temporary conservatorship proceeding. This provision allows for this possibility and authorizes the public guardian in his discretion to take immediate action to protect the proposed conservatee's estate, when deemed necessary. The insertion of 'misappropriated' is proposed because it more nearly approximates the common situation where a proposed elder conservatee's estate is being 'ripped off'."

§ 2914. Persons under jurisdiction of Departments of Mental Health or Developmental Services

2914. If the public guardian makes application under Section 2910 for guardianship or conservatorship of the person and estate or person or estate of any person who is under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the application shall not be granted without the written consent of the department having jurisdiction of the person.

Comment. Section 2914 continues former Welfare and Institutions Code Section 8007 without substantive change.

CHAPTER 3. ADMINISTRATION BY PUBLIC GUARDIAN

§ 2920. Deposit of funds

2920. All funds coming into the custody of the public guardian shall be deposited or invested in the same manner and subject to the terms and conditions as deposit or investment of money of an estate by the public administrator pursuant to Article 4 (commencing with Section 7660) of Chapter 7 of Division 7.

Comment. Section 2920 supersedes former Welfare and Institutions Code Section 8009. It cross-refers to comparable provisions of the public administrator statute.

NOTE. Rather than duplicating general provisions on deposit of funds with the county treasurer or in a financial institution, we have in this draft simply incorporated the fairly well developed provisions applicable to public administrators.

§ 2921. Employment of attorneys

2921. If necessary the public guardian in the public guardian's discretion may employ private attorneys where the cost of employment can be defrayed out of estate funds or where satisfactory pro bono or contingency fee arrangements can be made.

Comment. Section 2921 continues former Welfare and Institutions Code Section 8010 with the addition of reference to satisfactory pro bono or contingency fee arrangements.

Note. The phrase "or where satisfactory pro bono or contingency fee arrangements can be made" is added at the suggestion of the San Francisco public guardian.

§ 2922. Appraisal of estate

2922. If the value of the real and personal property of the estate appears to be less than fifty dollars (\$50) it is not necessary to have the property appraised. No appraisal is required in any estate handled by the public guardian if the estate consists of money only, or of money and other property, of a value of fifty dollars (\$50) or less.

Comment. Section 2922 continues former Welfare and Institutions Code Section 8011 without substantive change.

CROSS-REFERENCES

Definitions

Personal property § 57  
Property § 62  
Real property § 68

Note. The San Francisco public guardian would replace this provision with the substance of the following:

(a) The public guardian need not request appointment of a conservatorship referee if the proposed conservatee is eligible for Social Security Supplemental Income Benefits.

(b) The public guardian need not file an appraisal of assets other than cash if the assets are not to be sold. However, the public guardian shall file a verified declaration of the assets other than cash held by the public guardian. Special notice requests shall be applicable to the declaration.

(c) If the conservatee assets other than cash have an estimated value of \$1,000 or less, the public guardian shall be allowed to sell the assets upon the filing of a verified declaration stating the estimated value. Section 2545 remains applicable to the sale.

The San Francisco public guardian notes use of "eligible" in subdivision (a) includes the estates of proposed conservatees who may have more cash than the SSI limit (currently \$1600) but also have known bills that will reduce their estate to below this limit.

In support of these proposals, the San Francisco public guardian states that the proposals address the frequent situation of small conservatorships with furniture and furnishings, jewelry, and other small value items. Presently, these conservatorships have to incur the minimum \$75 referee fee prior to any sale. Present practice in these inventories is to allow the conservator to pencil in the estimated value. The referee then generally accepts the estimated value as the appraised value and places it on the inventory value column. The granting of the proposed authority to the public guardian would result in a savings for the small conservatorship. The granting of this authority to the public guardian would also seem appropriate in that the public guardian has usually had extensive experience in valuing small value assets like furniture, furnishings, and jewelry.

In addition to the proposed revision of Section 2922, the San Francisco public guardian suggests amendment of two other conservatorship provisions in comparable areas. The first proposal is to amend Probate Code Section 2610 (inventory and appraisal) to provide:

(d) If a conservatorship is 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 may be appraised by the conservator and need not be appraised by a probate referee.

The effect of this amendment would be to excuse valuation by the probate referee in any conservatorship estate in which there will be no sale of the estate property. The San Francisco public guardian states "This proposal is submitted in the interests of avoiding unnecessary expense to elderly conservatees, often on SSI or Medi-Cal, where there is no intention to sell assets."

The second proposal is "also submitted in the interests of saving unnecessary expenses in small estates." This would avoid probate referee appraisal of property for sale in cases where the aggregate of the sales or exchanges made during the calendar year do not exceed \$5,000:

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, or, in the case of a conservatorship, without a probate referee appraisal.

(b) The aggregate of the sales or exchanges made during any calendar year under this section may not exceed five thousand dollars (\$5,000).

The staff wonders about the need for this amendment, since there is nothing in the law as far as we can tell that requires an appraisal for a sale of personal property, though that may be the practice in some areas.

#### § 2923. Disposition of property on death of ward or conservatee

2923. (a) Pursuant to Section 2631, the public guardian upon the death of the ward or conservatee may pay in full or in part from assets of the ward or conservatee that are under the control of the public guardian the unpaid expenses of the last illness and disposition of the remains of the ward or conservatee.

(b) If payment of expenses pursuant to subdivision (a) cannot be made in full and the total market value of the remaining estate of the decedent does not exceed the amount provided in Section 13100, the public guardian may petition the court for an order permitting the public guardian to liquidate the decedent's estate. The public guardian may petition even though there is a will of the decedent in existence if the will does not appoint an executor or if the named executor refuses to act. No notice of the petition need be given. If the order is granted, the public guardian may sell any personal property of the decedent, withdraw any money of the decedent in an account in a financial institution, and collect any debt, claim, or insurance proceeds owed to the decedent or the decedent's estate, and any person shall pay or deliver the money or property to the public guardian. After the payment of any remaining amounts due for expenses of the last illness and disposition of the remains of the ward or conservatee, the public guardian may transfer any remaining assets pursuant to Section 2631.

Comment. Section 2923 restates former Welfare and Institutions Code Section 8012 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Account § 21  
Conservatee § 1411  
Court § 1418  
Financial institution § 40  
Order § 53  
Person § 56  
Personal property § 57  
Petition § 1430  
Property § 62  
Will § 88

Note. The San Francisco public guardian recommends that this section be revised to cover unpaid court approved public guardian and public guardian attorney's fees as well as unpaid last illness and burial expenses. "Consideration should be given here or in Probate Code Section 2631 to giving the public guardian authority to pay other reasonable conservatorship charges where there will be no estate proceedings. There are often miscellaneous medical and other legitimate charges after payment of the expenses of last illness and burial. In these instances the small amount of anticipated cash remaining precludes any estate proceeding."

If this is to be done, the staff recommends it should be done in Section 2631, since expenses of administration occur in all small guardianships and conservatorships, not just in public guardianships and conservatorships, although probably the public guardian handles many of the smaller cases.

§ 2924. Expenses of public guardian

2924. The public guardian has a claim against the estate of the ward or conservatee for all of the following:

(a) Reasonable expenses incurred in the execution of the guardianship or conservatorship.

(b) Such compensation for services of the public guardian and the attorney of the public guardian, and the filing and processing services of the county clerk, as the court deems just and reasonable.

Comment. Section 2924 restates former Welfare and Institutions Code Section 8013 without substantive change.

CROSS-REFERENCES

Definitions

Clerk § 27

Conservatee § 1411

Court § 1418