

Memorandum 77-54

Subject: Study 30.300 - Conservatorship-Guardianship Revisions

The staff has found that the preparation of the draft of the Tentative Recommendation Relating to Revision of the Guardianship-Conservatorship Law is a more substantial undertaking than we anticipated. In order to avoid sending you a great mass of material immediately prior to the meeting, we have decided to send you portions of the tentative recommendation as the portions are completed. You can either defer studying the material until you receive the entire tentative recommendation or can commence your study of each portion as you receive it.

Attached to this memorandum is an outline of the new Division 4 which will be added to the Probate Code. This will assist you in determining where each portion you receive fits into the new division. The portions we will be sending you will be largely complete in themselves so we believe you profitably can review them as you receive them. After the meeting, the staff will carefully review the entire draft to incorporate any decisions made by the Commission, to eliminate any inconsistencies, and to discover and correct any technical defects.

We will send you a soft-covered binder in which you can insert each part of the tentative recommendation as you receive it, together with the memorandum relating to that part.

You will be interested in the attached letter from the Chairman of the State Bar Guardianship and Conservatorship Committee indicating that a subcommittee of that committee will be more than pleased to work with the Commission on this project. The staff believes that this subcommittee (see list of members attached) will be of great assistance to us in this project.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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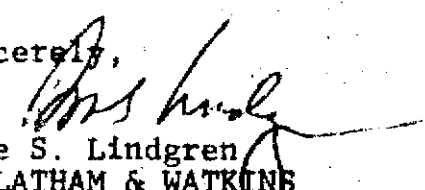
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Dear Mr. DeMouilly:

Thank you for your letter of July 22, 1977. The State Bar Guardianship and Conservatorship Committee will be more than pleased to work with the Commission in connection with the overhaul of the present Guardianship and Conservatorship Sections of the Probate Code. I enclose a list of the members of the Committee who will be acting on this particular sub-committee in connection with this work.

I have taken the liberty of forwarding to our Committee members a copy of your letter together with the material which you sent me. I would appreciate, when the additional material is ready, that copies of it be sent directly to the Committee members.

Sincerely,


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of LATHAM & WATKINS

Enclosure

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DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND
OTHER PROTECTIVE PROCEEDINGS

PART 1. DEFINITIONS AND GENERAL PROVISIONS (§ 1400)

PART 2. GUARDIANSHIP (§ 1500)

- Chapter 1. Appointment (§ 1500)
- Chapter 2. Termination (§ 1600)

PART 3. CONSERVATORSHIP (§ 1800)

- Chapter 1. Appointment (§ 1800)
- Chapter 2. Biennial Review of Conservatorship (§ 1850)
- Chapter 3. Termination (§ 1860)
- Chapter 4. Right to Counsel (§ 1870)

PART 4. PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIP (§ 2100)

- Chapter 1. Definitions and General Provisions (§ 2100)
- Chapter 2. Jurisdiction and Venue (§ 2200)
- Chapter 3. Temporary Guardians and Conservators (§ 2250)
- Chapter 4. Oath, Bonds, and Letters (§ 2300)
- Chapter 5. Powers and Duties of Guardian or Conservator of Person (§ 2400)
- Chapter 6. Powers and Duties of Guardian or Conservator of Estate (§ 2500)
- Chapter 7. Inventory and Accounts (§ 2600)
- Chapter 8. Removal or Resignation (§ 2650)
- Chapter 9. Requests for Special Notice (§ 2700)
- Chapter 10. Appeals (§ 2750)
- Chapter 11. Transfer of Proceedings Out-of-State (§ 2800)

PART 5. UNIFORM VETERANS' GUARDIANSHIP ACT (§ 2900)

PART 6. TRANSACTIONS NOT REQUIRING GUARDIANSHIP OR CONSERVATORSHIP (§ 3000)

- Chapter 1. Definitions and General Provisions (§ 3000)
- Chapter 2. Small Estates of Minors (§ 3100)
- Chapter 3. Fees of Minor's Attorney; Compromise of Minor's Disputed Claim (§ 3200)
- Chapter 4. Payment or Delivery of Property Pursuant to Compromise or Judgment for Minor or Incompetent (§ 3300)
- Chapter 5. Community or Homestead Property of Incompetent Persons (§ 3400)
- Chapter 6. Personal Property of Absentees (§ 3500)
- Chapter 7. Removal of Property of Nonresident (§ 3600)

DIVISION 5. GENERAL FIDUCIARY BOND LAW

[Not part of this project; to be drafted for future session.]

FAMILY LAW ACT

Civil Code § 4600 (amended)

GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS

Probate Code §§ 1400-1700 (repealed)

Probate Code §§ 1701-2207 (repealed)

Probate Code §§ 1400-3603 (added)

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Chapter 1. Rules of Construction and Definitions (§ 1400)

Chapter 2. General Provisions (§ 1450)

Chapter 3. Notice of Hearing (§ 1460)

Chapter 4. Transitional Provisions (§ 1470)

PART 2. GUARDIANSHIP (§ 1500)

Chapter 1. Appointment (§ 1500)

Chapter 2. Termination (§ 1600)

PART 3. CONSERVATORSHIP (§ 1800)

Chapter 1. Appointment (§ 1800)

Chapter 2. Biennial Review of Conservatorship (§ 1850)

Chapter 3. Termination (§ 1860)

Chapter 4. Right to Counsel (§ 1870)

PART 4. PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIP (§ 2100)

Chapter 1. Definitions and General Provisions (§ 2100)

Chapter 2. Jurisdiction and Venue (§ 2200)

Chapter 3. Temporary Guardians and Conservators (§ 2250)

Chapter 4. Oath, Letters, and Bond (§ 2300)

Chapter 5. Powers and Duties of Guardian or Conservator of the Person (§ 2400)

Chapter 6. Powers and Duties of Guardians or Conservators of the Estate (§ 2500)

Chapter 7. Inventory and Accounts (§ 2600)

Chapter 8. Removal or Resignation (§ 2650)

Chapter 9. Requests for Special Notice (§ 2700)

Chapter 10. Appeals (§ 2750)

Chapter 11. Transfer of Proceedings Out of State (§ 2800)

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Chapter 1. Definitions and General Provisions (§ 3050)

Chapter 2. Small Estates of Minors (§ 3100)

Chapter 3. Fees of Minor's Attorney; Compromise of Minor's Disputed Claim (§ 3200)

Chapter 4. Payment or Delivery of Property Pursuant to Compromise or Judgment for Minor or Incompetent (§ 3300)

Chapter 5. Community or Homestead Property of Incompetent Persons (§ 3400)

Chapter 6. Personal Property of Absentees (§ 3500)

Chapter 7. Removal of Property of Nonresident (§ 3600)

DIVISION 5. GENERAL FIDUCIARY BOND LAW

[Not part of this project; to be drafted for future session.]

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CONFORMING CHANGES

[Not included in this draft.]

The Commission's recommendation would be effectuated by enactment of the following measures:

An act to amend Section 4600 of the Civil Code, to add Division 4 (commencing with Section 1400) to, and to repeal Division 4 (commencing with Section 1400) and Division 5 (commencing with Section 1701) of, the Probate Code, relating to guardianship, conservatorship, and other protective proceedings.

The people of the State of California do enact as follows:

FAMILY LAW ACT

Civil Code § 4600 (amended)

SEC. 1. Section 4600 of the Civil Code is amended to read:

4600. (a) In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of ~~such the~~ child during ~~his~~ minority as may seem necessary or proper. ~~If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to his wishes in making an award of custody or modification thereof.~~

(b) In making or modifying an award of child custody, the court shall consider and give due weight to the following:

(1) The child's wishes if the child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody.

(2) The testamentary appointment of a guardian of the person of the child under Section 1500 of the Probate Code.

(c) Custody should be awarded in the following order of preference:

~~(a)~~ (1) To either parent according to the best interests of the child.

~~(b)~~ (2) To the person or persons in whose home the child has been living in a wholesome and stable environment.

~~(c)~~ (3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(d) Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

Comment. Section 4600 is amended to add the language contained in paragraph (2) of subdivision (b) to assure that testamentary appointment by a parent or a guardian of the person of a child will be given weight regardless of the nature of the custody proceeding. It was not clear under prior law whether Section 4600, which applies to "any proceeding where there is at issue the custody of a minor child," superseded the Probate Code provisions for such a testamentary appointment. See, e.g., Guardianship of Marino, 30 Cal. App.3d 952, 958-59, 106 Cal. Rptr. 655, ____ (1973).

405/198

GUARDIANSHIP, CONSERVATORSHIP, AND
OTHER PROTECTIVE PROCEEDINGS

Probate Code §§ 1400-1700 (repealed)

SEC. 2. Division 4 (commencing with Section 1400) of the Probate Code is repealed.

Comment. Former Division 4, Guardian and Ward (former Sections 1400-1700), is replaced by new Division 4 (Guardianship and Conservatorship). The disposition of each repealed section of the former law is indicated in the Comment to the repealed section. See Appendix to Recommendation Relating to Guardianship-Conservatorship Revision, 14 Cal. L. Revision Comm'n Reports 0000 (1977).

405/199

Probate Code §§ 1701-2207 (repealed)

SEC. 3. Division 5 (commencing with Section 1701) of the Probate Code is repealed.

Comment. Former Division 5, Conservatorship (former Sections 1701-2207), is replaced by new Division 4 (Guardianship and Conservatorship). The disposition of each repealed section of the former law is indicated in the Comment to the repealed section. See Appendix to Recommendation Relating to Guardianship-Conservatorship Revision, 14 Cal. L. Revision Comm'n Reports 0000 (1977).

Probate Code §§ 1400-3603 (added)

SEC. 4. Division 4 (commencing with Section 1400) is added to the Probate Code, to read:

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER
PROTECTIVE PROCEEDINGS

PART 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. RULES OF CONSTRUCTION AND DEFINITIONS

Article 1. Rules of Construction

Comment. This article contains rules of construction for this division. Unlike most of the California codes, the Probate Code does not contain general rules of construction. The inclusion of this article follows the pattern adopted in the Eminent Domain Law which was codified in the Code of Civil Procedure, which likewise does not contain general rules of construction.

404/931

§ 1400. Construction of division

1400. Unless the provision or context otherwise requires, these rules of construction govern the construction of this division.

Comment. Section 1400 is a standard provision in the various California codes. E.g., Evid. Code § 4; Veh. Code § 6.

404/932

§ 1401. Division, part, chapter, article, and section headings

1401. Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions in this division.

Comment. Provisions similar to Section 1401 appear in almost all of the existing California codes. E.g., Evid. Code § 5; Veh. Code § 6.

404/933

§ 1402. References to statutes

1402. Whenever any reference is made to any portion of this division or to any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.

Comment. Section 1402 is a standard provision in various California codes. E.g., Evid. Code § 6; Veh. Code § 10.

§ 1403. "Part," "chapter," "article," "section," and "subdivision"

1403. Unless otherwise expressly stated:

(a) "Part" means a part of this division.

(b) "Chapter" means a chapter of the part in which that term occurs.

(c) "Article" means an article of the chapter in which that term occurs.

(d) "Section" means a section of this code.

(e) "Subdivision" means a subdivision of the section in which that term occurs.

Comment. Section 1403 is similar to Evidence Code Section 7.

§ 1404. Tenses

1404. The present tense includes the past and future tenses; and the future, the present.

Comment. Section 1404 is a standard provision in various California codes. E.g., Evid. Code § 8; Veh. Code § 12.

§ 1405. Singular and plural

1405. The singular number includes the plural; and the plural, the singular.

Comment. Section 1405 is a standard provision in various California codes. E.g., Evid. Code § 10; Veh. Code § 14.

§ 1406. Severability

1406. If any provision or clause of this division or application thereto to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the division that can be given effect without the invalid provision or application and, to this end, the provisions of this division are severable.

Comment. Section 1406 is the same in substance as Section 3 of the Evidence Code and Section 1108 of the Commercial Code.

Note. The staff has not included the following provision ordinarily included in the rules of construction: "shall" is mandatory, and "may" is permissive. This provision has not been included because we believe that some of the provisions that use the word "shall" are not mandatory because the court can later confirm or approve an action of a guardian or conservator that should have been taken only with prior court approval.

17023

Article 2. Words and Phrases Defined

§ 1410. Application of definitions

1410. Unless the context otherwise requires, the words and phrases defined in this article govern the construction of this division.

Comment. Section 1410 is new.

17024

§ 1414. Absentee

1414. "Absentee" means either of the following:

(a) A member of a uniform service covered by United States Code, Title 37, Chapter 10, who is determined thereunder by the secretary concerned or a delegate to be in missing status, as missing status is defined therein.

(b) An employee of the United States government or an agency thereof covered by United States Code, Title 5, Chapter 55, Subchapter VII, who is determined thereunder by the head of the department or agency concerned or a delegate to be in missing status, as missing status is defined therein.

Comment. Section 1414 continues the definition of "absentee" contained in former Section 1751.5.

18481

§ 1418. Account in an insured savings and loan association

1418. "Account in an insured savings and loan association" means any of the following:

(a) Shares issued by a federal savings and loan association.

(b) Investment certificates issued by a state-chartered building and loan association or savings and loan association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act.

(c) Shares issued by a state-chartered building and loan association or savings and loan association doing business in this state which does not issue investment certificates and which is an "insured institution" as defined in Title IV of the National Housing Act.

Comment. Section 1418 continues the substance of the fourth paragraph of former Section 1510.

404/942

§ 1420. Court

1420. In the case of a guardianship or conservatorship proceeding, "court" means the court in which the guardianship or conservatorship proceeding is pending.

Comment. Section 1420 is new.

404/943

§ 1422. Bank

1422. "Bank" means a bank in this state.

Comment. Section 1422 is new and avoids the need to repeat "in this state" wherever "bank" is used in this division.

Note. A careful review of proposed Division 4 will be made to insure that the term "bank" is not used in any section to refer to an out-of-state bank.

404/953

§ 1426. Secretary concerned

1426. "Secretary concerned" has the same meaning as defined in United States Code, Title 37, Section 101.

Comment. Section 1426 continues the substance of subdivision (b) of former Section 1751.5.

18531

§ 1430. Shares of an insured credit union

1430. "Shares of an insured credit union" means shares issued by a credit union, either federally chartered or state licensed, which are insured under Title II of the Federal Credit Union Act.

Comment. Section 1430 continues the substance of the fifth paragraph of former Section 1510.

§ 1434. Single-premium deferred annuity

1434. "Single-premium deferred annuity" means an annuity offered by an admitted life insurer for the payment of a one-time lump-sum premium and for which the insurer neither assesses any initial charges or administrative fees against the premium paid nor exacts nor assesses any penalty for withdrawal of any funds by the annuitant after a period of five years.

Comment. Section 1434 continues the substance of the sixth paragraph of former Section 1510.

404/954

§ 1438. Trust company

1438. "Trust company" means a trust company authorized to transact a trust business in this state.

Comment. Section 1438 is based on a portion of former Section 1405.1. The definition avoids the need to repeat the words "authorized to transact a trust business in this state" in various sections.

CHAPTER 2. GENERAL PROVISIONS

§ 1450. Law governing

1450. Guardianships and conservatorships are governed by the provisions of this division. If no specific provision of this division is applicable, the provisions of Division 3 (commencing with Section 300) govern so far as they are applicable to like situations.

