

## Memorandum 87-58

Subject: Study L-1040 - Public Guardian and Public Administrator  
(Approval for Printing)

Attached is the draft of the public guardian and public administrator statute, revised to reflect the most recent Commission decisions on this subject. We have also revised the draft to reflect the enactment of AB 201 (Harris), an urgency bill sponsored by the Public Administrators to revise the law governing summary administration of small estates by the public administrator. That bill has been enacted as Chapter 53, effective June 17, and makes a number of changes in the law that the Commission's recommendation would also have made.

We have sent a version of this draft to the State Bar and to the Public Guardians and Public Administrators for review. We have so far received no further comments from the State Bar. The Public Administrators generally are happy with the draft. See Exhibit 1, attached.

The staff believes the draft is in basically good shape and ready for printing and submission to the Legislature.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

City and County of San Francisco

PUBLIC ADMINISTRATOR

PUBLIC GUARDIAN:

James R. Scannell

ATTORNEY:

Lou Aronian



PUBLIC ADMINISTRATOR

PUBLIC GUARDIAN

1212 Market Street  
San Francisco, CA 94102  
Telephone 558-4161

June 26, 1987

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Attention: Nat Sterling

Re: PA/PG Draft

IN REPLY REFER  
TO OUR FILE NO

Dear Nat:

I think you people have done an excellent job and I find very little that need changing.

I spoke with Verdine Dunham of the PA/PG Association and she agrees. We have circulated the draft to our membership and Verdine will contact you directly with any suggestions she may receive.

One point which could be corrected is Section 1143(a) of AB 201 which became effective in June addresses itself to all summary estates under \$60,000 and 1143(b) directs the activities for estates under \$10,000. In the LRC version these sections are reversed and when your bill passes, it might cause confusion when in effect they are in accord.

Again, well done.

Very truly yours,

JAMES R. SCANNELL  
Public Administrator/  
Public Guardian

JRS:lca

Staff Draft  
RECOMMENDATION RELATING TO  
PUBLIC GUARDIAN AND PUBLIC ADMINISTRATOR

PUBLIC GUARDIAN

The new law relocates the public guardian statute from the Welfare and Institutions Code<sup>1</sup> to the Guardianship and Conservatorship Law. At the same time, the new law makes a few significant substantive changes in the law.

Public guardian's bond. The official bond of the public guardian and the liability of the county for the public guardian stand in place of the ordinary bond of a guardian or conservator. Since the public guardian's bond and liability are for the benefit and protection of the ward or conservatee and persons interested in the estate of the ward or conservatee, it is proper that these persons, rather than the public, should bear the cost.<sup>2</sup> The new law allows a bond fee as a claim against the estate of the ward or conservatee.<sup>3</sup> This amount is remitted to the county treasury to offset the public expenditure for the official bond and other public liability of the county.

Court ordered public guardianship or conservatorship. If the court orders the guardianship or conservatorship of any person or estate into the public guardian's hands, existing law provides in one

---

1. Welf. & Inst. Code §§ 8000-8015. [Track SB 1042]

2. A guardian or conservator is generally allowed the amount of reasonable expenses incurred in performance of the duties, including the cost of any surety bond given. Prob. Code § 2623(a).

3. The pro rata share is statutorily defined as \$25 plus ¼% of the amount of an estate greater than \$10,000. This is equivalent to one half the maximum amount allowed for the bond of a personal representative under Probate Code Section 541.5.

The smallest estates--those of persons eligible for Social Security Supplemental Income--are exempt from the bond fee.

place that the public guardian "may act" as guardian or conservator and in another that the public guardian "shall" procure letters of guardianship or conservatorship.<sup>4</sup> As a consequence, whether the public guardian must accept a court referral is not clear. The new law makes it clear that the public guardian must accept a court-referred guardianship or conservatorship. However, the court may not order the referral except upon 15 days' notice to the public guardian, a court hearing, and a determination that there is no other person qualified and willing to act whose appointment would be in the best interest of the ward or conservatee and that the public guardianship or conservatorship is necessary. This will ensure that persons and property in need of protection will receive it, and that the public guardian will be required to act only in appropriate cases.

Jurisdiction of public guardian. Existing law provides that the public guardian may act with respect to persons and property "in the county."<sup>5</sup> However, a person domiciled in the county may require protection when temporarily outside the county (including institutionalization outside the county), or the person's property requiring protection may be situated outside the county. Jurisdiction should be based on domicile, regardless of the temporary location of the person or property. The new law implements this concept.

Taking possession or control of property. Whether or not the public guardian is ultimately appointed guardian or conservator, the public guardian may take immediate possession or control of property in need of protection because it is subject to waste, lack of care, or loss. The new law extends this authority to property that is subject to misappropriation as well. The new law also gives the public guardian added power to reach and preserve property, consistent with the powers of the public administrator in a similar situation.<sup>6</sup>

Existing law sets a fee for the services of the public guardian in taking charge of the ward's or conservatee's property. The statutory

---

4. Welf. & Inst. Code § 8006.

5. Welf. & Inst. Code § 8006.

6. Prob. Code § 1141.

fee is subject to a \$25 minimum and a \$500 maximum.<sup>7</sup> These limits are arbitrary, and bear no reasonable relation to the actual cost to the public guardian of providing services. The proposed law eliminates the statutory maximum and minimum fees, leaving the public guardian simply with a reasonable fee for services. This fee is subject to court approval.

Employment of attorneys. Existing law enables the public guardian to employ private attorneys if necessary, provided the cost can be defrayed out of estate funds.<sup>8</sup> The new law broadens this authority even where estate funds are insufficient by enabling the public guardian to employ private attorneys where satisfactory pro bono or contingency fee arrangements can be made. This will enable the public guardian to obtain adequate legal representation for the ward's or conservatee's estate without cost to the public or the estate.

Appraisal of estate. Ordinarily, a guardianship or conservatorship estate must be appraised.<sup>9</sup> The appraisal requirement is a substantial and unnecessary burden in the case of small estates. The new law mitigates this problem by having the public guardian, rather than the probate referee, appraise an estate less than \$10,000. This will simplify administration in small estates and prevent the ward's or conservatee's assets from being consumed in administrative expenses. The new provision would apply to estates administered by private conservators as well as the public guardian.

Disposition of assets on death of ward or conservatee. On the death of the ward or conservatee the public guardian may pay expenses of last illness and funeral expenses, and may liquidate an estate worth less than \$20,000 by summary court proceedings if existing liquid assets are insufficient for payment.<sup>10</sup> This is a useful procedure,

---

7. Welf. & Inst. Code § 8006.5.

8. Welf. & Inst. Code § 8010.

9. Prob. Code § 2610. An estate handled by the public guardian need not be appraised if worth fifty dollars or less. Welf. & Inst. Code § 8011.

