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Memorandum 89-63

Subject: Study L-700 - Guardianship-Conservatorship (Disposition of Assets on Death of Ward or Conservatee)

If a ward or conservatee dies while the guardianship or conservatorship is pending, Section 2631 of the Probate Code permits the guardian or conservator to pay debts and expenses, and, if the estate value is less than \$10,000, to petition for an order authorizing the guardian or conservator to liquidate the estate by withdrawing funds on deposit in financial institutions, collecting insurance and other property of the ward or conservatee, and selling personal property of the ward or conservatee. After payment of expenses, the guardian or conservator may distribute the estate to those entitled to it.

The staff recommends that the \$10,000 maximum estate limit for court-authorized liquidation by the guardian or conservator be increased to \$60,000 to conform to the summary collection provisions for decedents' estates generally. This may be accomplished by revising Section 2631 as set out in Exhibit 1.

Respectfully submitted,

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Exhibit 1Probate Code § 2631 (amended). 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 disposition of the remains of the deceased ward or conservatee, and for unpaid ~~court approved~~ court-approved attorney's fees, and may pay the unpaid expenses of the guardianship or conservatorship accruing before or after the death of the ward or conservatee, 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~~ personal property of the deceased ward or conservatee which is under the control of the guardian or conservator.

(b) If payment of expenses under subdivision (a) cannot be made in full and the total market value of the remaining estate of the decedent does not exceed ~~ten thousand dollars (\$10,000)~~ the amount determined under Section 13100, the guardian or conservator may petition the court for an order permitting the guardian or conservator to liquidate the decedent's estate. The guardian or conservator 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 guardian or conservator may sell personal property of the decedent, withdraw money of the decedent in an account in a financial institution, and collect a debt, claim, or insurance proceeds owed to the decedent or the decedent's estate, and a person having possession or control shall pay or deliver the money or property to the guardian or conservator.

(c) When a claim for 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.

(d) After payment of expenses, the guardian or conservator may transfer any remaining assets as provided in Division 8 (commencing with Section 13000). For this purpose, the value of the property of the deceased ward or conservatee shall be determined after the deduction of the expenses so paid.

Comment. Section 2631 is amended to substitute a reference to Section 13100 (limit for use of affidavit procedure for collection or transfer of personal property) for the 10,000 limit formerly found in subdivision (b). 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 21400-21406 apply. See Estate of Mason, 62 Cal. 2d 213, 397 P.2d 1005, 42 Cal. Rptr. 13 (1965).