Comment. Section 1450 supersedes former Sections 1606 (section added in 1931) and 1702. The language conforms more closely to former Section 1702 than to former Section 1606. The language "except as provided in Section 1853 of this code" which was contained in former Section 1702 is not continued. This makes no substantive change since the effect of the former exception is continued in the introductory clause of the second sentence of Section 1450.

By incorporating the provisions of Division 3, the second sentence of Section 1450 applies Section 1230 to guardianship and conservatorship proceedings. Section 1230 provides that "[a]ll issues of fact joined in probate proceedings must be tried in conformity with the requirements of the rules of practice in civil actions" and refers also to the right to trial by jury. This is consistent with prior law. See *Budde v. Superior Court*, 97 Cal. App.2d 615, 218 P.2d 103 (1950) (guardianship). See also *LeJeune v. Superior Court*, 218 Cal. App.2d 696, 32 Cal. Rptr. 390 (1963) (conservatorship). Section 1450 is supplemented by special provisions in Part 3 (conservatorship), applying the "law and procedure relating to the trial of civil actions, including trial by jury if demanded." See Sections 1828 (appointment), 1864 (termination).

404/970

§ 1451. Petitions to be verified

1451. Except as otherwise specifically provided, a petition filed under this division shall be verified.

Comment. Section 1451 is new. It supersedes various provisions of the former guardianship and conservatorship statutes requiring that petitions be verified and establishes a general requirement that petitions under this division be verified. For an exception to Section 1451, see Section 2643.

404/971

§ 1452. Setting petitions for hearing

1452. When a petition is filed with the clerk of the court pursuant to this division, the clerk shall set the petition for hearing.

Comment. Section 1452 is based on a portion of Section 1200, which was made applicable to guardianship and conservatorship proceedings by former Sections 1606 and 1702. Section 1452 supersedes comparable

provisions in various sections of the former guardianship and conservatorship statutes and establishes a general requirement that the clerk of the court set petitions filed under this division for hearing. The requirement of some provisions of the former statutes that petitions be set for hearing "by the court" has not been continued. Although ordinarily petitions will be heard by the court, in some cases the right to a jury trial exists unless waived. See, e.g., Sections 1828, 1864.

404/974

§ 1453. Guardian ad litem

1453. The provisions of this division do not limit the power of a court to appoint a guardian ad litem to protect the interests of any minor or incompetent person.

Comment. Section 1453 continues the substance of former Section 1607, but the reference to "insane" persons and the former language "in an action or proceeding therein" have been omitted as unnecessary. For provisions relating to a guardian ad litem, see Civil Code Section 42 and Code of Civil Procedure Sections 372-373.5.

CHAPTER 3. NOTICE OF HEARING

§ 1460. Notice of hearing generally

1460. (a) Subject to Section 1461, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing, in substantially the form prescribed in Section 1462, shall be given at least 10 days before the day of the hearing as provided in this section.

(b) Subject to Section 1461, the clerk of the court shall cause the notice of the hearing to be posted at the courthouse of the county where the proceedings are pending.

(c) Subject to Section 1461, the petitioner (which includes for the purposes of this section a person filing an account, report, or other paper) shall cause the notice of hearing to be mailed or personally delivered to each of the following persons (other than the petitioner or persons joining in the petition):

(1) The guardian or conservator.

(2) The conservatee.

(3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse.

(4) Except as provided in subdivision (b) of Section 1512, the adult relatives of the ward or conservatee within the second degree named in the petition for appointment of a guardian or conservator and the parents of the ward or conservatee.

(d) Proof of the giving of notice shall be made at or before the hearing as provided in Section 1465.

Comment. Section 1460 is based on portions of Section 1200 which was incorporated and made applicable to guardianship and conservatorship proceedings by various sections. For the adult relatives of the ward or conservatee required to be named in the petition for appointment, see Sections 1510 and 1821.

The court may require additional notice, may dispense with notice, and may enlarge or shorten the time for notice. See Section 1461. For provisions concerning requests for special notice, see Sections 2700-2704.

Note. Should the requirement of posting by the court clerk be retained?

Should notice be required to be given all adult relatives within the second degree in every case where no notice procedure is otherwise

provided? Should notice be given to the ward in cases where the ward is 14 years of age or older?

We plan to substitute references to Section 1460 for the references throughout the draft statute to Section 1200.

404/988

§ 1461. Court may vary or dispense with notice

1461. (a) The court, in its discretion, may:

(1) Dispense with any notice required by this division.

(2) Enlarge or shorten the time for giving any notice required by this division.

(3) Where the court determines that the notice otherwise required under this division is insufficient in the particular circumstances, require that such further or additional notice be given as the court orders.

(b) Paragraphs (1) and (2) of subdivision (a) do not apply to notice which is required to be given by personal service.

Comment. Subdivision (a) of Section 1461 is based on a portion of former Section 2001 with the addition of the language authorizing the court to enlarge or shorten the time for notice. Subdivision (b) is new.

404/989

§ 1462. Form of notice

1462. The notices provided for in Section 1460, and in all other cases in which notice of hearing is required in this division and no other type of notice is prescribed by law or by the court or judge, shall be in substantially the following form:

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE (CITY AND) COUNTY OF _____

[Guardianship][Conservatorship] of the)	No. _____
[person, estate, or person and estate])	
of _____, a [proposed])	NOTICE OF HEARING ON [des-
[ward or conservatee])	cribe nature of petition,
_____)	account, or report]

Notice is given that (name of petitioner and representative capacity, if any) has filed a (nature of petition, account, or report). The hearing on the (petition, account, or report), reference to which is made for further particulars, will be held on _____ (date) _____, at _____ m.,

at the courtroom of (department or judge) of the Superior Court of the State of California for the (City and County of _____, in the City of _____, California.

Dated: _____.

_____, Clerk

By _____, Deputy

OR

_____, Attorney for Petitioner

Comment. Section 1462 is based on Section 1200.1 (estates of deceased persons).

404/990

§ 1463. Publication of notice required in certain instances

1463. In case of a petition for leave to sell, or to give an option to purchase, a mining claim or real property worked as a mine, or for leave to borrow money or execute a mortgage or deed of trust or give other security, or for leave to execute a lease or sublease, in addition to the notice required by Section 1460, the petitioner shall also cause notice of the hearing on petition, in substantially the form prescribed in Section 1462, to be published in a newspaper of general circulation in the county in which the guardianship or conservatorship proceeding is pending pursuant to Section 6062a of the Government Code.

Comment. Section 1463 continues Section 1201 as that section applied to guardianships and conservatorships by incorporation by former Sections 1606 and 1702.

Note. Should this section be retained or should the publication requirement be eliminated by the substitution of the following provision for Section 1463: "Section 1201 does not apply to proceedings under this division."

404/991

§ 1464. Notice to Director of Health

1464. (a) Except as provided in subdivision (b), notice of the time and place of hearing on any petition, account, or other paper filed in the proceeding, and a copy of the petition, account, or other paper, shall be mailed or delivered to the Director of Health at the director's office in Sacramento at least 15 days before the hearing if both of the following requirements are met:

(1) The ward or conservatee is or has been during the guardianship or conservatorship proceeding a patient in or on leave from a state hospital under the jurisdiction of the State Department of Health.

(2) The petition, account, report, or other paper is filed under any one or more of the following provisions:

[list of provisions to be inserted here]

(b) If the ward or conservatee has been discharged from the state hospital, the Director of Health, upon ascertaining the facts, may file with the court a certificate stating that the ward or conservatee is not indebted to the state and waive the giving of further notices under this section. Upon the filing of the certificate of the Director of Health, compliance with this section thereafter is not required unless the certificate is revoked by the Director of Health and notice of the revocation is filed with the court.

(c) The statute of limitations does not run against any claim of the State Department of Health against the estate of the ward or conservatee for board, care, maintenance, or transportation with respect to an account that is settled without giving the notice required by this section.

Comment. Subdivision (a) of Section 1464 generalizes various provisions scattered throughout the former guardianship and conservatorship statutes. Subdivision (b) continues former Sections 1554.1 and 1906 but adds a provision for revoking the certificate and substitutes the "Director of Health" for the "Attorney General" as the one executing the certificate. Subdivision (b) supersedes former Section 1906. Subdivision (c) continues the last sentence of former Section 1554 and supersedes the broader provision of the last sentence of former Section 1905.

404/992

§ 1465. Proof of giving of notice

1465. (a) Proof of the giving of notice shall be made at or before the hearing by testimonial evidence presented at the hearing or by the following means, as applicable:

(1) Proof of notice by personal delivery may be made by the affidavit of the person making such delivery showing the time, place, and manner of delivery, and the name of the person to whom delivery was made.

(2) Proof of mailing may be made in the manner prescribed in Section 1013a of the Code of Civil Procedure.

(3) Proof of posting may be made by the affidavit of the person who posted the notice.

(4) Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

(b) If it appears to the satisfaction of the court that notice has been regularly given, the court shall so find in its order. When the order becomes final, it is conclusive on all persons.

Comment. Section 1465 is based on the last sentence of Section 1200. Proof of notice is allowed at or before the hearing, and the manner of proof is specified. Paragraph (1) is adapted from subdivision (a) of Section 417.10 of the Code of Civil Procedure. Paragraph (2) continues existing practice. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.16, at 37 (Cal. Cont. Ed. Bar 1968). Paragraph (3) also continues existing practice. See W. Dorsey, Notice and Procedure, in 1 California Decedent Estate Administration § 20.12, at 785-86 (Cal. Cont. Ed. Bar 1971). Paragraph (4) is adapted from subdivision (b) of Section 417.10 of the Code of Civil Procedure. A declaration may be used in lieu of the affidavits required by this section in many instances. See Code Civ. Proc. § 2015.5. Although Section 1465 allows proof of notice to be made by testimonial evidence, such proof should be made by affidavit or declaration filed in the proceeding in those cases where notice is jurisdictional. See W. Dorsey, supra § 20.10, at 785.

As to proof of giving notice in response to requests for special notice and the effect of the court's order, see Section 2703.

CHAPTER 4. TRANSITIONAL PROVISIONS

Note. This chapter is drafted on the assumption that the proposed legislation will be submitted to the 1978 legislative session and will become operative on July 1, 1979.

405/464

§ 1470. Definitions

1470. As used in this chapter:

(a) "Operative date" means the date this division becomes operative pursuant to Section 1471.

(b) "Prior law" means the applicable law as in effect prior to the operative date.

Comment. Section 1470 is new. It is included to facilitate the drafting and amendment of sections included in this chapter.

405/466

§ 1471. Operative date

1471. This division becomes operative on July 1, 1979.

Comment. Section 1471 defers the operative date of this division for six months in order to allow sufficient time for interested persons to become familiar with the new law and for the development of the necessary forms by the Judicial Council.

405/480

§ 1472. Effect on existing guardianships and conservatorships generally

1472. Subject to Section 1476, a guardianship or conservatorship in existence under this code on the operative date continues in existence and is governed by this division.

Comment. Section 1472 states the general rule that the enactment of this division and the repeal of prior law governing guardianships and conservatorships does not affect the existence of guardianships and conservatorships formed under prior law. However, on and after the operative date such guardianships and conservatorships are no longer governed by prior law but by this division.

§ 1473. Effect on bonds, security, and other obligations

1473. The bonds, security, and other obligations in effect immediately prior to the operative date shall continue to apply after the operative date just as if filed, issued, or incurred under this division after the operative date.

Comment. Section 1473 is consistent with the general rule stated in Section 1472.

§ 1474. Appointments or confirmations made under prior law

1474. The changes made in prior law by this division after the operative date in the standards for appointment or confirmation of a guardian shall not affect the validity of any nomination, appointment, or confirmation made under prior law, but any appointment or confirmation after the operative date is governed by this division.

Comment. Section 1747 is consistent with the general rule stated in Section 1472.

§ 1475. Pending actions and proceedings; actions arising under prior law

1475. Subject to Section 1476:

(a) Any action, cause of action, defense, accounting, or other proceeding instituted or maintained before the operative date shall be continued under this division, so far as applicable, and if no provision of this division is applicable, under the law in effect immediately prior to the operative date of this act, and for this limited purpose the prior law is continued in force and effect.

(b) If any right or remedy is abrogated or substantially curtailed by the provisions of this division after the operative date, the person entitled to such right or remedy shall have one year after the operative date in which to commence enforcement thereof under prior law.

Comment. Section 1475 is consistent with the general rule stated in Section 1472.

§ 1476. Effect on guardianships of adults and married minors

1476. (a) A guardianship of an adult, or a guardianship of the person of a married minor, in existence under this code on the operative date shall be deemed to be a conservatorship and is governed by the provisions of this code applicable to conservatorships without application or order, whether or not the letters of guardianship or the title of the proceeding are amended as provided in this chapter.

(b) A conservatee subject to conservatorship described in subdivision (a) shall be deemed to have been judicially determined to lack legal capacity as provided in Section 1832 unless otherwise ordered by the court.

(c) The validity of transactions and acts of a guardian or conservator shall not be affected by a misdescription of the office, nor shall any judgment, decree, or order of the court be invalidated by any such misdescription.

Comment. Section 1476 continues in effect as conservatorships all guardianships for adults and for the person of married minors established under prior law. It preserves the effect of the creation of a guardianship under prior law, which renders the ward incapable of making a valid contract. *Hellman Commercial Trust & Sav. Bank v. Alden*, 206 Cal. 592, 604-605, 275 P. 794, ____ (1929). Section 1832 permits the court to order that the conservatee lacks the power to enter into specified types of transactions or any transaction in excess of a specified amount. If the court removes entirely the disability imposed on the conservatee by this section, the conservatee will have the limited power to contract provided by Section 2527. *See Board of Regents State Univs. v. Davis*, 14 Cal.3d 33, 41, 533 P.2d 1047, ____ (1975).

§ 1477. Amendment of letters of existing guardianships

1477. Unless the court otherwise orders, the letters of guardianship in existence immediately preceding the operative date with respect to guardianships described in Section 1476 shall be amended at the time of the court's next biennial review as provided in Section 1850 to reflect that the conservatee lacks legal capacity to the extent provided in Section 40 of the Civil Code. Noncompliance with this section does not alter the effect of Section 1476 and gives rise to no penalty.

Comment. Section 1477 requires amendment of letters of conservatorship to indicate whether the conservatee (formerly a ward) lacks capacity. This requirement implements Section 1476.

§ 1478. References in statutes

1478. (a) The term "guardian," when used in any statute of this state with reference to an adult or person of a married minor, means the conservator of that adult or the conservator of the person in case of the married minor.

(b) Any reference in the statutes of this state to the term "absentee" or "secretary concerned" as defined in former Section 1751.5 of the Probate Code shall be deemed to be a reference to the definitions of those terms in this division.

(c) Any reference in the statutes of this state to the terms "account in an insured savings and loan association," "shares of an insured credit union," or "single-premium deferred annuity" as defined in Section 1510 of the Probate Code shall be deemed to be a reference to the definitions of those terms in this division.

Comment. Section 1478 is intended to conform references made obsolete by the enactment of this division in cases where conforming changes were not made in the references through inadvertence.

§ 1479. Rules of Judicial Council

1479. The Judicial Council may provide by rule for the orderly transition of pending proceedings on the operative date, including but not limited to amendment of the title of the proceedings and amendment of, or issuance of, letters of guardianship or conservatorship.