10. Welf. & Inst. Code § 8012.

and the new law expands it to permit liquidation and payment of other reasonable guardian or conservator charges as well, whether incurred before or after death,, including unpaid court approved attorney's fees.<sup>11</sup> However, because of the expansion and because of the summary nature of the court proceedings, the new law restricts the liquidation procedure to small estates--those worth less than \$10,000.

---

11. The new law makes this revision in Section 2631, which is applicable to any guardian or conservator and is not limited to the public guardian.

## PUBLIC ADMINISTRATOR

The provisions of existing law governing public administrators are generally continued in the new law without substantive change, or with only minor changes that are noted in the Comments to the new law and to the repealed provisions of existing law. There are a number of more significant changes, however, that are noteworthy.

Property subject to loss, injury, waste, or misappropriation. A public administrator must take charge of a decedent's property either (1) upon court order or (2) if there is no personal representative and the property is subject to loss, injury, or waste.<sup>12</sup> The new law extends this requirement to property that is subject to misappropriation as well. However, the public administrator is given express immunity with respect to property the public administrator is unable to obtain control of.

In carrying out this responsibility, the public administrator may make a search for other property, a will, and burial instructions, including a search of the decedent's safe deposit box, but only if there are reasonable grounds to believe that the public administrator may be appointed personal representative.<sup>13</sup> This limitation is unduly restrictive, since there may be an immediate need for action regardless of the likelihood the public administrator will ultimately be the personal representative. The new law deletes the likelihood of appointment requirement. The new law also adds a requirement that if the search reveals additional property of the decedent that is subject to loss, injury, or waste, the person in possession must surrender the property to the public administrator.

Public administrator's bond. The official bond of the public administrator and the liability of the county for the public administrator stand in place of the ordinary bond of a personal

---

12. Prob. Code § 1140.

13. Prob. Code § 1141.

representative. Since the public administrator's bond and liability are for the benefit and protection of persons interested in the estates administered by the public administrator, it is proper that these beneficiaries, rather than the public, should bear the cost. The new law allows a bond fee as a charge against every estate administered by the public administrator.<sup>14</sup> This amount is remitted to the county treasury to offset the public expenditure for the official bond and other public liability of the county.

Summary proceedings. Most estates handled by the public administrator are small estates that are uneconomical to administer.<sup>15</sup> Existing law seeks to cure this problem by providing summary proceedings for use by the public administrator in small estates.<sup>16</sup>

Because no notice to creditors is given under summary proceedings, the new law includes two protections for creditors not found under existing law. First, the new law requires payment of claims made any time before distribution of the decedent's property is made, as opposed to the four-month claim period applicable in ordinary administration proceedings in which creditors receive published notice. To avoid precipitate distributions, the new law prohibits distribution until four months after commencement of summary disposition proceedings. Second, the new law imposes liability on recipients of property distributed pursuant to summary proceedings for unpaid creditor

---

14. The statutory fee is \$25 for an estate of \$10,000 or less and ¼% of the amount of an estate greater than \$10,000. This is equivalent to one half the maximum amount allowed for the bond of a personal representative generally under Probate Code Section 541.5.

15. For example, James R. Scannell, Public Administrator for the City and County of San Francisco, informs the Law Revision Commission that 70% of the estates handled by his office are less than \$10,000 in value and 88% are less than \$50,00 in value. See Minutes of Meeting of California Law Revision Commission (March 13-14, 1986, Sacramento) at 28.

16. Prob. Code § 1143.

claims. This is analogous to personal liability imposed on recipients of property that passes without probate administration.<sup>17</sup>

Existing law provides no limit to the amount of time a public administrator must preserve files of summary disposition cases. The new law simplifies the record-keeping system by requiring the public administrator to file with the court a permanent statement of the decedent's estate and receipts for distributions in the case of an estate over \$10,000. Thereafter, the public administrator must preserve in the office of the public administrator a temporary file of all receipts and records of expenditures for a period of three years, after which the file may be destroyed.

Existing law provides that where the public administrator uses summary disposition proceedings, unclaimed property in estates under \$10,000 is paid to the county<sup>18</sup> but unclaimed property in estates under \$60,000 is distributed to the state.<sup>19</sup> The Law Revision Commission recommends that all unclaimed summary disposition funds be paid to the county. Typically the small estates summarily disposed of by the public administrator are the estates of elders living alone without family support who receive greater than usual county care and service during their lifetimes.<sup>20</sup> For this reason it is appropriate that unclaimed property is paid to the county where the decedent resided.

---

17. See, e.g., Prob. Code § 13000-13660.

18. Prob. Code § 1143(b).

19. Prob. Code § 1144.

20. Such care and service may include supplementation of income through geriatric programs such as day care centers, low cost public transportation, food and health centers, and replacement of services eliminated from the Medi-Cal program. See letter from Dianne Feinstein, Mayor of San Francisco, to California Law Revision Commission (May 21, 1986) (letter on file in Commission office).

Outline

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER  
PROTECTIVE PROCEEDINGS

PART 5. PUBLIC GUARDIAN

CHAPTER 1. TAKING TEMPORARY POSSESSION OR CONTROL OF PROPERTY

- § 2900. Authority to take possession or control
- § 2901. Providing information and access to public guardian
- § 2902. Costs and fee for taking possession or control

CHAPTER 2. APPOINTMENT OF PUBLIC GUARDIAN

- § 2920. Application for appointment
- § 2921. Persons under jurisdiction of Departments of Mental Health or  
Developmental Services
- § 2922. Letters, oath, and bond

CHAPTER 3. ADMINISTRATION BY PUBLIC GUARDIAN

- § 2940. Deposit of funds
- § 2941. Employment of attorneys
- § 2942. Expenses of public guardian
- § 2943. Inventory and appraisal of estate
- § 2944. Immunity of public guardian

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

CHAPTER 7. PUBLIC ADMINISTRATOR

Article 1. Taking Temporary Possession or Control of Property

- § 7600. Report of public officer or employee
- § 7601. Duty of public administrator
- § 7602. Search for property, will, and instructions for disposition  
of remains
- § 7603. Providing information and access to public administrator
- § 7604. Costs and fees for taking possession or control of property

Article 2. Appointment as Personal Representative

- § 7620. Authority of public administrator
- § 7621. Appointment of public administrator

- § 7622. General rules governing administration of estates apply
- § 7623. Additional compensation
- § 7624. Payment of unclaimed funds

Article 3. Deposit of Money of Estate

- § 7640. Deposit by public administrator
- § 7641. Withdrawal of amounts deposited
- § 7642. Interest on money deposited
- § 7643. Deposit with county treasurer
- § 7644. Deposit unclaimed in financial institution

Article 4. Summary Disposition of Small Estates

- § 7660. Summary disposition authorized
- § 7661. Liquidation of assets
- § 7662. Payment of debts
- § 7663. Distribution of property
- § 7664. Liability for decedent's unsecured debts
- § 7665. Public administrator's statement of disposition
- § 7666. Commission of public administrator

CONFORMING CHANGES

COMMENTS TO REPEALED SECTIONS

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER  
PROTECTIVE PROCEEDINGS

PART 5. PUBLIC GUARDIAN

Comment. For general provisions governing the office of the public guardian, formerly found in Welfare and Institutions Code Sections 8000-5, 8008, and 8015, see Government Code Sections 27430-6.

