

Memorandum 89-44

Subject: Study L-700 - Guardianship-Conservatorship (Limitation Period for Action Against Surety)

For decedents' estates, the limitation period for an action against sureties on the personal representative's bond is provided by Section 8488: "No action may be maintained against the sureties on the bond of the personal representative unless commenced within four years after the settlement of the accounts of the personal representative or the discharge of the personal representative, whichever occurs later."

Unlike Section 8488, the guardianship-conservatorship statute (Section 2333) provides a tolling period for legal disability: An action may be brought within four years after the disability is removed.

The guardianship-conservatorship rule (Section 2333) was enacted in 1979. The decedents' estates rule (Section 8488) was enacted in 1988. When Section 8488 was considered by the Commission in January 1986, a staff note said the section:

does not extend the statute of limitations for minors and incompetent persons, as does the guardianship/conservatorship statute, consistent with our general approach to assure finality in probate proceedings, relying instead on guardians ad litem where necessary. If the Commission approves this approach, conforming changes in the guardianship/conservatorship statute should be considered.

Assuming that the rule should be the same in guardianship-conservatorship proceedings as in decedents' estates, the staff proposes to eliminate tolling from Section 2333 by amending it as follows:

Probate Code § 2333 (amended). 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 four years from the discharge or removal of the guardian or conservator or within four years from the date the order surcharging the guardian or conservator becomes final, whichever is later.

~~(e) 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 four years after the disability is removed.~~

Comment. Section 2333 is amended to delete subdivision (c) to make it consistent with the rule for decedents' estates. See Section 8488.

Respectfully submitted,

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