Comment. Section 1479 recognizes the authority of the Judicial Council in the transition period to prescribe rules not inconsistent with this chapter.

PART 2. GUARDIANSHIP

CHAPTER 1. APPOINTMENT

Article 1. Appointment of Testamentary Guardian

§ 1500. Appointment of testamentary guardian by parent

1500. (a) Either parent of a minor child, living or likely to be born, may appoint a guardian of the person of the child, or a guardian of the estate of the child, or both, to take effect upon the death of the appointing parent.

(b) An appointment under this section shall be made by will, by deed, or by a signed writing.

(c) Unless the other parent is dead or incapable of consent, the written consent of the other parent is required for an appointment under this section if that parent's consent would be required for an adoption of the child.

Comment. Section 1500 continues the substance of former Section 1403 but adds a provision authorizing a parent to appoint a testamentary guardian "by a signed writing." The word "general" which appeared in former Section 1403 has been omitted as unnecessary. For cases in which consent of a parent to adoption of a child is required, see Civil Code Sections 223-224. As to when the appointment becomes effective, see Section 1502. See also Sections 2153 (several guardians for one ward), 2154 (one guardian for several wards).

§ 1501. Appointment of special testamentary guardian

1501. (a) A parent may appoint a guardian by will or by deed for the property of any minor child, living or likely to be born, which the child may take from the parent by the will or by succession.

(b) Any person may appoint a guardian by will for any property of a minor, living or likely to be born, which the minor may take from such person by the will.

Comment. Section 1501 continues the substance of former Section 1402. As to when the appointment becomes effective, see Section 1502. See also Sections 2153 (several guardians for one ward), 2154 (one guardian for several wards).

A special testamentary guardianship under Section 1501 may coexist with a general guardianship; the special guardianship controls the property referred to in Section 1501, and the general guardianship controls the balance of the estate. In re Guardianship of Joaquin, 168

Cal. App.2d 99, 335 P.2d 507 (1959). The word "succession" in subdivision (a) of Section 1501 is synonymous with "descent"; it excludes those who take by gift or any form of contract. In re Welfer, 110 Cal. App.2d 262, 242 P.2d 655 (1952).

Where a parent attempts to appoint a general guardian of the person and estate of a child, as authorized by Section 1500, but the appointment does not satisfy the requirements of Section 1500 because the written consent of the other parent is required but not obtained, the appointment may nevertheless satisfy the requirements of Section 1501 and permit appointment of a guardian with respect to the property of the appointing parent that the child takes by will or succession from that parent. In re Guardianship of Joaquin, supra.

4253

§ 1502. When appointment effective

1502. An appointment under this article is effective only if both of the following requirements are met:

(a) The appointment is confirmed by the court under Article 2 (commencing with Section 1510).

(b) The person appointed satisfies the requirements of Section 2300.

Comment. Section 1502 is new and makes clear that an appointment of a general or special testamentary guardian under this article is subject to court confirmation under Article 2. See the Comments to the sections in that article. The person appointed must also satisfy the requirements of Section 2300 (oath and, if required, bond). A testamentary guardian is not required to file a bond unless required by the court. See Section 2324.

4264

Article 2. Court Appointment or Confirmation Generally

§ 1510. Petition for appointment or confirmation

1510. A relative or other person on behalf of the minor, or the minor if 14 years of age or older, may file a verified petition for the appointment or confirmation of a guardian of the minor. The petition shall allege that the appointment of a guardian of the person and estate of the minor, or of the person or estate of the minor, is necessary or convenient and shall set forth, so far as known to the petitioner, the names and residences of (1) the parents of the minor and (2) the relatives of the minor within the second degree who reside in this state.

Comment. The first sentence and the first portion of the second sentence of Section 1510 continue the substance of the second sentence of subdivision (a) of former Section 1440 which was made applicable to petitions for confirmation of a testamentary appointment by the last sentence of former Section 1405. The "necessary or convenient" standard is taken from the first sentence of subdivision (a) of former Section 1440. The remainder of the second sentence of Section 1510 is new and is drawn from the second sentence of former Section 1754 (conservators). This provision, which adds a requirement to facilitate compliance with the notice requirement of Section 1512, continues existing practice. See Petition for Appointment of Guardian of Minor (Form Approved by the Judicial Council of California, effective January 1, 1976). For additional requirements concerning the petition in cases of certain nonrelative guardianships, see Sections 1541 and 1542. See also Sections 2153 (several guardians for one ward), 2154 (one guardian for several wards). As to appointments to fill vacancies, see Section 2155.

4266

§ 1511. Setting petition for hearing

1511. Upon the filing of the petition, the clerk shall set the petition for hearing by the court.

Comment. Section 1511 is a new provision based on the same provision of the third sentence of former Section 1754 (conservators).

4268

§ 1512. Notice to person having custody, relatives, and parents

1512. (a) Except as provided in subdivision (b), before the appointment or confirmation of the guardian, notice of the proposed appointment or confirmation shall be given in such manner as the court or a judge thereof determines is reasonable to all of the following:

- (1) The parents of the proposed ward.
- (2) The person having the care of the proposed ward.
- (3) Such relatives of the proposed ward residing in this state as the court or judge determines should be given notice.

(b) Notice shall not be given to any of the following:

(1) The parents or other relatives of a proposed ward who has been relinquished to a licensed adoption agency.

(2) The parents of a proposed ward who has been declared free from their custody and control.

(c) Proof shall be made to the court before the appointment is made or confirmed that notice has been given as required by this section or that for good cause such notice cannot be given.

Comment. Section 1512 continues the substance of former Section 1441. Subdivision (c) makes clear that proof that the required notice has been given must be made with respect to all persons entitled to notice under subdivision (a). Under former Section 1441, it was not clear whether such proof was required merely as to the notice to parents, but the Judicial Council form included provision for waiver of notice by relatives. See Petition for Appointment of Guardian of Minor (Form Approved by Judicial Council of California, effective January 1, 1976).

4272

§ 1513. Order for temporary custody

1513. (a) When it appears to the court or judge from a verified petition or from affidavits that the welfare of the minor will be imperiled if the minor is allowed to remain in the custody of the person then having the minor's care, the court or judge may make an order providing for the temporary custody of the minor until a hearing can be had on the petition.

(b) If there is reason to believe that the minor will be carried out of the jurisdiction of the court or will suffer some irreparable injury before the temporary custody order can be enforced, the court or judge may, at the time of making the temporary custody order, cause a warrant to be issued, reciting the facts and directed to the sheriff, coroner, or a constable of the county, commanding such officer (1) to take the minor from the custody of the person in whose care the minor then is and (2) to place the minor in custody in accordance with the order.

Comment. Section 1513 continues the substance of former Section 1442. Although this section appears to give the court somewhat broader authority than under the Family Law Act, former Section 1442 was held to apply in a custody proceeding between parents. *Titcomb v. Superior Court*, 220 Cal. 34, 29 P.2d 206 (1934).

4428

§ 1514. Investigation by probation officer or domestic relations investigator

1514. (a) The probation officer or domestic relations investigator in the county in which the petition for appointment of a guardian is pending shall make an investigation of each case whenever requested by a judge of the superior court. If a petition for guardianship is filed

for a minor of two years of age or under and the person petitioning for appointment as guardian is not a relative of the minor, the court shall require the probation officer or domestic relations investigator to make an investigation.

(b) The officer making the investigation shall file with the court a written confidential report. The report may be considered by the court and shall be made available only to the petitioner, or the attorney for the petitioner, at least 10 days before the hearing on the petition. The report may be received in evidence upon stipulation of the petitioner.

Comment. Subdivision (a) of Section 1514 continues the substance of former Section 1443 insofar as that subdivision related to a guardian for a minor except that "domestic relations investigator" has been added to Section 1514 to conform to Civil Code Section 4602. Subdivision (b) of Section 1514 is new and is based on the comparable provision of Civil Code Section 4602. See also Section 1544 (report in case of certain nonrelative guardianships).

4440

§ 1515. Appointment or confirmation of guardian

1515. (a) Upon hearing of the petition, if it appears necessary or convenient, the court may appoint or confirm a guardian of the person and estate of the minor or a guardian of the person or estate of the minor.

(b) In appointing or confirming a guardian of the person, the court is governed by the provisions of Section 4600 of the Civil Code, relating to custody of a minor.

(c) The court shall confirm the appointment of a guardian made under Section 1500 insofar as the appointment relates to the guardianship of the estate unless the court determines that the appointee is unsuitable.

(d) The court shall confirm the appointment of a guardian of the estate made under Section 1501 unless the court determines that the appointee is unsuitable.

(e) Subject to subdivisions (c) and (d), in appointing a guardian of the estate, the court is to be guided by what appears to be in the best interest of the minor, taking into account the proposed guardian's

ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the minor. If the minor is of sufficient age to form an intelligent preference, the court shall give due consideration to that preference in determining the question.

Comment. Subdivision (a) of Section 1515 continues the substance of the first sentence of subdivision (a) of former Section 1440 which apparently was made applicable to petitions for confirmation of a testamentary appointment by the last sentence of former Section 1405. The jurisdiction and venue provisions are found in Sections 2200-2215. Certain nonprofit charitable corporations may be appointed as guardians of the person and estate or person or estate. See Section 2152. A corporation or association authorized to conduct the business of a trust company in this state may be appointed as a guardian of the estate but not as a guardian of the person. See Section 480. Other public offices or entities are also authorized to serve as a guardian. See Health & Saf. Code § 416 (Director of Health); Mil. & Vet. Code § 1046 (Veterans' Home of California); Welf. & Inst. Code § 8006 (public guardian). See also Section 2153 (several guardians for one ward), 2154 (one guardian for several wards). As to appointments to fill vacancies, see Section 2155.

Subdivision (b) applies only to a guardian of the person of a minor. If a person is to be appointed as a guardian of the person and of the estate, this subdivision applies. Proceedings for an adult in need of protective supervision may be brought pursuant to Part 3 (conservatorship). Subdivision (b) incorporates by reference Section 4600 of the Civil Code, which applies to any proceeding where there is at issue the custody of a minor child, including a guardianship proceeding. See, e.g., *Guardianship of Marino*, 30 Cal. App.3d 952, 106 Cal. Rptr. 655 (1973). Former Section 1406 permitted a minor over 14 years of age to nominate a guardian, but the court had considerable latitude in approving or disapproving the minor's nominee. See *Guardianship of Kentera*, 41 Cal.2d 639, 262 P.2d 317 (1953); *Guardianship of Rose*, 171 Cal. App.2d 677, 340 P.2d 1045 (1959). Section 1510 preserves the standing of a minor 14 years of age or older to petition as a party in a guardianship proceeding for the appointment of his or her own guardian. Civil Code Section 4600 requires the court to consider and give due weight to the minor's preference.

Subdivisions (c) and (d) continue the portion of the last sentence of former Section 1405 that related to confirmation of a testamentary guardian of the estate of a minor. Prior law was not clear whether appointment of a testamentary guardian of the estate was binding on the court or was merely persuasive. See 3 N. Condee, *California Probate Court Practice* § 2029, at 151 (2d ed. 1964); Schlesinger, *Testamentary Guardianships for Minors and Incompetents*, in *California Will Drafting* § 10.10 (Cal. Cont. Ed. Bar 1965). Subdivisions (c) and (d) require confirmation of a testamentary guardian of the estate unless the court determines that the appointee is unsuitable. Subdivision (b) permits confirmation of a testamentary guardian of the person and estate of a minor in the court's discretion, as in the case of a judicial appointment; but, if the appointment is not confirmed as to the person, the

appointee still is required to be confirmed as the guardian of the estate unless the court determines that the appointee is unfit.

Subdivision (e) provides the standards for appointing a general guardian of the estate of a minor. A general guardian may coexist with a special testamentary guardian of the estate appointed under Section 1501, with the latter controlling the property received from the person making the appointment. See In re Guardianship of Joaquin, 168 Cal. App.2d 99, 335 P.2d 507 (1964). However, no new general guardian may be appointed when an existing general guardian is serving unless the existing guardian is removed or the appointment is vacated. See Guardianship of Kimball, 80 Cal. App.2d 884, 182 P.2d 612 (1947). Subdivision (e) continues the first sentence of former Section 1406 insofar as it related to appointment of a general guardian of the estate of a minor.

Section 1515 substitutes the rule of Section 4600 and the general rule stated in subdivision (e) for the priorities and limitations stated in former Sections 1406-1409 and supersedes those sections.

4442

§ 1516. No guardian of person for married minor

1516. Notwithstanding any other provision of this part, no guardian of the person shall be appointed or confirmed for a minor who is or has been married.

Comment. Section 1516 supersedes former Section 1433, which precluded appointment of a guardian of the person of a married minor solely by reason of minority. If a married minor is in need of protective supervision of the person, a conservator of the person may be appointed under Part 3. Nothing in Section 1516 precludes the appointment or confirmation of a guardian of the estate of a married minor. See also Section 1600 (termination of guardianship of person when minor marries).

4429

Article 3. Nonrelative Guardianships

§ 1540. Application of article

1540. This article does not apply in any of the following cases:

- (a) The petition is for guardianship of the estate exclusively.
- (b) The petitioner is a relative of the proposed ward.
- (c) The petitioner is one appointed as a guardian of the proposed ward under Section 1500.

(d) The Director of Health is appointed guardian pursuant to Article 7.5 (commencing with Section 416) of Division 1 of the Health and Safety Code.

Comment. Section 1540 is new. The section is drawn from the qualifications for application of subdivision (c) of former Section 1440 and from former Section 1440.3. Subdivision (c) of Section 1540 limits the exception for testamentary guardians to those appointed by a parent (with the written consent of the other parent if such other parent is capable of consenting) under Section 1500. The exception under former Section 1440 applied to any guardian appointed "by will," which would appear to have included a special testamentary guardian of the estate appointed by a parent or a nonparent under former Section 1402 (continued in Section 1501).

4431

§ 1541. Additional contents of petition for guardianship

1541. Except as provided in Section 1540, in addition to the other required contents of the petition for appointment of a guardian, the petition shall include all of the following:

(a) An allegation that, upon request by an agency referred to in Section 1544 for information relating to the investigation referred to in that section, the petitioner will promptly submit the information required.

(b) A disclosure of any petition for adoption of the minor who is the subject of the guardianship petition by the petitioner for guardianship regardless when filed.

(c) An allegation whether or not the petitioner's home is licensed as a foster family home.

Comment. Section 1541 continues the substance of the second sentence of subdivision (c) of former Section 1440.

4434

§ 1542. Amendment of guardianship petition if adoption petition filed

1542. Except as provided in Section 1540, if the petitioner files a petition for adoption of the minor of whom the petitioner is seeking guardianship after the guardianship petition is filed, the petitioner shall amend the guardianship petition to disclose that fact.

Comment. Section 1542 continues the substance of the second paragraph of subdivision (c) of former Section 1440.

§ 1543. Service of copy of petition on Department of Health

1543. Except as provided in Section 1540, the petitioner shall mail or deliver a notice of the hearing and a copy of the petition to the Director of Health at the director's office in Sacramento at least 15 days before the hearing.

Comment. Section 1543 continues the substance of the first sentence of subdivision (c) of former Section 1440 except that the requirement that notice of the hearing be given has been added, "mail or deliver" has been substituted for "served," and the 15-day provision has been added. The provision of former Section 1440 requiring proof of service to be made to the court at the time of hearing has been omitted; this will permit proof of mailing or delivery to be filed with the court prior to the hearing.