CHAPTER 1. TAKING TEMPORARY POSSESSION OR CONTROL OF PROPERTY

§ 2900. Authority to take possession or control

2900. The public guardian may take possession or control of property of a person domiciled in the county that is subject to loss, injury, waste, or misappropriation if the public guardian determines that the requirements for appointment of a guardian or conservator of the estate are satisfied and the public guardian intends to apply for appointment.

Comment. Section 2900 supersedes the fifth sentence of former Welfare and Institutions Code Section 8006. It replaces the concept of "referral" to the public guardian with a scheme based on the propriety of public guardian control. It also adds misappropriation as grounds for taking possession or control.

§ 2901. Providing information and access to public guardian

2901. (a) A public guardian who is authorized to take possession or control of property under this chapter may issue a written certification of that fact. The written certification is effective for five days after the date of issuance.

(b) The public guardian may record a copy of the written certification in any county in which is situated real property of which the public guardian is authorized to take possession or control under this chapter.

(c) A financial institution or other person shall, without the necessity of inquiring into the truth of the written certification and without court order or letters being issued:

(1) Provide the public guardian information concerning property held in the sole name of the proposed ward or conservatee.

(2) Surrender to the public guardian property of the proposed ward or conservatee that is subject to loss, injury, waste, or misappropriation.

(d) Receipt of the written certification:

(1) Constitutes sufficient acquittance for providing information and for surrendering property of the proposed ward or conservatee.

(2) Fully discharges the County Recorder, financial institution, or other person from any liability for any act or omission of the public guardian with respect to the property.

Comment. Section 2901 is drawn from Section 7603 (providing information and access to public administrator).

§ 2902. Costs and fee for taking possession or control

2902. A public guardian who takes possession or control of property pursuant to this chapter is entitled to reasonable 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 against the estate of the ward or conservatee.

Comment. Section 2902 restates former Welfare and Institutions Code Section 8006.5, eliminating the maximum and minimum fees. The costs and fee provided by this section are subject to court approval under Section 2430. Where the public administrator is ultimately appointed guardian or conservator, the costs and fee provided by this section are part of the public guardian's commission. See Section 2942 (expenses of public guardian).

CHAPTER 2. APPOINTMENT OF PUBLIC GUARDIAN

§ 2920. Application for appointment

2920. If any person domiciled in the county requires a guardian or conservator and there is no one else whose who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:

(a) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, and a determination that the appointment is necessary. The

notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.

Comment. Section 2920 supersedes the first, second, and a portion of the third sentences of former Welfare and Institutions Code Section 8006. Section 2920 applies even though a person may be institutionalized in a facility in another county if the person is domiciled in the county of the public guardian. Even though there may be other persons qualified and willing to act, their appointment may not be in the best interest of the ward or conservatee. This could occur, for example, where a neutral party is needed because of family disputes. In such a situation, a public guardian is not liable for failure to take possession or control of property that is beyond the public guardian's ability to possess or control. See Section 2944 (immunity of public guardian).

The court may order appointment of the public guardian only after notice to the public guardian and a determination that the appointment is necessary. Subdivision (b) permits this special notice and hearing to be combined with a general notice and hearing for appointment of a guardian or conservator in the interest of procedural efficiency.

§ 2921. Persons under jurisdiction of Departments of Mental Health or Developmental Services

2921. An application of the public guardian for guardianship or conservatorship of the person, the estate, or the person and estate, of a person who is under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services may not be granted without the written consent of the department having jurisdiction of the person.

Comment. Section 2921 restates former Welfare and Institutions Code Section 8007 without substantive change.

§ 2922. Letters, oath, and bond

2922. If the public guardian is appointed as guardian or conservator:

(a) Letters shall be issued in the same manner and by the same proceedings as letters are issued to other persons. Letters may be issued to "the public guardian" of the county without naming the public guardian.

(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.

Comment. Section 2922 restates the third and fourth sentences of former Welfare and Institutions Code Section 8006 with the addition of authority to issue letters to "the public guardian." Letters issued in this form are sufficient to enable a successor public guardian to act without issuance of new letters. Gov't Code § 27433 (termination of authority of public guardian). See also Section 52 ("letters" defined).

The public guardian is allowed a share of the cost of the bond as an expense of administration. Section 2942 (expenses of public guardian).

### CHAPTER 3. ADMINISTRATION BY PUBLIC GUARDIAN

#### § 2940. Deposit of funds

2940. All funds coming into the custody of the public guardian shall be deposited or invested in the same manner and subject to the same terms and conditions as deposit or investment by the public administrator of money in an estate pursuant to Article 4 (commencing with Section 7640) of Chapter 7 of Division 7.

Comment. Section 2940 supersedes former Welfare and Institutions Code Section 8009. It cross-refers to comparable provisions of the public administrator statute.

#### § 2941. Employment of attorneys

2941. The public guardian may, if necessary and in the public guardian's discretion, 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 2941 restates former Welfare and Institutions Code Section 8010 with the addition of reference to satisfactory pro bono or contingency fee arrangements.

#### § 2942. Expenses of public guardian

2942. 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) Compensation for services of the public guardian and the attorney of the public guardian, and for the filing and processing services of the county clerk, in the amount the court determines is just and reasonable.

(c) A bond fee in the amount of twenty-five dollars (\$25) plus one-fourth of one percent of the amount of an estate greater than ten thousand dollars (\$10,000). The amount charged shall be deposited in the county treasury. This subdivision does not apply if the conservatee is eligible for Social Security Supplemental Income Benefits.

Comment. Subdivisions (a) and (b) of Section 2942 restate former Welfare and Institutions Code Section 8013 without substantive change. Subdivision (c) is new; it is comparable to Section 7621(d) (public administrator).