§ 1544. Report on suitability of guardian

1544. (a) Except as provided in Section 1540:

(1) If the petition as filed or as amended states that an adoption petition has been filed, a report with respect to the suitability of the petitioner for guardianship shall be filed with the court by the agency investigating the adoption.

(2) In other cases, the local agency to whom foster family home licensure has been delegated shall file a report with the court with respect to the petitioner of the same character required to be made with regard to an applicant for foster family home licensure.

(b) The report filed with the court pursuant to this section is confidential. The report may be considered by the court and shall be made available only to the petitioner, or the attorney for the petitioner, at least 10 days before the hearing on the petition. The report may be received in evidence upon stipulation of the petitioner.

Comment. Subdivision (a) of Section 1544 is the same in substance as former Section 1440.1. Subdivision (b) supersedes former Section 1440.2 and is comparable to subdivision (b) of Section 1514 and is based on the comparable provision of Civil Code Section 4602. See also Section 1514 (investigation by probation officer or domestic relations investigator).

CHAPTER 2. TERMINATION

§ 1600. Majority, death, or marriage of ward

1600. (a) A guardianship of the person and estate or person or estate terminates when the ward attains majority or dies.

(b) A guardianship of the person terminates when the ward marries.

Comment. Subdivision (a) of Section 1600 continues subdivisions (1) and (2) of former Section 1590, relating to termination of guardianship when the ward attains majority. The age of majority is 18. See Civil Code § 25. Subdivision (a) also codifies the rule that the death of the ward terminates the guardianship. See In re Estate of Kelley, 184 Cal. 448, 194 P. 4 (1920); In re Estate of Livermore, 132 Cal. 99, 64 P. 113 (1901). Subdivision (b) continues that portion of subdivision (1) of former Section 1590 relating to termination of the guardianship of the person when a minor marries. The court retains jurisdiction of the guardianship proceeding despite the termination of the guardianship. See Section 2641. Marriage of the guardian does not affect the authority of the guardian. See Section 2156.

29176

§ 1601. Termination by court order

1601. Upon petition of the guardian or ward and after such notice to the other as the court may require, the court may make an order terminating the guardianship if the court determines that the guardianship is no longer necessary or convenient.

Comment. Section 1601 continues the first portion of subdivision (3) of former Section 1590 but deletes the provision relating to restoration to capacity under Chapter 5 since Chapter 5 is repealed. The standard--that the guardianship is no longer necessary or convenient--was not formerly specified in the statute but is consistent with the standard for creation of a guardianship. See Section 1515(a). The court retains jurisdiction of the guardianship proceeding despite termination of the guardianship. See Section 2641.

29179

§ 1602. Settlement of accounts, release, and discharge of guardian

1602. (a) After a ward has reached majority, the ward may settle accounts with the guardian and give the guardian a release. The release is valid if obtained fairly and without undue influence.

(b) Except as otherwise provided by this code, a guardian appointed by a court is not entitled to a discharge until one year after the ward has attained majority.

Comment. Subdivision (a) of Section 1602 continues the substance of former Section 1592. Subdivision (b) continues the substance of former Section 1593.

PART 3. CONSERVATORSHIP

CHAPTER 1. APPOINTMENT

Article 1. Persons for Whom Conservator May Be Appointed§ 1800. Conservatorships for adults or married minors

1800. If the other requirements of this chapter are satisfied, the court may appoint:

(a) A conservator of the person and estate, or person or estate, of an adult.

(b) A conservator of the person of a minor who is or has been married.

Comment. Section 1800 is new and makes clear that conservatorships are authorized only for adults and for minors who are or have been married. In the case of a minor who is or has been married, a conservator of the person may be appointed if the requirements of this chapter are satisfied; a guardian of the estate of the minor may be appointed where necessary or convenient. See Sections 1515 and 1516.

Note. Is it desirable to have a scheme where a married minor has a conservator of the person because he or she is incompetent and a guardian of the estate?

§ 1801. Need for appointment

1801. Subject to Section 1800, a conservator may be appointed for a person who:

(a) In the case of a conservatorship of the person, is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter.

(b) In the case of a conservatorship of the estate, is substantially unable to manage his or her own financial resources or resist fraud or undue influence. "Substantial inability" may not be proved solely by isolated incidents of negligence or improvidence.

(c) In the case of a conservatorship of the person and estate, is a person described in subdivisions (a) and (b).

Comment. Section 1801 continues the substance of a portion of former Section 1751. The portion of former Section 1751 that authorized the appointment of a conservator for an adult for whom a guardian could be appointed is superseded by subdivision (e) of Section 1821 and Section 1832.

§ 1802. Appointment upon request of proposed conservatee

1802. Subject to Section 1800, a conservator of the person and estate, or person or estate, may be appointed for a person who voluntarily requests the appointment and who, to the satisfaction of the court, establishes good cause for the appointment.

Comment. Section 1802 continues the substance of a portion of former Section 1751.

§ 1803. Proposed conservatee an "absentee"

1803. A conservator of the estate may be appointed for a person who is an absentee as defined in Section 1404.

Comment. Section 1803 continues a portion of former Section 1751. For special provisions applicable where the proposed conservatee is an absentee, see Article 4 (commencing with Section 1840).

Article 2. Order of Preference for
Appointment of Conservator

§ 1810. Nomination by proposed conservatee

1810. The proposed conservatee may nominate a conservator in the petition or in a written instrument executed either before or after the petition is filed if, at the time of signing the petition or written instrument, the proposed conservatee has sufficient capacity to form an intelligent preference. The court shall appoint the nominee as conservator unless the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee.

Comment. Section 1810 continues the substance of the second sentence of former Section 1752.

§ 1811. Order of preference for appointment as conservator

1811. (a) The selection of a conservator of the person or estate is solely in the discretion of the court and, in making the selection, the court is to be guided by what appears to be for the best interests of the proposed conservatee.

(b) Subject to Sections 1810 and 1812, of persons equally qualified in the opinion of the court to appointment as conservator of the person and estate or person or estate of another, preference is to be given in the following order:

(1) The spouse of the proposed conservatee or the nominee of the spouse.

(2) An adult child of the proposed conservatee or the nominee of the child.

(3) A parent of the proposed conservatee or the nominee of the parent.

(4) A brother or sister of the proposed conservatee or the nominee of the brother or sister.

(5) Any other person or entity eligible for appointment as a conservator under this code or, if there is no such person or entity willing to act as a conservator, under the Welfare and Institutions Code.

(c) The preference for any nominee for appointment under paragraphs (2), (3), and (4) of subdivision (b) is subordinate to the preference for any other parent, child, brother, or sister in such class.

Comment. Section 1811 continues the substance of former Section 1753 and the first sentence of former Section 1752. The last sentence of former Section 1752 is omitted as unnecessary in view of the addition of the introductory clause to subdivision (b) of Section 1811 and the more detailed and inconsistent provisions of former Section 1753 which are continued in Section 1811. The last paragraph of former Section 1753 has been omitted as unnecessary. The reference to guardian of an incompetent person has been omitted since guardians are no longer appointed for incompetent persons.

Note. The Comment will include a listing of nonnatural persons and their officers eligible for appointment as a conservator or will refer to a section containing such a list.

29200

§ 1812. Condition for appointment of absentee's spouse

1812. The spouse of an absentee as defined in Section 1404 may not be appointed as conservator of the estate of the absentee unless the spouse alleges in the verified petition for appointment as conservator, and the court finds, that the spouse has not commenced any action or

proceeding against the absentee for judicial or legal separation, divorce or dissolution of marriage, annulment, or adjudication of nullity of their marriage.

Comment. Section 1812 continues the substance of the second sentence of former Section 1754.5.

4449

Article 3. Procedure for Appointment

§ 1820. Filing of petition

1820. (a) A petition for the appointment of a conservator may be filed by the proposed conservatee or by any relative or friend, other than a creditor, of the proposed conservatee.

(b) If the proposed conservatee is a minor, the petition may be filed during his or her minority so that the appointment of a conservator may be made effective immediately upon the minor's becoming eligible therefor as provided in Section 1800. An existing guardian of the minor may be appointed as conservator under this part upon the minor's becoming eligible therefor.

Comment. Subdivision (a) of Section 1820 continues the substance of a portion of the first sentence of former Section 1754. The requirement that the petition be verified is continued in Section 1821.

The first sentence of subdivision (b) is new and will permit the uninterrupted continuation of protective proceedings for an incompetent minor under guardianship who is approaching majority. The second sentence of subdivision (b) is based on a portion of the first sentence of former Section 1704. Under subdivision (b), however, the power of the court to appoint an existing guardian as conservator upon the minor's reaching majority is not conditioned upon settlement of the guardian's accounts, and such settlement may take place after the guardian's appointment as conservator.

4450

§ 1821. Verification and contents of petition

1821. (a) The petition shall be verified and shall allege that the appointment of a conservator is required and the reasons for appointment.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and residence addresses of the spouse, if any, and of the relatives of the proposed conservatee within the second degree.

(c) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Health and that fact is known to the petitioner, the petitioner shall name the institution in the petition.

(d) The petition shall state whether or not the proposed conservatee is receiving or entitled to receive benefits from the Veterans Administration.

(e) The petition may include a further allegation that either of the following is necessary for the protection of the proposed conservatee or the estate of the proposed conservatee:

(1) That the proposed conservatee be adjudged to lack legal capacity to the extent provided in Section 40 of the Civil Code.

(2) That the power of the proposed conservatee to enter into specified types of transactions or any transaction in excess of a specified money amount be withdrawn.

Comment. Subdivision (a) of Section 1821 continues the substance of a portion of the first sentence of former Section 1754 but adds the requirement that the "reasons for appointment" be alleged. This addition is consistent with existing practice. See Petition for Appointment of Conservator (Form Approved by Judicial Council of California, effective July 1, 1977). Subdivision (b) is the same in substance as the second sentence of former Section 1754. Subdivision (c) continues the substance of a portion of former Section 1461.3 (guardianship) which appears to have been made applicable to conservatorships by the penultimate sentence of former Section 1754. See Petition for Appointment of Conservator (Form Approved by the Judicial Council of California, effective July 1, 1977). Subdivision (d) is based on the penultimate sentence of former Section 1754 and is consistent with existing practice. See Petition for Appointment of Conservator (Form Approved by the Judicial Council of California, effective July 1, 1977). In connection with subdivision (d), see the Uniform Veterans' Guardianship Act, Part 5 (commencing with Section 2900). For additional requirements if the proposed conservatee is an "absentee," see Sections 1812, 1842. See also Section 2152 (nonprofit charitable corporation as conservator). Subdivision (e) replaces the portion of former Section 1751 that permitted a conservator to be appointed if the proposed conservatee was a person for whom a guardian could be appointed.

4451

§ 1822. Setting petition for hearing

1822. Upon the filing of the petition, the clerk shall set the petition for hearing within 30 days of the filing of the petition.

Comment. Section 1822 continues the substance of the third sentence of former Section 1754 and subdivision (a) of former Section 1851. The reference to hearing "by the court" is not continued since the proposed conservatee may be entitled to trial by jury. See Section 1828.

4452

§ 1823. Notice of hearing

1823. At least 15 days before the hearing, a copy of the petition and of the notice of the time and place of hearing shall be mailed to the following persons:

(a) The spouse, if any, of the proposed conservatee at the address stated in the petition.

(b) The relatives named in the petition at their addresses stated in the petition.

(c) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Health and that fact is known to the petitioner, to the Director of Health at the director's office in Sacramento.

(d) If the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, to the office of the Veterans Administration referred to in Section 2908.

Comment. The introductory clause of Section 1823, which requires that notice be mailed at least 15 days before the hearing, is drawn from former Section 1754. The requirement of former Section 1754 that the notice be of the "nature of the proceedings" is replaced by a requirement that a copy of the petition be mailed with the notice of the time and place of the hearing. Subdivisions (a) and (b) continue the substance of a portion of the fifth sentence of former Section 1754 but add the provision that the mailing is to be sent to the addresses stated in the petition. See Section 1821(b). Subdivisions (c) and (d) are based on the penultimate sentence of former Section 1754, which appears to have adopted a portion of former Section 1461.3 (guardianship) and provisions of the Uniform Veterans' Guardianship Act. The provision for shortening the time for the notice which was found in former Section 1461.3 is not continued here. If time is of the essence, a temporary conservatorship may be used. See Sections 2250-2256. For additional notice requirements where the proposed conservatee is an "absentee," see Section 1843. See also Section 1830 (right of state and federal officers and agencies to appear at hearing and oppose petition).

§ 1824. Citation to proposed conservatee

1824. (a) If the petition is filed by a person other than the proposed conservatee, the clerk shall issue a citation directed to the proposed conservatee setting forth the time and place of hearing.

(b) The citation shall include a specific delineation of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1801 and shall state the substance of all of the following:

(1) The proposed conservatee may be adjudged unable to provide for his or her personal needs or to manage his or her financial resources and, by reason thereof, a conservator may be appointed for his or her person and estate or person or estate.

(2) Such adjudication may transfer to the appointed conservator the proposed conservatee's right to contract, to manage and control his or her property, and to fix his or her residence.

(3) The court or a court investigator will explain the nature, purpose, and effect of the proceeding to the proposed conservatee and will answer questions concerning the explanation.

(4) The proposed conservatee has the right to appear at the hearing and oppose the petition.

(5) The proposed conservatee has the right to legal counsel of his or her own choosing, including the right to have legal counsel appointed by the court if he or she is unable to retain one.

(6) The proposed conservatee has the right to a jury trial if he or she so desires.

Comment. Section 1824 continues the substance of the second paragraph of former Section 1754. A citation is not required if the proposed conservatee is an "absentee." See Section 1844.

§ 1825. Service on proposed conservatee of citation and petition

1825. The citation and a copy of the petition shall be served on the proposed conservatee at least 10 days before the hearing. Service shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

Comment. Section 1825 is the same in substance as the first sentence of the third paragraph of former Section 1754. No citation is required if the proposed conservatee is the petitioner. See Section 1824(a). If the proposed conservatee is an "absentee," no citation is required. See Section 1844.

4459

§ 1826. Attendance of proposed conservatee at hearing

1826. (a) The proposed conservatee shall be produced at the hearing except in either of the following cases:

(1) The proposed conservatee is out of the state when served and is not the petitioner.

(2) The proposed conservatee is unable to attend the hearing.

(b) If the proposed conservatee is unable to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the proposed conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the proposed conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the appointment of a conservator.

(c) Emotional or psychological instability is not good cause for the absence from the hearing of the proposed conservatee unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee.

Comment. Section 1826 continues the substance of the first four sentences of the fourth paragraph of former Section 1754. An "absentee" need not be produced at the hearing. See Section 1845(b).

4460

§ 1827. Appointment and duties of court investigator

1827. (a) Upon receipt of an affidavit or certificate attesting to the medical inability of the proposed conservatee to attend the hearing, the court shall appoint as court investigator a person trained in law who is an officer or special appointee of the court and has no personal or other beneficial interest in the proceedings.