#### § 2943. Inventory and appraisal of estate

2943. Notwithstanding subdivision (c) of Section 2610, the property described in the inventory may be appraised by the public guardian and need not be appraised by a probate referee if the public guardian files with the inventory an appraisal showing that the estimated value of the property in the estate, including cash items, does not exceed \$10,000.

Comment. Section 2943 supersedes former Welfare and Institutions Code Section 8011.

#### § 2944. Immunity of public guardian

2944. The public guardian is not liable for failing to take possession or control of property that is beyond the ability of the public guardian to possess or control.

Comment. Section 2944 is new. Cf. Section 7601(b) (duty of public administrator).

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

CHAPTER 7. PUBLIC ADMINISTRATORS

Article 1. Taking Temporary Possession or Control of Property

§ 7600. Report of public officer or employee

7600. If a public officer or employee knows of property of a decedent that is subject to loss, injury, waste, or misappropriation and that ought to be in the possession or control of the public administrator, the officer or employee shall inform the public administrator.

Comment. Section 7600 restates former Section 1146 without substantive change.

CROSS-REFERENCES

Definitions

Property § 62

§ 7601. Duty of public administrator

7601. (a) If no personal representative has been appointed, the public administrator of a county shall take prompt possession or control of property of a decedent in the county that is subject to loss, injury, waste, or misappropriation, or that the court orders into the possession or control of the public administrator after notice to the public administrator as provided in Section 1220.

(b) If property described in subdivision (a) is beyond the ability of the public administrator to take possession or control, the public administrator is not liable for failing to take possession or control of the property.

Comment. Section 7601 restates the first sentence of former Section 1140(a), with the addition of (1) misappropriation as a ground for taking possession or control, (2) express provisions relating to notice and hearing, and (3) an express immunity in the case of property that is beyond the control of the public administrator. The public administrator may also be appointed special administrator for the property. Sections {8540-8541} (special administrators).

CROSS-REFERENCES

Definitions

Personal representative § 58  
Property § 62

§ 7602. Search for property, will, and instructions for disposition  
of remains

7602. (a) A public administrator who is authorized to take possession or control of property of a decedent under this article shall make a prompt search for other property, a will, and instructions for disposition of the decedent's remains.

(b) If a will is found, the public administrator or custodian of the will shall deliver the will as provided in Section {8200}.

(c) If instructions for disposition of the decedent's remains are found, the public administrator shall promptly deliver the instructions to the person upon whom the right to control disposition of the decedent's remains devolves as provided in Section 7100 of the Health and Safety Code.

Comment. Section 7602 restates the first portion of subdivision (a) and subdivision (b) of former Section 1141 but eliminates the requirement that there be reasonable grounds to believe that the public administrator may be appointed personal representative.

CROSS-REFERENCES

Definitions

Property § 62  
Will § 88

§ 7603. Providing information and access to public administrator

7603. (a) A public administrator who is authorized to take possession or control of property of a decedent pursuant to this article may issue a written certification of that fact. The written certification is effective for five days after the date of issuance.

(b) The public administrator may record a copy of the written certification in any county in which is situated real property of which the public administrator is authorized to take possession or control under this article.

(c) A financial institution or other person shall, without the necessity of inquiring into the truth of the written certification and without court order or letters being issued:

(1) Provide the public administrator information concerning property held in the sole name of the decedent.

(2) Grant the public administrator access to a safe deposit box rented in the sole name of the decedent for the purpose of inspection and removal of any will or instructions for disposition of the decedent's remains. Costs and expenses incurred in drilling or forcing a safe deposit box shall be borne by the estate of the decedent.

(3) Surrender to the public administrator property of the decedent that is subject to loss, injury, waste, or misappropriation.

(d) Receipt of the written certification provided by this section:

(1) Constitutes sufficient acquittance for providing information or granting access to the safe deposit box, for removal of the decedent's will and instructions for disposition of the decedent's remains, and for surrendering property of the decedent.

(2) Fully discharges the County Recorder, financial institution, or other person from any liability for granting access or for any act or omission of the public administrator with respect to the safe deposit box.

Comment. Section 7603 restates the last portion of subdivision (a) and subdivision (c) of former Section 1141 with the elimination of the requirement that there be reasonable grounds to believe the public administrator may be appointed personal representative and with the addition of subdivisions (b) and (c)(3) and the imposition of a 5 day effective period for the written certification.

#### CROSS-REFERENCES

##### Definitions

Financial institution § 40  
Letters § 52  
Person § 56  
Property § 62  
Will § 88

§ 7604. Costs and fees for taking possession or control of property

7604. If the public administrator takes possession or control of property of a decedent under this article, but another person is subsequently appointed personal representative, the public administrator is entitled to costs incurred for the preservation of the estate, together with a reasonable fee for services. The costs and fee are a proper and legal charge against the decedent's estate as an expense of administration.

Comment. Section 7604 restates former Section 1144.5. The public administrator's costs and fee under this section are an expense of administration and thus subject to court order for payment. Section 11422 (payment of debts on court order).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

Article 2. Appointment as Personal Representative

§ 7620. Authority of public administrator

7620. The public administrator of the county in which the estate of a decedent may be administered shall promptly:

(a) Petition for appointment as personal representative of the estate if no person having higher priority has petitioned for appointment.

(b) Petition for appointment as personal representative of any other estate the public administrator determines is proper.

(c) Accept appointment as personal representative of an estate when so ordered by the court whether or not on petition of the public administrator, after notice to the public administrator as provided in Section 7621.

Comment. Subdivisions (a) and (b) of Section 7620 restate the second sentence of former Section 1140(a) without substantive change. Subdivision (c) is new. For priority for appointment as personal representative, see Section 422. See also Sections [7050-7051] (jurisdiction and venue of probate proceedings) and [8461] (priority for appointment).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Personal representative § 58

§ 7621. Appointment of public administrator

7621. (a) Except as otherwise provided in this section, appointment of the public administrator as personal representative shall be made, and letters issued, in the same manner and pursuant to the same procedure as for appointment of and issuance of letters to personal representatives generally.

(b) Appointment of the public administrator may be made on the court's own motion, after notice to the public administrator as provided in Section 1220.

(c) Letters may be issued to "the public administrator" of the county without naming the public administrator.

(d) The public administrator's oath and official bond are in lieu of the personal representative's oath and bond. Every estate administered under this chapter shall be charged a bond fee in the amount of twenty-five dollars (\$25) plus one-fourth of one percent of the amount of an estate greater than ten thousand dollars (\$10,000). The amount charged is an expense of administration and that amount shall be deposited in the county treasury.

Comment. Section 7621 restates former Section 1140(b), with the addition of subdivisions (b) and (c) and the provision of subdivision (d) allowing the county to recoup a bond fee.