(b) The court investigator shall do all of the following:

- (1) Personally interview the proposed conservatee.
- (2) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, attend the hearing, have the matter tried by jury, and be represented by counsel.
- (3) Determine whether it appears that the proposed conservatee is unable to attend the hearing.
- (4) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.
- (5) Determine whether the proposed conservatee wishes to be represented by counsel and, if so, whether the proposed conservatee has retained counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.
- (6) If the proposed conservatee does not wish to contest the establishment of the conservatorship, determine if the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.
- (7) Report to the court in writing concerning all of the foregoing, including the proposed conservatee's express statement concerning representation by counsel, at least five days before the hearing.

Comment. Section 1827 continues the substance of the fifth, sixth, seventh, and eighth paragraphs of former Section 1754. "Medical inability" has been substituted for "inability" in subdivision (a) to avoid the requirement that a court investigator be appointed in a case, for example, where the proposed conservatee is an "absentee." See Section 1845(b).

4461

§ 1828. Law and procedure applicable to hearing

1828. The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded.

Comment. Section 1828 continues the substance of the third sentence of former Section 1606.5 (guardianship of incompetent adult) and the third sentence of former Section 2006 (conservatorship). See also Section 1864 (law and procedure applicable termination of conservatorship).

The proposed conservatee has a right to counsel at the hearing. See Sections 1870 and 1871. See also Section 1830 (persons who may oppose petition).

§ 1829. Information to proposed conservatee by court

1829. (a) Except as provided in subdivision (c), prior to the appointment of a conservator of the person and estate, or person or estate, the court shall inform the proposed conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The appointment of a conservator is a legal adjudication of the conservatee's inability properly to provide for his or her personal needs or to manage his or her own financial resources or of the conservatee's incapacity to make a conveyance or contract, and the effect of such an adjudication on the conservatee's basic rights.

(3) The identity of the person who has been nominated as the conservator.

(4) The conservatee has the right to oppose the proceeding, to have the matter tried by jury, and to be represented by legal counsel if the conservatee chooses.

(b) After the court so informs the proposed conservatee and prior to the appointment of a conservator, the court shall consult the proposed conservatee to determine his or her opinion concerning the appointment.

(c) This section does not apply in either of the following cases:

(1) The proposed conservatee is the petitioner.

(2) The proposed conservatee is absent from the hearing, is not required to attend the hearing under the provisions of Section 1826, and any showing required by Section 1826 has been made.

Comment. Subdivisions (a) and (b) of Section 1829 continue the substance of the first paragraph of former Section 1754.1. Subdivision (c) expands the second sentence of former Section 1754.1 which made the section inapplicable only if the proposed conservatee's inability to attend the hearing was "medically" certified. Subdivision (c) makes this section inapplicable in the case of any legitimate absence of the proposed conservatee.

09598

§ 1830. Persons who may oppose petition

1830. Any officer or agency of this state or of the United States or the authorized delegate thereof, or any relative or friend of the proposed conservatee, or the proposed conservatee, may appear at the hearing and oppose the petition.

Comment. Section 1830 continues the substance of the last sentence of former Section 1754.

09597

§ 1831. Order appointing conservator

1831. The order appointing the conservator shall contain the names, addresses, and telephone numbers of:

- (a) The conservator.
- (b) The conservatee's attorney, if any.
- (c) The court investigator, if any.

Comment. Section 1831 continues the substance of the last sentence of former Section 1801.

4464

§ 1832. Adjudication of conservatee's lack of legal capacity; withdrawing power to enter specified transactions

1832. (a) If the court determines that it is necessary for the protection of the conservatee or the conservatee's estate, the court may by order do either of the following:

- (1) Determine that the conservatee lacks legal capacity to the extent provided in Section 40 of the Civil Code.
 - (2) Withdraw the power of the conservatee to enter into specified types of transactions or any transaction in excess of a specified money amount.
- (b) The order referred to in subdivision (a) may be included in the order of appointment of the conservator or may be included in a subsequent order made upon a verified petition made, noticed, and heard in the same manner as a petition for appointment of a conservator. The terms of the order shall be included in the letters of conservatorship.
- (c) The order referred to in subdivision (a) may be modified upon a verified petition made, noticed, and heard in the same manner as a petition for termination of a conservatorship under Chapter 3 (commencing with Section 1860).

Comment. Section 1832 is new and is added to preserve the effect under former Section 1751 of appointing a conservator on the ground that the conservatee was a person for whom a guardian could have been appointed. The appointment of a guardian for an adult under former Division 4 constituted a judicial determination of incapacity under Section 40 of the Civil Code and made void any contract entered into by the ward

after such determination. *Hellman Commercial Trust & Sav. Bank v. Alden*, 206 Cal. 592, 604-05, 275 P. 794, ____ (1929). An order appointing a conservator on the ground that the conservatee was a person for whom a guardian could have been appointed rendered the conservatee incapable of contracting. *Board of Regents State Univs. v. Davis*, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, ____ n.6, ____, 120 Cal. Rptr. 407, ____ n.6, ____ (1975). Section 1832 permits the court to withdraw or constrict the conservatee's power to contract, thus providing a judicial adjudication of the conservatee's incapacity but without the necessity of a stigmatizing adjudication of incompetency. The provision authorizing the court to withdraw the power of the conservatee to enter into specified types of transactions or any transaction in excess of a specified money amount is drawn from Section 5357 of the Welfare and Institutions Code.

4446

Article 4. Special Provisions Applicable Where
Proposed Conservatee Is An Absentee

§ 1840. Definitions

1840. As used in this article:

(a) "Absentee" has the meaning given that term by Section 1404.

(b) "Secretary concerned" has the meaning given that term by Section [to be supplied].

Comment. Section 1840 continues the substance of former Section 1751.5.

4467

§ 1841. Procedure for appointment of conservator for absentee

1841. Except as otherwise provided in this article, a conservator for an absentee shall be appointed as provided in Article 3 (commencing with Section 1820).

Comment. Section 1841 retains the substance of the prior statute which applied to the appointment of a conservator for an absentee but included some special provisions applicable where the proposed conservatee is an absentee. Because of the limited use of conservatorships for absentees, these special provisions have been relocated from the general provisions relating to appointment of conservators and have been collected in this article. See also Sections 1803 (conservator of estate may be appointed for absentee), 1812 (condition on appointment of spouse of absentee as conservator), 1865 (termination of conservatorship for absentee).

§ 1842. Additional contents of petition

1842. In addition to the other required contents of the petition, if the proposed conservatee is an absentee:

(a) The petition and any notice required by any other law shall set forth the last known military rank or grade and the social security account number of the proposed conservatee.

(b) The petition shall allege whether the absentee's spouse has commenced any action or proceeding against the absentee for judicial or legal separation, divorce or dissolution of marriage, annulment, or adjudication of nullity of their marriage.

Comment. Section 1842 continues that portion of the first and second sentences of former Section 1754.5 that related to the information required to be contained in the petition or in the notice except that, under Section 1842, the information concerning military rank and social security number is required to be included in the petition rather than in the notice. See also Section 1812 (condition on appointment of spouse of absentee as conservator).

§ 1843. Notice of hearing

1843. In addition to the persons and entities to whom notice of hearing is required under Section 1823, if the proposed conservatee is an absentee, a copy of the petition and notice of the time and place of the hearing shall be mailed at least 15 days before the hearing to the secretary concerned or to the head of the United States department or agency concerned, as the case may be. In such case, notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the hearing will be held.

Comment. Section 1843 continues the substance of a portion of the fourth sentence and all of the fifth sentence of former Section 1754. The inconsistent requirement of former Section 1754.5 that the copy of the petition and notice be "delivered only by a method which would be sufficient for service of a summons in a civil action" is not continued. See also Section 1830 (right of officer or agency of United States or authorized delegate thereof to appear at hearing and oppose petition).

§ 1844. Citation to proposed conservatee not required

1844. No citation is required under Section 1824 to the proposed conservatee if the proposed conservatee is an absentee.

Comment. Section 1844 continues the substance of the second sentence of the third paragraph of former Section 1754.

§ 1845. Proof of status of proposed conservatee; attendance at hearing not required

1845. (a) An official written report or record complying with Section 1283 of the Evidence Code that a proposed conservatee is an absentee shall be received as evidence of that fact and the court shall not determine the status of the proposed conservatee inconsistent with the status determined as shown by the written report or record.

(b) The inability of the proposed conservatee to attend the hearing is established by the official written report or record referred to in subdivision (a).

Comment. Subdivision (a) of Section 1845 continues the substance of the last sentence of former Section 1754.5. Subdivision (b) continues the substance of the last sentence of the fourth paragraph of former Section 1754.

CHAPTER 2. BIENNIAL REVIEW OF CONSERVATORSHIP

§ 1850. Court review of conservatorship

1850. (a) Each conservatorship initiated pursuant to this part shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter.

(b) For each conservatorship established prior to July 1, 1977, court review shall commence at the time of the next financial accounting but, in all cases, no later than July 1, 1980.

Comment. Subdivision (a) of Section 1850 continues the substance of the first sentence of former Section 1851.1. Subdivision (b) continues the substance of former Section 1851.2.

§ 1851. Visitation and findings by court investigator

1851. (a) When court review is required, the court investigator shall visit the conservatee. The court investigator shall personally inform the conservatee that he or she is under a conservatorship and shall give the name of the conservator to the conservatee. The investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, and whether the present conservator is acting in the best interests of the conservatee.

(b) The findings of the court investigator, including the facts upon which such findings are based, shall be certified in writing to the court within 15 days of the date of review.

Comment. Section 1851 continues the substance of the second, third, and fourth sentences of former Section 1851.1.

§ 1852. Notification of counsel; representation of conservatee at hearing

1852. If the conservatee wishes to petition the court for termination of the proceeding or for removal of the existing conservator, or if based on information contained in the court investigator's report the court determines that a hearing for such termination or removal is in the best interests of the conservatee, the court shall notify the attorney of record for the conservatee, if any, or shall appoint the public

defender or other attorney to file the petition and represent the conservatee at the hearing or trial.

Comment. Section 1852 continues the substance of the fifth and sixth sentences of former Section 1851.1.

4626

§ 1853. Termination of conservatorship on failure to locate or produce conservatee

1853. (a) If the court investigator is unable to locate the conservatee, the court shall serve notice upon the conservator to produce the conservatee within 15 days of the receipt of such notice or to show cause why the conservatorship should not be terminated.

(b) If the conservatee is not produced within the time prescribed and no good cause is shown for not producing the conservatee, the court shall terminate the conservatorship. If the conservatorship is of the estate, the court shall order the conservator to file an accounting.

Comment. Section 1853 continues the substance of the last two sentences of former Section 1851.1.

CHAPTER 3. TERMINATION

§ 1860. When conservatorship terminates

1860. A conservatorship continues until terminated by the death of the conservatee or by order of court.

Comment. Section 1860 continues a portion of the first sentence of former Section 1755. The provision of former Section 1755 for termination of the conservatorship on the death of the conservator is not continued; death of the conservator merely terminates the relationship of conservator and conservatee but does not terminate the conservatorship proceeding. See Section 2641. Cf. Estate of Mims, 202 Cal. App.2d 332, 20 Cal. Rptr. 667 (1962) (guardianship). As to the duty of the conservator to deliver the conservatee's estate to the conservatee's personal representative upon death of the conservatee, see Section [to be supplied]. See also Section 1853 (termination of conservatorship on failure to locate or produce conservatee).

4630

§ 1861. Petition for termination of conservatorship

1861. The conservator, conservatee, or any relative or friend of the conservatee may apply by verified petition to the superior court of the county in which the proceedings are pending to have the conservatorship terminated. The petition shall state facts showing that the conservatorship is no longer required.

Comment. Section 1861 continues the second and third sentences of former Section 1755.

4633

§ 1862. Setting petition for hearing

1862. Upon the filing of the petition, the clerk shall set the petition for hearing.

Comment. Section 1862 continues the substance of a portion of the fourth sentence of former Section 1755, which provided that the petition shall be set for hearing in the manner provided for a petition for the appointment of a conservator. See Section 1822 (setting petition for appointment for hearing).

4637

§ 1863. Notice of hearing

1863. (a) At least 15 days before the hearing, a copy of the petition and of the notice of the time and place of the hearing shall be mailed to:

(1) The conservatee if the conservatee is not the petitioner and has not joined in the petition; and

(2) The persons specified in Section 1823.

(b) If the conservator is not the petitioner and has not joined in the petition, the conservator shall be served with a copy of the petition and a notice of the time and place of the hearing at least 10 days prior to the hearing. Service shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the conservator cannot with reasonable diligence be served with a copy of the petition and notice of hearing, the court may dispense with such service.

Comment. Subdivision (a) of Section 1862 continues the substance of a portion of the fourth sentence of former Section 1755, which provided that notice of the hearing shall be given to the persons and in the manner provided for the appointment of a conservator. It was not clear under the former law whether issuance and personal service of a citation on the conservatee was required when the hearing is on the termination of the conservatorship. See W. Johnstone & G. Zillgitt, California Conservatorships § 7.10, at 266 (Cal. Cont. Ed. Bar 1968). Subdivision (a) makes clear that mailed notice to the conservatee, but not issuance and personal service of a citation, is required when the hearing is on the termination of the conservatorship.

Subdivision (b) continues the substance of the fifth, sixth, and seventh sentences of former Section 1755 except that subdivision (b) requires 10 days' notice rather than five days as was the case under former Section 1755. This change makes subdivision (b) consistent with Section 1825.

4638

§ 1864. Hearing and judgment

1864. (a) The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded. The conservator, the conservatee, or any relative or friend of the conservatee may appear and oppose the petition.

(b) If the court determines that the grounds for appointment of a conservator of the person and estate, or person or estate, no longer exist, the court shall make such a finding and shall enter judgment terminating the conservatorship accordingly.

(c) The conservator may at the hearing, or thereafter on further notice and hearing, be discharged and bond given by the conservator be exonerated upon the settlement and approval of the conservator's final account by the court.

(d) Termination of conservatorship does not preclude institution of new proceedings for appointment of a conservator on the same or other grounds.

Comment. Section 1864 supersedes the last five sentences of former Section 1755. Under subdivision (a), the list of those who may appear and oppose the petition is broadened to include the conservatee. Subdivision (d) supersedes the last sentence of former Section 1755.5 but broadens its application to all cases and not merely those where the conservatee was an absentee as defined in Section 1404.

The conservatee has a right to counsel at the hearing. See Sections 1870 and 1871.

4639

§ 1865. Termination of conservatorship of "absentee"

1865. (a) In the case of the conservatorship of an "absentee" as defined in Section 1404, the petition to terminate the conservatorship may also be filed by any person who is eligible to oppose or be made a party to the petition for conservatorship.

(b) If the petition alleges and the court finds that the absentee has returned to the controllable jurisdiction of the military department or civilian department or agency concerned, or is deceased, as determined under 37 United States Code, Section 556, or 5 United States Code, Section 5566, as the case may be, the court shall order the conservatorship terminated. An official written report or record of such military department or civilian department or agency that the absentee has returned to such controllable jurisdiction or is deceased shall be received as evidence of such fact.

Comment. Section 1865 continues the substance of the first paragraph of former Section 1755.5. See Section 1830 (persons who may oppose petition for appointment of conservator).

CHAPTER 4. RIGHT TO COUNSEL

§ 1870. Right to counsel

1870. (a) In any proceeding under this part for the appointment of a conservator or for the termination of a conservatorship, the proposed conservatee or conservatee shall be represented by legal counsel at the hearing if he or she so chooses, irrespective of whether he or she appears to have the capacity to make such a choice.