Letters issued to "the public administrator" under subdivision (c) are sufficient to enable a successor public administrator to act without issuance of new letters. Gov't Code § 27444 (expiration of term of office).

The amount allowed under subdivision (d) is half the amount allowed for the bond of a personal representative generally under Section 541.5. Removal of the public administrator is subject to the same procedures as removal of administrators generally, including removal at the request of a person having a higher priority for appointment. Section [8503].

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

§ 7622. General rules governing administration of estates apply

7622. Except as otherwise provided in this chapter:

(a) The public administrator shall administer the estate in the same manner as a personal representative generally, and the provisions of this division apply to administration by the public administrator.

(b) The public administrator is entitled to receive the same compensation and allowances granted by this division to a personal representative generally.

Comment. Section 7622 restates former Section 1142 without substantive change. The public administrator must file an inventory, institute suits for the recovery or protection of property, render accounts, and deliver up the property of the estate in the same manner as personal representatives generally.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 7623. Additional compensation

7623. (a) As used in this section, "additional compensation" means the difference between the reasonable cost of the administration of an estate and the commission awarded under Sections 901 and 902.

(b) The public administrator may be awarded additional compensation if any of the following conditions is satisfied:

(1) A person having priority for appointment as personal representative has been given notice under Section [8110] of the public administrator's petition for appointment, and the person has not petitioned for appointment in preference to the public administrator.

(2) The public administrator has been appointed after the resignation or removal of a personal representative.

Comment. Section 7623 restates former Section 1142.3 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

§ 7624. Payment of unclaimed funds

7624. (a) If after final distribution of an estate any money remains in the possession of the public administrator that should be paid over to the county treasurer pursuant to Chapter 5 (commencing with Section [11850]) of Part 10, the court shall order payment to be made within 60 days.

(b) Upon failure of the public administrator to comply with an order made pursuant to subdivision (a), the district attorney of the county shall promptly institute proceedings against the public administrator and the sureties on the official bond for the amount ordered to be paid, plus costs.

Comment. Section 7624 restates former Section 1154, referring to the general provisions for deposit of funds in the county treasury instead of to "unclaimed" property and allowing 60 instead of 10 days for payment to be made.

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Article 3. Deposit of Money of Estate

§ 7640. Deposit by public administrator

7640. (a) The public administrator shall, upon receipt, deposit all money of the estate in an insured account in a financial institution or with the county treasurer of the county in which the proceedings are pending.

(b) Upon deposit under this section the public administrator is discharged from further responsibility for the money deposited until the public administrator withdraws the money.

Comment. Section 7640 restates the first sentence of former Section 1147 without substantive change.

CROSS-REFERENCES

Definitions

Insured account in a financial institution § 46

§ 7641. Withdrawal of amounts deposited

7641. Money deposited in a financial institution or with the county treasurer under this article may be withdrawn upon the order of the public administrator when required for the purposes of administration.

Comment. Section 7641 restates the second sentence of former Section 1147 without substantive change.

CROSS-REFERENCES

Definitions

Financial institution § 40

§ 7642. Interest on money deposited

7642. (a) The public administrator shall credit each estate with the highest rate of interest or dividends that the estate would have received if the funds available for deposit had been individually and separately deposited.

(b) Interest or dividends credited to the account of the public administrator in excess of the amount credited to the estates pursuant to subdivision (a) shall be deposited in the county general fund.

Comment. Section 7642 restates the second paragraph of former Section 1147.

§ 7643. Deposit with county treasurer

7643. (a) The county treasurer shall receive and safely keep all money deposited with the county treasurer under this chapter and pay the money out on the order of the public administrator when required for the purposes of administration. The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(b) The county treasurer shall deliver to the State Treasurer or the State Controller all money in the possession of the county treasurer belonging to the estate, if there are no beneficiaries or other persons entitled to the money, or the beneficiaries or other persons entitled to the money do not appear and claim it. Delivery shall be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 7643 restates former Section 1148 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Beneficiary § 24

Person § 56

#### § 7644. Deposit unclaimed in financial institution

7644. (a) If a deposit in a financial institution is made under this article, money remaining unclaimed at the expiration of five years after the date of the deposit, together with the increase and proceeds of the deposit, shall be presumed abandoned in any of the following circumstances:

(1) The deposit belongs to the estate of a known decedent for which a personal representative has never been appointed.

(2) The deposit belongs to the estate of a known decedent for which a personal representative has been appointed but no order of distribution has been made due to the absence of interested persons or the failure of interested persons diligently to protect their interests by taking reasonable steps for the purpose of securing a distribution of the estate.

(b) The State Controller may, at any time after the expiration of the five-year period, file a petition with the court setting forth the fact that the money has remained on deposit in a financial institution under the circumstances described in subdivision (a) for the five-year period, and requesting an order declaring that the money is presumptively abandoned and directing the holder of the money to pay the money to the State Treasurer.

(c) Upon presentation of a certified copy of a court order made under subdivision (b), the financial institution shall forthwith transmit the money to the State Treasurer for deposit in the State Treasury. The deposit shall be made as provided in Section 1310 of the Code of Civil Procedure. All money deposited in the State Treasury under the provisions of this section shall be deemed to be deposited in the State Treasury under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure. The deposit shall be transmitted,

received, accounted for, and disposed of as provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

Comment. Section 7644 restates former Section 1147.5 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Financial institution § 40  
Interested person § 48  
Personal representative § 58

#### Article 4. Summary Disposition of Small Estates

##### § 7660. Summary disposition authorized

7660. (a) If a public administrator takes possession or control of, or is appointed personal representative of, an estate pursuant to this chapter, the public administrator may summarily dispose of the estate in the manner provided in this article in either of the following circumstances:

(1) The total value of the property in the decedent's estate does not exceed the amount prescribed in Section 13100. The authority provided by this paragraph may be exercised only upon order of the court. The order may be made upon ex parte application. The fee to be allowed to the clerk for the filing of the application shall be set by the court.

(2) The total value of the property in the decedent's estate does not exceed ten thousand dollars (\$10,000). The authority provided by this paragraph may be exercised without court authorization.

(b) Summary disposition may be made whether or not there is a will of the decedent in existence, if the will does not name an executor, or if the named executor refuses to act.

(c) Nothing in this article precludes the public administrator from filing a petition with the court under any other provision of this division.

Comment. Subdivisions (a) and (b) of Section 7660 supersede portions of former Section 1143(a) and (b). Subdivision (c) restates former Section 1143(d). Petitions under other provisions of this division include petitions for interpretation of a will or determination of persons entitled to distribution. See, e.g., Sections 9611 (petition for instructions); 11700-11705 (determination of persons entitled to distribution).