(b) If the proposed conservatee or conservatee so chooses but is unable to retain legal counsel, the court shall, at the time of the hearing, appoint the public defender or other attorney to represent the proposed conservatee or conservatee.

(c) A county without a public defender is authorized to compensate the other attorney appointed by the court under subdivision (b).

Comment. Subdivisions (a) and (b) of Section 1870 continue the substance of the first paragraph of former Section 2006. Subdivision (c) continues the substance of former Section 2007 (enacted in 1977).

4641

§ 1871. Compensation of court-appointed counsel

1871. (a) If the proposed conservatee or conservatee is furnished legal counsel under this chapter, either through the public defender or private counsel appointed by the court, upon the conclusion of the hearing, the court shall make a determination of the present ability of the proposed conservatee or conservatee to pay all or a portion of the costs of such counsel.

(b) If the court determines that the proposed conservatee or conservatee has the present ability to pay all or a portion of the costs of such counsel, the court shall order the conservator of the estate or, if none, the proposed conservatee or conservatee to pay the amount so determined:

(1) In the case of the public defender or a court-appointed attorney referred to in subdivision (c) of Section 1870, to the county.

(2) In the case of other court-appointed private counsel, to such counsel. The court shall order such amount to be paid in such installments and manner the court determines to be reasonable and compatible with the financial ability of the proposed conservatee or conservatee.

(c) If a conservator is not appointed for the proposed conservatee, execution may be issued on the order in the same manner as on a judgment in a civil action.

Comment. Section 1871 continues the substance of the last paragraph of former Section 2006 (amended in 1977).

Note. This section presents a significant policy issue. Should not the county pay the cost of providing counsel to persons who are unable to retain legal counsel, with the right to recover back the cost if the person is financially able to pay for such service? However, since this would be a mandatory duty imposed on the county, a state appropriation would be required to cover the cost this change would impose on the county. The procedure outlined above is, in substance, the procedure used for providing counsel in criminal cases, but the state reimbursement to the county in criminal cases is limited. See Penal Code §§ 987-987.8.

PART 4. PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIP

CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

§ 2100. "Court" defined

2100. As used in this part, unless the context otherwise requires, "court" means the court in which the guardianship or conservatorship proceeding is pending.

Comment. Section 2100 is new.

Article 2. General Provisions

§ 2150. Relationship confidential and subject to law of trusts

2150. The relationship of guardian and ward and conservator and conservatee is confidential and is subject to the provisions of law relating to trusts.

Comment. Section 2150 continues the substance of the fifth sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702.

§ 2151. Control by court

2151. A guardian or conservator is subject to the regulation and control of the court in the performance of the duties of the office.

Comment. Section 2151 continues the substance of the last sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702.

§ 2152. Nonprofit charitable corporation as guardian or conservator

2152. (a) A nonprofit charitable corporation may be appointed as a guardian or conservator of the person and estate or of the person or of the estate if all of the following requirements are met:

(1) The corporation is incorporated in this state.

(2) The articles of incorporation specifically authorize the corporation to accept appointments as guardian or conservator, as the case may be.

(3) The corporation has been providing, at the time of appointment, care, counseling, or financial assistance to the proposed ward or conservatee under the supervision of a registered social worker certified by the Board of Behavioral Science Examiners of this state.

(b) The petition for appointment of the nonprofit charitable corporation as a guardian or conservator under this section shall include in the caption the name of a responsible corporate officer who shall act for the corporation for the purposes of this division. If, for any reason, the officer so named ceases to act as the responsible corporate officer for the purposes of this division, the corporation shall file with the court a notice containing (1) the name of the successor responsible corporate officer and (2) the date the successor becomes the responsible corporate officer.

Comment. Section 2152 continues the substance of a portion of former Sections 1400 and 1701.

968/897

§ 2153. Several guardians or conservators

2153. (a) The court, in its discretion, may appoint or confirm more than one guardian or conservator for the same ward or conservatee.

(b) When two or more guardians or conservators are appointed, each shall qualify and is liable as if a sole guardian or conservator.

(c) If one of several guardians or conservators dies or resigns, the powers and duties continue in the remaining guardians or conservators until further appointment is made by the court.

(d) Where two or more guardians or conservators have been appointed and one or more are absent from the state, or legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining guardians or conservators to act as to all matters embraced in its order.

Comment. Subdivision (a) of Section 2153 continues the substance of a portion of the second sentence of former Section 1405 and the last sentence of former Section 1751. Subdivision (b) is based on the third sentence of former Section 1405. See also Section 2326 (liability on bond is joint and several if single bond is given). Subdivision (c) is drawn from former Sections 1591 and 1955 but has been expanded to cover the case where there is a resignation as well as the case of a death. Subdivision (d) continues the substance of former Section 1956.

§ 2154. One guardian or conservator for several wards or conservatees

2154. The court, in its discretion, may appoint or confirm one guardian or conservator for several wards or conservatees.

Comment. Section 2154 makes clear that a proceeding may be for the appointment of a guardian for several wards or a conservator for several conservatees. This continues authority formerly found in subdivision (b) of Section 1440 (guardians). No express authority was contained in the conservatorship statute. See also Section 2327 (separate bonds or single bonds where proceeding involves more than one ward or conservatee).

§ 2155. Appointment to fill vacancy

2155. When for any reason a vacancy occurs in the office of guardian or conservator, the court may appoint a successor, after notice and hearing as in the case of an original appointment.

Comment. Section 2155 continues the substance of former Section 1954 with the addition of "for any reason." Former Section 1582 covered an appointment in case of resignation or removal.

§ 2156. Marriage of guardian or conservator

2156. The authority of a guardian or conservator is not extinguished or affected by the marriage of the guardian or conservator.

Comment. Section 2156 continues former Section 1410. There was no express provision in the conservatorship statute which was made applicable to conservators by former Section 1702.

§ 2157. Release of guardian or conservator and sureties

2157. Unless reversed on appeal, a judgment, order, or decree made pursuant to this division releases the guardian or conservator and the sureties from all claims of the ward or conservatee and of any persons affected thereby, based upon any act or omission directly authorized, approved, or confirmed in the judgment, order, or decree. This section does not apply where the judgment, order, or decree was obtained by fraud, conspiracy, or misrepresentation as to a material fact.

Comment. Section 2157 continues the substance of former Section 2103 (conservatorship); there was no comparable provision for guardianship.

CHAPTER 2. JURISDICTION AND VENUE

Article 1. Jurisdiction and Venue§ 2200. Jurisdiction in superior court

2200. The superior court has jurisdiction of guardianship and conservatorship proceedings.

Comment. Section 2200 continues portions of former Sections 1405 and 1440 (guardianship of minor), 1460 (guardianship of incompetent), and 2051 (conservatorship).

08361

§ 2201. Venue for residents

2201. Guardianship or conservatorship proceedings for a resident of this state shall be instituted in the county in which the proposed ward or proposed conservatee resides or is temporarily domiciled or in such other county as may be in the interest of justice.

Comment. Section 2201 supersedes former Sections 1440 (county in which minor resides or is temporarily domiciled), 1460 (any county in which application for incompetent is made), 2051 (county in which proposed conservatee resides). Section 2201 follows the pattern of former Section 1440 but adds the last phrase permitting the court to exercise jurisdiction even though residence or temporary domicile is not present or is in dispute. See *Guardianship of Smith*, 147 Cal. App.2d 686, ___ Cal. Rptr. ___ (1957); *Hillman v. Stults*, 263 Cal. App.2d 848, ___ Cal. Rptr. ___ (1968). The addition of the last phrase avoids the need to litigate the issue of residence or temporary domicile in a case where the court determines that the continuance of the proceeding in the county where filed is in the interest of justice.

08360

§ 2202. Venue for nonresidents

2202. (a) Guardianship or conservatorship proceedings for a non-resident of this state shall be instituted in the county in which the proposed ward or proposed conservatee is temporarily living or, if there is no such county, in any county in which the proposed ward or proposed conservatee has property or in such other county as may be in the interest of justice.

(b) If a guardianship or conservatorship proceeding of a nonresident is instituted in more than one county, the guardianship or conservatorship first granted extends to all of the property of the ward or conservatee within this state, and the court of no other county has jurisdiction.

Comment. Subdivision (a) of Section 2202 continues and clarifies the substance of portions of former Sections 1440(a) (guardian of minor), 1570 (guardian of minor or incompetent), and 2051 (conservatorship) but adds the last phrase. See the Comment to Section 2201. As to the powers and duties of the guardian of a nonresident ward or conservator of a nonresident conservatee, see Section ____.

Subdivision (b) continues the substance of the last sentence of former Section 1570 (guardianship); there was no comparable provision for conservatorship.

101/197

Article 2. Change of Venue

§ 2210. Authority to transfer proceeding

2210. The court in which the proceeding is pending may, upon petition therefor, transfer the proceeding to another county within this state.

Comment. Section 2210 continues the substance of portions of former Sections 1603 (guardianship) and 2051 and 2052 (conservatorship). For provisions governing transfer of proceedings out of state, see Chapter 11 (commencing with Section 2800).

29219

§ 2211. Who may petition for transfer

2211. The petition for transfer shall be filed by the guardian or conservator, the ward or conservatee, or any relative or friend of the ward or conservatee, or any person interested in the estate of the ward or conservatee.

Comment. Section 2211 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship) but clarifies the persons who may petition for transfer. See also former Section 1603 (guardianship).

29220

§ 2212. Contents of petition

2212. The petition for transfer shall be verified and shall set forth all of the following:

- (a) The county to which the proceeding is to be transferred.
- (b) The residence address of the ward or conservatee.
- (c) A brief description of the character, value, and location of the property of the ward or conservatee.

(d) The reasons for the transfer.

(e) The names and residence addresses, so far as they are known to the petitioner, of the spouse and relatives of the ward or conservatee within the second degree.

(f) The name and residence addresses of the guardian or conservator if the guardian or conservator is not the petitioner.

Comment. Section 2212 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship); see also former Section 1603 (guardianship).

29221

§ 2213. Setting for hearing; notice of hearing

2213. (a) Upon the filing of the petition to transfer, the clerk shall set the petition for hearing.

(b) Notice of the hearing shall be given for the period and in the manner prescribed by Section 1200. In addition, the petitioner shall cause written notice of the hearing and a copy of the petition to be mailed to all persons required to be listed in the petition at least 10 days before the date set for the hearing.

Comment. Section 2213 continues the substance of the first two sentences of former Section 2053 (conservatorship); see also former Section 1603 (guardianship).

29222

§ 2214. Hearing

2214. (a) Any of the following persons may appear and file written objections to the petition:

- (1) Any person required to be listed in the petition.
- (2) Any creditor of the ward or conservatee or of the estate.
- (3) The ward or conservatee.

(b) If the court determines that the transfer requested in the petition will be for the best interests of the ward or conservatee, it shall make an order transferring the proceeding to the other county.

Comment. Section 2214 continues the substance of the third and fourth sentences of former Section 2053 (conservatorship). See also former Section 1603 (guardianship).

§ 2215. Transfer

2215. (a) Upon the order of transfer, the clerk shall transmit to the clerk of the court to which the proceeding is transferred a certified or exemplified copy of the order, together with all papers in the proceeding on file with the clerk.

(b) The clerk of the court from which the removal is made shall receive no fee therefor but shall be paid out of the estate all expenses incurred by the clerk in the removal. The clerk of the court to which the proceeding is transferred shall be entitled to such fees as are payable on the filing of a like original proceeding.

Comment. Subdivision (a) of Section 2215 continues the substance of the fifth sentence of former Section 2053 (conservatorship); subdivision (b) continues the substance of former Section 2054 (conservatorship); see also former Section 1603 (guardianship).

CHAPTER 3. TEMPORARY GUARDIANS AND CONSERVATORS

§ 2250. Appointment

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of a temporary guardian or temporary conservator. The petition shall be verified and shall establish good cause for appointment of the temporary guardian or temporary conservator.

(b) The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person and estate or person or estate or a temporary conservator of the person and estate or person or estate to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator. The appointment of the temporary guardian or temporary conservator may be made with or without notice, as the court may require.

Comment. Section 2250 continues the substance of former Sections 1640 (special guardian) and 2201 (temporary conservator) with the addition "or other showing as it may require" in subdivision (b). The "special guardian" is referred to in this chapter as a "temporary guardian" for purposes of uniformity. Authority to appoint a temporary guardian of the person is added to the previously existing authority to appoint a temporary guardian of the estate.

§ 2251. Issuance of letters

2251. A temporary guardian or temporary conservator shall be issued temporary letters of guardianship or conservatorship upon taking the oath and filing the bond as in the case of a guardian or conservator.

Comment. Section 2251 continues the substance of former Sections 1641 (special guardian) and 2202 (temporary conservator) with the addition of the reference to the taking of the oath.

§ 2252. Powers and duties

2252. (a) Except as provided in subdivision (b), a temporary guardian or temporary conservator shall have only the power and authority and only the duties that are necessary to (1) provide for the temporary care, maintenance, and support of the ward or conservatee and (2) conserve and protect the property of the ward or conservatee from loss or injury.

(b) The temporary guardian or temporary conservator shall have such additional powers and duties as may be ordered by the court (1) in the order of appointment or (2) by subsequent order made with or without notice as the court may require.

Comment. Section 2252 continues the substance of former Sections 1642 (special guardian) and 2203 (temporary conservator), but authority is added to give the temporary guardian power, authority, and duties concerning the person of the ward. This addition is necessary to conform with the expansion of temporary guardianship to include guardianship of the person. See Section 2250.

21987

§ 2253. Inventory and appraisement of estate

2253. (a) Except as provided in subdivision (b), an inventory and appraisement of the estate shall be filed by the temporary guardian or temporary conservator as required by Article 2 (commencing with Section 2610) of Chapter 7.

(b) A temporary guardian of the estate or of the person and estate or a temporary conservator of the estate or of the person and estate may inventory the estate in the final account, without the necessity for an appraisal of the estate, if the final account is filed within three months after the entry of the order of appointment of the temporary guardian or temporary conservator.

Comment. Section 2253 continues the substance of former Sections 1643 (special guardian) and 2204 (temporary conservator).

21989

§ 2254. Accounts

2254. (a) Except as provided in subdivision (b), the temporary guardian or temporary conservator shall present the account to the court for settlement and allowance within 90 days after the appointment of a guardian or conservator, or within such other time as the court may fix.

(b) If the temporary guardian or temporary conservator is appointed guardian or conservator, the guardian or conservator may account for the administration as temporary guardian or temporary conservator in the first regular account.

(c) Accounts shall be subject to Sections 2621, 2622, 2623, 2625, 2630, 2631, 2641, and 2643.

Comment. Section 2254 continues the substance of former Sections 1644 (special guardian) and 2205 (temporary conservator).

21990

§ 2255. Termination

2255. (a) Except as provided in subdivision (b), the powers of a temporary guardian or temporary conservator terminate except for the rendering of the account at the earliest of the following times:

(1) The time a guardian or conservator is appointed and qualified.

(2) Thirty days after the appointment of the temporary guardian or temporary conservator or such earlier time as the court may specify in the order of appointment.

(b) With or without notice as the court may require, the court may for good cause order that the time for the termination of the powers of the temporary guardian or temporary conservator be extended pending final determination by the court of the petition for appointment of a guardian or conservator or pending the final decision on appeal therefrom or for other cause. The order which extends the time for termination shall fix the time when the powers of the temporary guardian or temporary conservator terminate except for the rendering of the account.

Comment. Section 2255 continues the substance of former Sections 1645 (special guardian) and 2206 (temporary conservator).

21991

§ 2256. Suspension, removal, resignation, and discharge

2256. A temporary guardian or temporary conservator is subject to the provisions of this division governing the suspension, removal, resignation, or discharge of a guardian or conservator.

Comment. Section 2256 continues the substance of former Sections 1646 (special guardian) and 2207 (temporary conservatorship). Cf. Chapter 8 (commencing with Section 2650) (suspension, removal, and resignation).

CHAPTER 4. OATH, LETTERS, AND BOND

Article 1. Requirement of Oath and Bond§ 2300. Oath and bond required before appointment effective

2300. Before the appointment of a guardian or conservator is effective, the guardian or conservator shall:

(a) Take an oath to perform the duties of the office according to law, which oath shall be attached to or endorsed upon the letters of guardianship or conservatorship.

(b) File the required bond if a bond is required.

Comment. Section 2300 is based on the first portion of former Section 1480 and the second sentence of former Section 1801. The requirement that the oath be attached to or endorsed upon the letters is taken from former Section 1480 and is consistent with a similar requirement in Section 540 (executor or administrator); former Section 1801 required that the oath "be filed in the proceeding." Section 2300 applies to a testamentary guardian as well as a guardian appointed by the court. In this respect, Section 2300 supersedes the requirement of former Section 1484 that a testamentary guardian "must qualify."

Article 2. Letters§ 2310. Issuance of letters

2310. The appointment, the taking of the oath, and the filing of the bond, if required, shall thereafter be evidenced by the issuance by the clerk of the court of letters of conservatorship or guardianship, as the case may be.

Comment. Section 2310 is based on the third sentence of former Section 1801 with the addition of wording relating to the filing of the bond taken from former Section 1481. There was no express provision on this subject in the guardianship statute.

§ 2311. Form of letters

2311. Except as otherwise required by the order of appointment, the letters shall be in substantially the same form as letters of administration.

Comment. Section 2311 continues portions of former Sections 1481 and 1801.

§ 2312. Notice to conservatee

2312. Before letters of conservatorship may be issued, a copy of the order appointing the conservator shall be mailed to the conservatee at the conservatee's last known address.

Comment. Section 2312 continues a portion of former Section 1801. The former provision has been clarified by substituting "mailed" for "served by mail" and by adding "at the conservatee's last known address."

Note. It is a policy issue whether to extend the principle of this section to minors and their appointed guardians.

31515

Article 3. Bonds of Guardians and Conservators

§ 2320. General requirement of bond; amount

2320. (a) Except as otherwise provided by statute:

(1) Every guardian and conservator shall furnish a bond in the amount fixed by the court, conditioned upon the faithful execution of the duties of the office according to law, to protect the ward or conservatee and all persons interested in the guardianship or conservatorship estate.

(2) Except upon a showing of good cause, the amount of the bond shall be determined as provided in Section 541 for a bond given under that section by an authorized surety company.

(b) If the sureties on the bond are individual persons, the bond shall be approved by the court and shall be for twice the amount required for a bond given by an authorized surety company.

Comment. Section 2320 is based on the second and third sentences of former Section 1802 and a portion of former Section 1480. The amount of the bond is determined by reference to Sections 541 except that the court may increase or decrease the amount of the bond that would otherwise be required upon a showing of good cause. Section 2320 substitutes a uniform rule for the conflicting rules provided in former Sections 1480 (bond not less than amount equivalent to that specified in Section 541) and 1802 (amount of bond not to exceed amount specified in Section 541). For provisions relating to approval of bond of individual sureties, see Sections 545 and 546. As to the requirement of a bond for a trust company acting as a guardian or conservator, see Probate Code Section 481. As to the bond required under the Uniform Veterans' Guardianship Act, see Sections 2907 and 2918. The cost of a surety bond is an allowable expense of the guardian or conservator. See Section 2622(a)(1).

One of the exceptions that qualifies Section 2320 is found in Section 2328 which permits reduction in the amount of the bond when money, securities, or other property are deposited in a bank or trust company or invested in an account of an insured savings and loan association, subject to withdrawal only upon authorization of the court. See also Sections 2321 (waiver of bond), 2322 (guardian or conservator of person only), 2323 (estate consisting entirely of public benefits), 2324 (testamentary guardian), 2522 (deposit of personal assets with trust company and reduction of bond).

31516

§ 2321. Waiver of bond by conservatee

2321. In a conservatorship proceeding, where the conservatee as petitioner has waived the filing of a bond, the court in its discretion may dispense with the requirement that a bond be filed.

Comment. Section 2321 continues the first sentence of former Section 1802.

31517

§ 2322. Guardian or conservator of person only

2322. A person appointed only as guardian of the person or conservator of the person need not file a bond unless required by the court.

Comment. Section 2322 continues the fourth sentence of former Section 1802 and extends the same rule to the guardian of the person.

31519

§ 2323. Estate consisting entirely of public benefits

2323. (a) The court may dispense with the requirement of a bond where the entirety of the estate consists of benefits received or to be received under:

(1) Part 3 (commencing with Section 11000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(2) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of Chapter 7, Title 42, United States Code.

(b) If property, other than the benefits described in subdivision (a), becomes part of the estate, the court may require the filing of a bond.

Comment. Section 2323 continues former Section 1480.3 except that the former provision is expanded to cover the estate of a conservatee as well as the estate of a minor. See Welf. & Inst. Code §§ 10002, 11006.5.

The programs specified in Section 2323 are: (1) state aid and medical assistance (Welf. & Inst. Code, Part 3 of Division 9), (2) county aid and relief to indigents (Welf. & Inst. Code, Part 5 of Division 9), (3) federal old age, survivors, and disability insurance benefits (42 U.S.C. §§ 401-431, Supp. V 1975), and (4) federal supplemental security income for the aged, blind, and disabled (42 U.S.C. § 1381 et seq., Supp. V 1975). See Review of Selected 1976 California Legislation, 8 Pac. L.J. 165, 188 (1977).

31521

§ 2324. Testamentary guardian

2324. A testamentary guardian need not file a bond unless required by the court.

Comment. Section 2324 continues former Section 1485. As to testamentary guardians, see Sections 1500-1502.

30185

§ 2325. Bond of nonprofit charitable corporation

2325. The surety on the bond of a nonprofit charitable corporation described in Section 2152 shall be an authorized surety company.

Comment. Section 2325 continues the substance of former Sections 1480.6 and 1802.5. The cost of the bond is an allowable expense. See Section 2622(a)(1).

30186

§ 2326. Several guardians or conservators

2326. (a) If more than one guardian or conservator is appointed, separate or joint bonds shall be furnished, as the court may order.

(b) If a joint bond is furnished, the liability on the bond is joint and several.

Comment. Section 2326 is based on a portion of the second sentence of former Section 1405 and the last sentence of former Section 1802. Section 2326 makes clear that the liability on a joint bond is joint and several and is consistent with Section 544 (administrators and executors). See also Section 2153 (authority to appoint several guardians or conservators).

§ 2327. Several wards or conservatees

2327. If the proceeding involves more than one ward or conservatee, the court may order separate bonds or a single bond or a combination thereof.

Comment. Section 2327 is based on the second sentence of subdivision (b) of Section 1440 and makes clear that, where the proceeding involves several wards or several conservatees, the court, in its discretion, may order a separate bond for each ward or conservatee, a single bond to cover all the wards or conservatees, or a combination of such bonds. See also Section 2154 (authority to appoint one guardian or conservator for several wards or conservatees).

§ 2328. Deposit of money or other property subject to court control

2328. (a) In any proceeding to determine the amount of the bond of the guardian or conservator (whether at the time of appointment or subsequently), if the estate includes money, securities, or other property which has been or will be deposited in a bank or trust company, or money which has been or will be invested in an account in an insured savings and loan association, upon condition that the money, securities, or other property will not be withdrawn except on authorization of the court, the court, in its discretion, may so order and may do either of the following:

(1) Exclude such money, securities, and other property in determining the amount of the required bond or reduce the amount of the bond to be required in respect to such money, securities, or other property to such an amount as the court determines is reasonable.

(2) If a bond has already been furnished or the amount fixed, reduce the amount to such an amount as the court determines is reasonable.

(b) The petitioner for letters, or the proposed guardian or conservator in advance of appointment of a guardian or conservator, may do any one or more of the following:

(1) Deliver to a bank or trust company money, securities, or other property in such person's possession.

(2) Deliver to an insured savings and loan association money in such person's possession.

(3) Allow a bank or trust company to retain such money, securities, and other property already in its possession.

(4) Allow an insured savings and loan association to retain any such money already invested with it.

(c) In the cases described in subdivision (b), the petitioner or proposed guardian or conservator shall obtain and file with the court a written receipt including the agreement of the bank, trust company, or insured savings and loan association that the money, securities, or other property shall not be allowed to be withdrawn except upon authorization of the court. In receiving and retaining money, securities, or other property under subdivisions (b) and (c), the bank, trust company, or association shall be protected to the same extent as though it had received the money, securities, or other property from a person to whom letters had been issued.

Comment. Section 2328 continues the substance of former Section 1405.1 except that Section 2328 includes personal property in addition to money and securities. In this respect, Section 2328 is consistent with former Section 1804, which it supersedes, and with Financial Code Section 1586 which covers not only money but also "personal assets." Under Section 2328, the guardian or conservator would be permitted, for example, to deposit jewelry or other personal property of the ward or conservatee with a bank or trust company, subject to withdrawal only on order of court, and have the bond reduced accordingly. For related sections, see Fin. Code §§ 764, 765, 1586, and 6408.5. For definitions of terms used in this section, see Sections ____ (account in an insured savings and loan association), ____ (bank), ____ (trust company). See also Sections 2521 (deposit or investment of money in bank or in account in an insured savings and loan association), 2522 (deposit of personal assets with trust company).

30935

§ 2329. Estate not exceeding \$10,000 consisting of deposited money

2329. No bond is required if the estate does not exceed ten thousand dollars (\$10,000) and is in the form of money deposited in a bank or trust company or invested in an account in an insured savings and loan association, subject to withdrawal only upon authorization of the court.

Comment. Section 2325 continues the substance of the fourth sentence of former Section 1405 but expressly covers conservatorships as well as guardianships. No bond is required where Section 2329 applies; but, where Section 2329 does not apply, the court is given discretion as to the amount of the bond under Section 2328. For definitions of terms used in this section, see Sections ____ (account in an insured savings and loan association), ____ (bank), ____ (trust company).

§ 2330. Reduction of amount of bond

2330. (a) A guardian or conservator may apply to the court for reduction in the amount of the bond. The application shall be made by filing a verified petition setting forth the condition of the estate.

(b) The petition shall be set for hearing by the clerk and notice given in the manner required by Section 1200. Upon the hearing, the court may reduce the amount of the bond to such amount as the court in its discretion determines is proper under the circumstances; but, except upon a showing of good cause, the amount of the bond shall not be reduced below the amount determined pursuant to Section 2320.

(c) The guardian or conservator may furnish new sureties who may be the same sureties as on the previous bond and who shall qualify for the reduced amount.

(d) Nothing in this section limits the authority of the court under Section 2328 to reduce the amount of the bond.

Comment. Section 2330 continues the substance of former Sections 1483.1 and 1803, but the limitation on the amount to which the bond can be reduced is revised to conform to the requirements of Section 2320. Subdivision (d) is new. It makes clear the relationship of Section 2330 and Section 2328; the court may reduce the amount of the bond under Section 2328 without compliance with Section 2330. See also Section 2522 (reduction of bond when personal assets deposited with trust company).

§ 2331. Additional bond on real property transactions

2331. Before any sale of real property of an estate is confirmed, or any mortgage or deed of trust with respect to real property of an estate is authorized by which money is to be raised, the guardian or conservator shall furnish such additional bond as is required by the court in order to make the sum of the bonds furnished by the guardian or conservator equal to the amount determined pursuant to Sections 2320, taking into account the proceeds of the sale or mortgage or deed of trust.

Comment. Section 2331 continues the substance of former Section 1534a, which applied to conservators by virtue of former Section 1852.

§ 2332. Deposit in place of surety bond

2332. (a) A guardian or conservator may, instead of furnishing the required surety bond, file with the clerk of the court, a cash bond, or an assigned interest in an account in a bank or insured savings and loan association, or deposit with the clerk bearer or endorsed bonds of the United States or of the State of California, in the sum required for a surety bond given by an authorized surety company.

(b) The security furnished under subdivision (a) is subject to increase or decrease as provided with respect to the surety bond, shall be conditioned the same as required of the surety bond, and is returnable to the guardian or conservator on the termination of the service of the guardian or conservator.

Comment. Section 2332 continues former Sections 1480.5 and 1803.5. For definitions of terms used in this section, see Sections ____ (account in an insured savings and loan association), ____ (bank).

38044

§ 2333. Filing and preservation of bond

2333. Every bond given by a guardian or conservator shall be filed and preserved in the office of the clerk of the court.

Comment. Section 2333 is the same in substance as a portion of former Sections 1486 and 1805. For requirements as to entries in register of actions and presumptive effect of such entries, see Section 545, incorporated by the general reference provisions of Section ____.

38046

§ 2334. Suit against sureties on bond; limitation period

2334. (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) No action may be maintained against the sureties on the bond unless commenced within three years from the discharge or removal of the guardian or conservator or from the date the order surcharging the guardian or conservator becomes final, whichever is later.

(c) 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 three years after the disability is removed.

Comment. Subdivision (a) of Section 2334 continues a portion of former Sections 1486 and 1805. Subdivisions (b) and (c) are based on former Section 1487 with the addition of wording as to "surcharge" from former Section 1806. Subdivision (b) adopts the three-year period under former Section 1487 rather than the two-year period under former Section 1806. Subdivision (c) adopts the three-year period under former Section 1487 rather than the one-year period under former Section 1806. As to the liability of the guardian, conservator, and sureties, see also Section 554.

38048

§ 2335. Insufficiency of sureties; order for further security or new bond

2335. (a) The ward or conservatee, or any relative or friend of the ward or conservatee, or any person interested in the estate may apply to the court for an order that the guardian or conservator be required to furnish further security. The application shall be made by a verified petition showing that the sureties on the bond furnished by the guardian or conservator have become, or are becoming, insolvent, or that they have removed or are about to remove from the state, or that from any other cause the bond is insufficient.

(b) If it comes to the knowledge of the court that the bond of a guardian or conservator is from any cause insufficient, the court may on its own motion, without any application, make an order requiring the guardian or conservator to furnish further security.

(c) If the court is satisfied from the petition or from its own information that the matter requires investigation, the court shall issue a citation to the guardian or conservator directing the guardian or conservator to appear before the court at a designated time and place to show cause why further security should not be required. The citation shall be served on the guardian or conservator personally, at least 10 days before the return day. If the guardian or conservator cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the guardian or conservator. On the return of the citation or at such other time as the court may fix, the court shall proceed to hear the matter, and if it satisfactorily appears that the security, from any cause, is insufficient, the court shall make an order requiring the guardian or conservator to give further security, or to

file a new bond, within a reasonable time, not less than five days.