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

Ex parte orders may be made in chambers, Code Civ. Proc. § 166

§ 7661. Liquidation of assets

7661. A public administrator acting under authority of this article may:

(a) Withdraw money of the decedent on deposit in a financial institution.

(b) Collect any debts owed to the decedent.

(c) Sell personal property of the decedent. Sales may be made with or without notice, as the public administrator elects. Title to the property sold passes without the need for confirmation by the court.

(d) Sell real property of the decedent, subject to Article 6 (commencing with Section 10300) of Chapter 17 of Part 5. Title to the property sold passes with the public administrator's deed.

Comment. Section 7661 restates portions of former Sections 1143 and 1144, expanding the ability to withdraw funds to include other financial institutions besides banks.

CROSS-REFERENCES

Definitions

Financial institution § 40

Real property § 68

§ 7662. Payment of debts

7662. The public administrator acting under authority of this article shall pay out the money of the estate in the following order:

(a) Costs of administration, including commissions and fees.

(b) Expenses of the decedent's last illness and of disposition of the remains of the decedent.

(c) Claims presented to the public administrator before distribution of the decedent's property pursuant to Section 7663. Claims shall be paid in the order prescribed in Section 11420. A creditor whose claim is paid under this subdivision is not liable for contribution to a creditor whose claim is presented after the payment.

Comment. Section 7662 restates the second sentence of former Section 1143(a) and a portion of former Section 1143(b), with the addition of specific references to fees and costs of administration. Tax and other claims of public entities are entitled to priority under Section 11420. Because no notice to creditors is given pursuant to this article, the time for making claims is extended to the time of distribution of the decedent's property, and recipients of the property remain liable for creditor claims. See Section 7664 (liability for decedent's unsecured debts). Distribution may not be made until at least four months after commencement of administration. Section 7663 (distribution of property).

#### CROSS-REFERENCES

##### Definitions

Property § 62

#### § 7663. Distribution of property

7663. (a) After payment of debts pursuant to Section 7662, but in no case before four months after court authorization of the public administrator to act under this article or after the public administrator takes possession or control of the estate, the public administrator shall distribute any money or other property of the decedent remaining in the possession of the public administrator to the decedent's beneficiaries.

(b) If there are no beneficiaries, the public administrator shall deposit the balance with the county treasurer for use in the general fund.

Comment. Section 7663 restates a portion of former Section 1143(b) and supersedes the fifth and sixth sentences of former Section 1144. It makes clear that distribution may not be made until at least four months after commencement of administration, and requires that all unclaimed summary disposition funds go to the county (as opposed to only those from the smallest estates). The California Veterans' Home is considered a beneficiary for the purpose of application of this section. See Mil. & Vet. Code § 1035.05.

#### CROSS-REFERENCES

##### Definitions

Beneficiary § 24

Person § 56

Property § 62

§ 7664. Liability for decedent's unsecured debts

7664. A person to whom property is distributed under this article is personally liable for the unsecured debts of the decedent. Such a debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In an action based on the debt, the person may assert any defenses available to the decedent if the decedent had not died. The aggregate personal liability of a person under this section shall not exceed the fair market value of the property distributed, valued as of the date of the distribution, less the amount of any liens and encumbrances on the property on that date.

Comment. Section 7664 is new. It is drawn from Sections 13109 and 13112 (affidavit procedure for collection or transfer of personal property).

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

§ 7665. Public administrator's statement of disposition

7665. (a) The public administrator shall file with the clerk a statement showing the property of the decedent that came into possession of the public administrator and the disposition made of the property, together with receipts for all distributions. This subdivision does not apply to proceedings under paragraph (2) of subdivision (a) of Section 7660.

(b) The public administrator shall maintain a file of all receipts and records of expenditures for a period of three years after disposition of the property pursuant to Section 7663.

Comment. Subdivision (a) of Section 7665 restates the substance of the fourth sentence of former Section 1144. Receipts and records for expenditures are preserved in the public administrator's files for three years pursuant to subdivision (b).

CROSS-REFERENCES

Definitions

Property § 62

§ 7666. Commission of public administrator

7666. (a) Except as provided in subdivision (b), the commissions payable to the public administrator and the attorney, if any, for the filing of an application pursuant to this article and for performance of any duty or service connected therewith, are those set out in Sections 901, 902, and 910.

(b) The public administrator is entitled to a minimum commission of three hundred fifty dollars (\$350).

Comment. Section 7666 supersedes former Section 1143(c) and the second sentence of former Section 1144. See 43 Op. Cal. Att'y Gen. 192 (1964).

CROSS-REFERENCES

Definitions

Property § 62

CONFORMING CHANGES

Code Civ. Proc. § 1441 (amended)

SEC. . Section 1441 of the Code of Civil Procedure is amended to read:

1441. Money or other property distributed to the State under ~~Sections 1027 or 1144~~ Section 1027 of the Probate Code, if not claimed within five years from the date of the decree making such distribution, is permanently escheated to the State without further proceeding; [remainder of section unchanged].

Comment. Section 1441 is amended to reflect the repeal of Probate Code Section 1144 and its replacement, in part, by Probate Code Section 7663 (distribution of property), which provides for escheat to the county.

Code Civ. Proc. § 1443 (amended)

SEC. . Section 1443 of the Code of Civil Procedure is amended to read:

1443. Notwithstanding any other provision of law, all money or other property paid or delivered to the state or any officer or employee thereof under the provisions of Section ~~738, 1027, 1144, 1148,~~ or 6800, 7643, or 11428 of the Probate Code, or any other section of the Probate Code, or any amendment thereof adopted after the effective date of this section, shall be deemed to be paid or delivered for deposit in the State Treasury under the provisions of this article, and shall be transmitted, received, accounted for, and disposed of, as provided in this title.

Comment. Section 1443 is amended to reflect the repeal of Probate Code Section 738 and its replacement by Probate Code Section 11428 (deposit for missing creditor), the repeal of Probate Code 1148 and its replacement by Probate Code Section 7643 (deposit with county treasurer), and the repeal of Probate Code Section 1144 and its replacement, in part, by Probate Code Section 7663 (distribution of property), which provides for escheat to the county.

Code Civ. Proc. § 1449 (amended)

SEC. . Section 1449 of the Code of Civil Procedure is amended to read:

1449. Notwithstanding any other provision of law, all presumptively abandoned money or other property paid or delivered to the Treasurer or Controller under the provisions of Section 1147.5 7644 of the Probate Code shall be deemed to be paid or delivered for deposit in the State Treasury under the provisions of this article, and shall be transmitted, received, accounted for, and disposed of as provided in this title.

Comment. Section 1449 is amended to reflect the repeal of Probate Code Section 1147.5 and its replacement by Probate Code Section 7644 (deposit unclaimed in financial institution).

Government Code § 27430-6 (added), Public guardian

SEC. . Chapter 8.5 (commencing with Section 27430) is added to Part 3 of Division 2 of Title 3 of the Government Code, to read:

CHAPTER 8.5. PUBLIC GUARDIAN

§ 27430. Creation and termination of office

27430. (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 by ordinance terminate the office of public guardian.

Comment. Subdivision (a) of Section 27430 restates the first sentence of the first paragraph of former Welfare and Institutions Code Section 8000 without substantive change. Subdivision (b) restates former Welfare and Institutions Code Section 8002 without substantive change.

§ 27431. Appointment of public guardian

27431. (a) The board of supervisors may appoint a public guardian to fill the office and provide for appointment to the subordinate positions.

(b) In appointing the public guardian, the board of supervisors may give preference to the person or agency providing public guardian services in each county. No person or agency shall be designated as public guardian whose agency functions present real conflict with the functions of conservatorship investigation or administration.

Comment. Subdivision (a) of Section 27431 restates the second sentence of the first paragraph of former Welfare and Institutions Code Section 8000 without substantive change. Subdivision (b) restates the second paragraph of former Welfare and Institutions Code Section 8000 without substantive change.

§ 27432. Consolidation of offices of public guardian and public administrator

27432. (a) The board of supervisors may by ordinance designate that the public administrator is ex officio public guardian.

(b) If the board of supervisors has not designated the public administrator as ex officio public guardian, but has appointed another 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.

(c) 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. Subdivision (a) of Section 27432 restates former Welfare and Institutions Code Section 8001 without substantive change. Subdivision (b) restates former Welfare and Institutions Code Section 8004 without substantive change. Subdivision (c) restates former Welfare and Institutions Code Section 8003 without substantive change.

§ 27433. Termination of authority of public guardian

27433. 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. If letters have been issued to "the public guardian" of the county, the letters are sufficient to authorize action by the successor and new letters need not be issued.

Comment. The first sentence of Section 27422 restates former Welfare and Institutions Code Section 8005 without substantive change. The second sentence is new; it recognizes that letters may be issued to

the office instead of the individual (Section 2922) pursuant to existing practice in some counties.

§ 27434. Official bond

27434. The public guardian shall give an official bond in an amount 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 27434 restates former Welfare and Institutions Code Section 8008 without substantive change. See also Section 2922 (letters, oath, and bond). The public guardian is allowed a bond fee as an expense of administration. Section 2942 (expenses of public guardian).

§ 27435. Advance on expenses of public guardian

27435. (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 funds or property of the estate by the public guardian as soon as and to the extent that funds or property become available.

(b) As a means of advancing necessary expenses of a public guardian, 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 27435 restates former Welfare and Institutions Code Section 8015 without substantive change. To the extent funds of the estate are insufficient for reimbursement under subdivision (a), the expenses advanced remain a county charge.

§ 27436. Public guardian as public representative payee

27436. The board of supervisors may designate who shall be authorized as public representative payee, and designate the public guardian to collect such fees as may be authorized by the board of supervisors for public representative payee services.

Comment. Section 27436 restates the third paragraph of former Welfare and Institutions Code Section 8000 without substantive change.

Gov't Code § 27444 (added). Expiration of term of office

SEC. . Section 27444 is added to the Government Code, to read:

27444. The authority of the public administrator ceases upon termination of his or her tenure in the office of public administrator, and his or her authority vests in the successor in the office of public administrator. If letters have been issued to "the public administrator" of the county, the letters are sufficient to authorize action by the successor and new letters need not be issued.

Comment. Section 27444 reverses the rule of former Probate Code Section 1152 that a person acting as public administrator may complete administration of an estate even after termination of his or her tenure in office. The section also recognizes that letters may be issued to the office instead of the individual (Probate Code Section 7621). This codifies existing practice in some counties.

Note. *Jim Scannell is checking to see whether the change made by this section could impact funding of any existing public administrators.*

Government Code § 29616 (repealed)

SEC. . Section 29616 of the Government Code is repealed.

~~29616. The publication of the semiannual report by the public administrator is a county charge.~~

Comment. The semiannual report to which former Section 29616 referred was repealed in 1981. See former Probate Code § 1153.

Military & Veterans Code § 1035.05 (amended)

SEC. . Section 1035.05 of the Military and Veterans Code is amended to read:

1035.05. [set out existing text without change]

(c) For the purpose of application to this section of the provisions of the Probate Code governing distribution of property, the home shall be deemed to be a beneficiary of the decedent.

Comment. Section 1035.05 is amended to make clear that the Veterans' Home of California is considered a "beneficiary" within the meaning of the Probate Code provisions governing distribution, for proper interpretation of the law. Thus, for example, under Probate Code Section 7663 (distribution of property by public administrator), distribution must be made to the Veterans' Home if appropriate before funds may be delivered to the county treasurer.

Probate Code § 52 (amended)

SEC. . Section 52 of the Probate Code, as added by AB 708 (1987), is amended to read:

52. "Letters,"—as "i

(a) As used in Division 7 (commencing with Section 7000), means letters testamentary, letters of administration, letters of administration with the will annexed, or letters of special administration.

(b) As it relates to a guardian or conservator, means letters of guardianship or conservatorship or temporary guardianship or conservatorship.

Prob. Code § 2430 (amended)

SEC. . Section 2430 of the Probate Code is amended to read:

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 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 debts incurred by the ward or conservatee during the guardianship or conservatorship to provide the necessaries of life to the ward or conservatee, and to the spouse and minor children of the ward or conservatee, to the extent the debt is 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 debt incurred by the conservatee during the conservatorship only if the debts satisfies the requirements of any order made under Chapter 4 (commencing with Section 1870) of Part 3.

(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 or 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.
- (v) The public guardian for costs and fee under Section 2902.

(b) The payments provided for by paragraph (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 conservatee and the spouse and minor children of the 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. Subdivision (a)(4)(v) is added to Section 2431 to ensure court review of the public administrator's costs and fee for taking possession or control of property where another person is ultimately appointed guardian or conservator.

Prob. Code § 2631 (amended)

SEC. . Section 2631 of the Probate Code is amended to read:

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 disposition of the remains of the deceased ward or conservatee, ~~or~~ and for other reasonable guardian or conservator charges, including unpaid court approved attorney's fees, and may pay the unpaid expenses of such last illness and funeral, 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 under the control of the guardian or conservator.

(b) If payment of expenses and charges under subdivision (a) cannot be made in full and the total market value of the remaining estate of the decedent does not exceed \$10,000, 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.

{b} (c) When a claim for such expenses and charges 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.

{e} (d) After payment of such the expenses and charges, the guardian or conservator may transfer any remaining assets in accordance with and subject to the provisions of Section-630 Part 1 (commencing with Section 13000) of Division 8. The value of the property of the deceased ward or conservatee, for the purpose of ascertaining the right to transfer under Section-630 Part 1 (commencing with Section 13000) of Division 8, shall be determined after the deduction of the expenses so paid.

Comment. Section 2631 is amended to authorize payment of attorney's fees and other reasonable expenses of the guardian or conservator and to incorporate and expand provisions of former Welfare and Institutions Code Section 8012 (public guardian).

Prob. Code § 13114 (amended)

SEC. . Section 13114 of the Probate Code is amended to read:

13114. A public administrator who has taken ~~charge of the estate of a decedent as provided in Section 1140~~ possession or control of property of a decedent under Article 1 (commencing with Section 7600) of Chapter 7 of Part 1 of Division 7 may refuse to pay money or deliver property pursuant to this chapter if payment of the costs and fees described in Section ~~1144.5, subject to the dollar limitations in that section,~~ 7604 has not first been made or adequately assured to the satisfaction of the public administrator.

Comment. Section 13114 is amended for conformity with Sections 7600-7604.

## COMMENTS TO REPEALED SECTIONS

## CHAPTER 20. PUBLIC ADMINISTRATORS

Probate Code § 1140 (repealed)

Comment. The first sentence of subdivision (a) of former Section 1140 is restated in Section 7601 (duty of public administrator), with the addition of misappropriation as a ground for taking possession or control of property. The court may also appoint the public administrator as special administrator. Section [8541] (procedure for appointment). The second sentence of subdivision (a) is restated in Section 7620 (authority of public administrator).

Subdivision (b) is restated without substantive change in Section 7621 (appointment of public administrator), with the addition of provisions for appointment of a public administrator on the court's own motion and for county recoupment from the estate of a bond fee.

Probate Code § 1140.5 (repealed)

Comment. Former Section 1140.5 is omitted. The county may not return alien indigents to their native land.

Probate Code § 1141 (repealed)

Comment. Former Section 1141 is restated without substantive change in Sections 7602 (search for property, will, and instructions for disposition of remains) and 7603 (providing information and access to public administrator), with the elimination of the requirement that there be reasonable grounds to believe the public administrator may be appointed personal representative.

Probate Code § 1142 (repealed)

Comment. Former Section 1142 is restated without substantive change in Section 7622 (general rules governing administration of estates apply).

Probate Code § 1142.3 (repealed)

Comment. Former Section 1142.3 is restated without substantive change in Section 7623 (additional compensation).

Probate Code § 1142.5 (repealed)

Comment. Former Section 1142.5 is omitted as unnecessary. See, e.g., Gov't Code §§ 1190-1195 and 24100-24155, governing deputies and assistants.

Probate Code § 1143 (repealed)

Comment. Former Section 1143 is superseded by Sections 7660-7666 (summary disposition of small estates).

Probate Code § 1144 (repealed)

Comment. Former Section 1144 is superseded by Sections 7660-7666 (summary disposition of small estates).

Probate Code § 1144.5 (repealed)

Comment. Former Section 1144.5 is restated in Section 7604 (costs and fees for taking possession or control of property).

Probate Code § 1145 (repealed)

Comment. Former Section 1145 is superseded by Section 7600 (report of public officer or employee).

Probate Code § 1146 (repealed)

Comment. Former Section 1146 is restated without substantive change in Section 7600 (report of public officer or employee).

Probate Code § 1147 (repealed)

Comment. The first sentence of the first paragraph of former Section 1147 is restated without substantive change in Section 7640 (deposit by public administrator). The second sentence is restated without substantive change in Section 7641 (withdrawal of amounts deposited). The second paragraph is restated in Section 7642 (interest on money deposited).

Probate Code § 1147.5 (repealed)

Comment. Former Section 1147.5 is restated without substantive change in Section 7644 (deposit unclaimed in financial institution).

Probate Code § 1148 (repealed)

Comment. Former Section 1148 is restated without substantive change in Section 7643 (deposit with county treasurer).

Probate Code § 1149 (repealed)

Comment. Former Section 1149 is omitted. Payment of fees is controlled by general rules governing payment of the expenses of administration. See, e.g., Sections 7622 (general rules governing administration of estates apply) and 7662 (payment of demands).

Probate Code § 1150 (repealed)

Comment. Former Section 1150 is omitted. General rules governing fiduciary obligations of the personal representative apply to the public administrator. Government Code Section 27443 provides an additional sanction.

Probate Code § 1152 (repealed)

Comment. Former Section 1152 is superseded by Government Code Section 27444 (expiration of term of office), which reverses the rule that a public administrator whose tenure is terminated may complete the administration of pending estates.

Probate Code § 1154 (repealed)

Comment. Former Section 1154 is restated in Section 7624 (payment of unclaimed funds), which allows 60 days instead of 10 days for making payment.

Probate Code § 1155 (repealed)

Comment. Former Section 1155 is omitted. Special sanctions are unnecessary in view of applicable general sanctions.

PUBLIC GUARDIAN

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 the Government Code and the Probate Code. The disposition of the former provisions is indicated below.

| <u>Former Provision</u> | <u>New Provision</u>         |
|-------------------------|------------------------------|
| 8000                    | Gov't Code §§ 27430-1, 27436 |
| 8001                    | Gov't Code § 27432           |
| 8002                    | Gov't Code § 27430           |
| 8003                    | Gov't Code § 27432           |
| 8004                    | Gov't Code § 27432           |
| 8005                    | Gov't Code § 27433           |
| 8006                    |                              |
| First sentence          | Prob. Code § 2920            |
| Second sentence         | Prob. Code § 2920            |
| Third sentence          | Prob. Code §§ 2920, 2922     |
| Fourth sentence         | Prob. Code § 2922            |
| Fifth sentence          | Prob. Code § 2900            |
| 8006.5                  | Prob. Code § 2902            |
| 8007                    | Prob. Code § 2921            |
| 8008                    | Gov't Code § 27434           |
| 8009                    | Prob. Code § 2940            |
| 8010                    | Prob. Code § 2941            |
| 8011                    | Prob. Code § 2943            |
| 8012                    | Prob. Code § 2631            |
| 8013                    | Prob. Code § 2942            |
| 8015                    | Gov't Code § 27435           |
| <i>[Track SB 1042]</i>  |                              |