(d) If sufficient security or additional security is not given within the time fixed by the court's order, the court shall revoke the letters issued to the guardian or conservator.

(e) When a petition is presented for an order under this section that a guardian or conservator be required to give further security, or to give a bond where no bond was originally required, and it is alleged on oath, that the guardian or conservator is wasting the property of the estate, the court, by order, may suspend the powers of the guardian or conservator until the matter can be heard and determined.

Comment. Section 2335 supersedes former Section 1483 which was general in terms. Section 2335 is the same in substance as Sections 547-550 (executors and administrators) except that the court is directed to prescribe the manner of service if personal service cannot be made. Cf. Code Civ. Proc. § 413.10. There were no express provisions in the conservatorship statute on this subject. See former Section 1702.

90870

§ 2336. Substitution of surety

2336. (a) A guardian or conservator who desires a substitution and discharge of a surety may file a petition with the court for that purpose together with an accounting. The clerk shall issue a citation to the existing surety directing the surety to appear before the court at a designated time and place to show cause why the surety should not be substituted and discharged. The citation shall be served on the surety personally at least 10 days before the return day. If the surety cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the surety.

(b) The court shall hear the matter on the return of the citation or at such other time as the court may appoint. If, upon the hearing, the accounting is approved and it appears to the court that the substitute surety is satisfactory and that no injury can result to the estate, the court may order a substitution of surety and discharge the existing surety from liability on his bond for any subsequent act, default, or misconduct of the guardian or conservator.

Comment. Section 2336 continues the substance of former Sections 1483.2 and 1483.3 except that the court is directed to prescribe the manner of service if personal service cannot be made. Cf. Code Civ. Proc. § 413.10. There were no express provisions in the conservatorship statute on this subject. See former Section 1702.

90871

§ 2337. Release of surety

2337. (a) A surety may apply to the court for an order that the surety be discharged from liability on the bond for any subsequent act, default, or misconduct of the guardian or conservator. The clerk shall issue a citation to the guardian or conservator directing the guardian or conservator to appear before the court at a designated time and place and give other security. The citation shall be served on the guardian or conservator personally at least 10 days before the return day. If the guardian or conservator cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the guardian or conservator.

(b) If the guardian or conservator fails to give new sureties to the satisfaction of the court on the return of the citation or within such reasonable time as the court shall allow, unless the surety making the application consents to a longer extension of time, the court shall revoke the letters of the guardian or conservator.

(c) If new sureties are given to the satisfaction of the court, the court shall thereupon make an order that the sureties who applied for the order shall not be liable on their bond for any subsequent act, default, or misconduct of the guardian or conservator.

Comment. Section 2337 continues the substance of former Sections 1488, 1489, and 1490 with the new provisions as to the service of the citation. See the Comments to Sections 2235 and 2236. There were no express provisions in the conservatorship statute on this subject. See former Section 1702.

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

§ 2400. Definitions

2400. As used in this chapter:

(a) "Conservator" means the conservator of the person or conservator of the person and estate.

(b) "Guardian" means the guardian of the person or the guardian of the person and estate.

(c) "Court" means the court in which the guardianship or conservatorship proceeding is pending.

Comment. Section 2400 is new. The section is needed to avoid needless repetition in the various sections in this chapter. As a result of the definitions of "conservator" and "guardian" in Section 2400, if one person is appointed as the conservator of the person and estate or as the guardian of the person and estate, the powers and duties conferred by this chapter will apply.

969/027

§ 2401. Care, custody, control, and education

2401. The guardian or conservator has the care, custody, and control of, and is in charge of the education of, a ward or conservatee.

Comment. The provision of Section 2401 for care, custody, and control continues provisions found in the first sentence of former Sections 1500 (guardianship) and 1851 (conservatorship), respectively. The words "and control" were contained in former Section 1851 but not in former Section 1500. The generalization of these words to apply to guardianships as well as to conservatorships makes no substantive change. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.3, at 152-53 (Cal. Cont. Ed. Bar 1968). See also Section 2400 for definitions of "guardian" and "conservator."

The provision of Section 2401 concerning the education of the ward or conservatee extends to conservators the provision of the second sentence of former Section 1500 which applied only to guardians. This extension authorizes a conservator of the person to provide for the education of a married minor subject to conservatorship as well as of a conservatee over the age of 18.

405/852

§ 2402. Residence of ward or conservatee

2402. (a) The guardian or conservator may fix the residence of the ward or conservatee at any place within this state but not elsewhere without the permission of the court.

(b) The guardian or conservator shall give prompt written notice to the court of all changes in the residence of the ward or conservatee.

Comment. Subdivision (a) of Section 2402 continues the substance of the third sentence of former Section 1500 and the last portion of the first sentence of former Section 1851. Subdivision (b) continues the substance of subdivision (c) of former Section 1500 and subdivision (b) of former Section 1851 except that notice is to be given to the court in which the proceedings are then pending rather than the court which issued letters. See Section 2400 for definitions of "guardian," "conservator," and "court."

405/853

§ 2403. Involuntary civil mental health treatment

2403. No person over the age of 14 for whom a guardian or conservator has been appointed shall be placed in a mental health treatment facility under the provisions of this division against his or her will. Involuntary civil mental health treatment for such a ward or conservatee shall be obtained only pursuant to the provisions of Chapter 2 (commencing with Section 5150) or Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

Comment. Section 2403 continues the substance of the second paragraph of former Sections 1500 and 1851, respectively, except that it applies to minors over the age of 14. Section 2403 recognizes that minors over the age of 14 have an independent right to assert the protections of the due process clause of the United States and California Constitutions. See In re Roger S., 19 Cal.3d 655, ___ P.2d ___, ___ Cal. Rptr. ___ (1977). See also Section 2400 for definitions of "guardian" and "conservator."

404/678

§ 2404. Additional conditions in order of appointment

2404. When a guardian or conservator is appointed, the court may, with the consent of the guardian or conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care, treatment, education, and welfare of the ward or conservatee. The performance of such conditions is a part of the duties of the guardian or conservator, for the faithful performance of which the guardian or conservator and the sureties on the bond, if any, are responsible.

Comment. Section 2404 continues the portion of former Section 1512 which applied to a guardian of the person of a minor and broadens its application to include a conservator of the person. See also Section 2502 (additional conditions for guardian or conservator of estate). In the case of a guardian or conservator of the person, the requirement of

a bond is discretionary with the court. See Section 2322. See Section 2400 for definitions of "guardian," "conservator," and "court."

999/343

§ 2405. Instructions from or approval by court

2405. (a) Upon petition of the guardian or conservator or ward or conservatee or other interested party, the court may, after hearing, authorize and instruct the guardian or conservator or approve and confirm the acts of the guardian or conservator, with respect to the powers and duties prescribed in this chapter.

(b) Notice of the hearing on the petition shall be given for the period and in the manner required by Section 1200. When the ward or conservatee is or has been, during the guardianship or conservatorship, a patient in a state hospital under the jurisdiction of the State Department of Health, notice of hearing and a copy of the petition shall be mailed or delivered to the Director of Health at the director's office in Sacramento at least 15 days before the hearing.

Comment. Section 2405 is based on the portion of former Section 1860 (instructions to or approval of acts of conservator) insofar as that section related to the care and protection of the conservatee. See also former Section 1516, which was limited to instructing the guardian of the estate. Section 2405 makes clear that the court may instruct and approve with respect to supervision of the person as well as with respect to management of the estate (see Section 2504). Section 2405 also extends to guardians of the person the former conservatorship provision of Section 1860 which authorized the court not only to instruct in advance but also to confirm actions already taken. See also Section 2400 for definitions of "guardian," "conservator," and "court."

999/328

§ 2406. Setting petitions for hearing

2406. All petitions filed under this chapter shall be set for hearing within 30 days of the filing of such petitions.

Comment. Section 2406 continues subdivision (b) of former Section 1500 and subdivision (a) of former Section 1851 insofar as those provisions applied to the provisions compiled in this chapter.

Note. The need for this section merits careful consideration.

CHAPTER 6. POWERS AND DUTIES OF GUARDIANS OR
CONSERVATORS OF THE ESTATE

Article 1. Definitions and General Provisions

§ 2500. Definitions

2500. As used in this chapter:

(a) "Conservator" means conservator of the estate or person and estate.

(b) "Court" means the court in which the guardianship of the estate or conservatorship of the estate proceeding is pending.

(c) "Estate" means the real and personal property of the ward or conservatee or such part thereof as is committed to the management of the guardian or conservator.

(d) "Guardian" means guardian of the estate or person and estate.

Comment. Section 2500 is new. The definitions provided in this section avoid needless repetition in the various sections in this chapter. The definition of "estate" is drafted in recognition that the management responsibility of the guardian or conservator may be limited to a portion of the estate of the ward or conservatee. See, e.g., Section 1501 (testamentary appointment of special guardian).

998/816

§ 2501. Management of the estate

2501. The guardian or conservator has the management of the estate of the ward or conservatee and shall manage it frugally and without waste.

Comment. Section 2501 continues the substance of a portion of the first sentence of former Section 1500 and a portion of the first sentence of former Section 1502 which applied to guardianships. These provisions also were made applicable to conservatorships by former Section 1852. The management responsibility of the guardian or conservator may be limited to a portion of the estate. See, e.g., Section 1501 (testamentary appointment of special guardian). See definition of "estate" in Section 2500. See also definitions of "guardian" and "conservator" in Section 2500.

999/312

§ 2502. Additional conditions in order of appointment

2502. When a guardian or conservator is appointed, the court may, with the consent of the guardian or conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care

and custody of the property of the ward or conservatee. The performance of such conditions is a part of the duties of the guardian or conservator for the faithful performance of which the guardian or conservator and the sureties on the bond are responsible.

Comment. Section 2502 continues the portion of former Section 1512 which applied to a guardian of the estate of a minor and broadens its application to include a conservator of the estate. Consent of the guardian or conservator is required. In re Guardianship of Reynolds, 60 Cal. App.2d 669, 141 P.2d 498 (1943). See also Sections 2404 (additional conditions for guardian or conservator of person), 2591 (authority of court to impose restrictions, conditions, or limitations in granting authority for independent exercise of powers).

999/320

§ 2503. Setting petitions for hearing

2503. A petition filed under this chapter shall be set for hearing within 30 days after the filing of the petition.

Comment. Section 2503 continues subdivision (b) of former Section 1500 and subdivision (a) of former Section 1851 insofar as those provisions applied to the provisions compiled in this chapter.

Note. The application of this section to the provisions of this division or chapter should be carefully considered. Should the section be retained at all? If so, how should its application be limited?

09599

§ 2504. Instructions from or approval by court

2504. (a) Upon petition of the guardian, conservator, ward, conservatee, creditor, or other interested party, the court may, after hearing, authorize and instruct the guardian or conservator, or approve and confirm the acts of the guardian or conservator, with respect to the powers and duties prescribed in this chapter and in Chapter 7 (commencing with Section 2600), including the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith.

(b) Notice of the hearing on such petition shall be given for the period and in the manner required by Section 1200. When the ward or conservatee is or has been during the guardianship or conservatorship a patient in a state hospital under the jurisdiction of the State Department of Health, notice of hearing and a copy of the petition shall be

mailed or delivered to the Director of Health at the director's office in Sacramento at least 15 days before the hearing.

Comment. Section 2504 is based on former Sections 1516 (instructions to guardian of estate) and 1860 (instructions to or approval of acts of conservator). The word "investment" is added in subdivision (a) as is the reference to Chapter 7 (inventory and accounts). The second sentence of subdivision (b) is new. Section 2504 supersedes the last portion of the first sentence of former Section 1557 which relates to investments. Section 2504 extends to guardians the former conservatorship provision of Section 1860 which authorized the court not only to instruct in advance but also to confirm actions already taken. See *Place v. Trent*, 27 Cal. App.3d 526, 103 Cal. Rptr. 841 (1972). The provision of former Section 1516 that precluded the use of the general instruction section where another procedure was provided by statute is not continued in Section 2504. For definitions of terms used in this section, see Section 2500. As to petition for court order fixing fees of guardian, conservator, or attorney, see Sections 2630 and 2631. See also Sections 2511 (allowance for ward or conservatee), 2512 (payment of wage claims), 2513 (order for support notwithstanding third party liable), 2514 (order for payment of surplus income to next of kin of conservatee), 2525 (partition action), 2526 (compromise of claims and actions), 2527 (instructions concerning payment of debts), 2528 (order directing payment of support or debts), 2530 (maintaining minor's insurance contract in force), 2531 (dedication of conveyance of real property or easement with or without consideration), 2532 (conveyance of property claimed by another), 2533 (acceptance of deed in lieu of foreclosure).

18/324

§ 2505. Application of chapter to community and homestead property

2505. This chapter applies to property owned by husband and wife as community property, or owned by husband and wife or either of them which is subject to a homestead, only to the extent authorized by Chapter 5 (commencing with Section 3400) of Part 6.

Comment. Section 2505 continues the substance of former Section 1529.

3060

Article 2. Payments to or for Benefit of Ward or Conservatee

§ 2510. Support, maintenance, and education

2510. (a) The guardian or conservator shall apply the income from the estate, so far as necessary, to the comfortable and suitable support, maintenance, and education of the ward or conservatee and of those legally entitled to support, maintenance, or education from the ward or conservatee.

(b) If the income from the estate is insufficient for the purpose described in subdivision (a), the guardian or conservator may sell or give a chattel mortgage or other lien on any personal property of the estate, or sell or mortgage or give a deed of trust on any real property of the estate, as provided in this part.

(c) When the amount paid by the guardian or conservator for the purpose described in subdivision (a) is not disproportionate to the value of the estate or the condition in life of the person to whom the payment is made, and proof thereof is made to the satisfaction of the court by proper vouchers or other proof, the guardian or conservator shall be allowed credit for such payments when the accounts of the guardian or conservator are settled.

Comment. Subdivisions (a) and (b) continue the substance of a portion of the first sentence of former Section 1502 with the addition of the reference to "education" in subdivision (a) and the substitution in subdivision (a) of the reference to "those legally entitled to support" contained in former Section 1855 for the reference in former Section 1502 to the ward's family. Subdivisions (a) and (b) supersede former Section 1855. As to subdivision (b), see Section 2530 (sale or encumbrance of property). Subdivision (c) continues the substance of the second sentence of former Section 1502 except that the provision is broadened by the reference to subdivision (a) to include payments for the support, maintenance, or education of persons legally entitled to support, maintenance, or education from the ward or conservatee. In connection with subdivision (c), it should be noted that many conservators seek court authority in advance (as authorized under Section 2504) for the expenditure of a monthly sum for the support and maintenance of the conservatee and any dependents. It has been pointed out that the guardian or conservator is more likely to have payments allowed when he seeks authority in advance than when he attempts to justify the same payments after they have been incurred. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.9, at 156 (Cal. Cont. Ed. Bar 1968). As to advances for this purpose from the personal funds of the guardian or conservator, see Section 2529. Terms used in this section are defined in Section 2500. For provisions relating to the sale or encumbering of property of the estate, see Sections 2540 (sales), 2550 (borrowing money and giving security therefor).

4650

§ 2511. Allowance for ward or conservatee

2511. (a) Upon petition of the guardian or conservator, the court may, after hearing, authorize the guardian or conservator to pay to the ward or conservatee out of the estate a reasonable allowance for the personal use of the ward or conservatee. The allowance shall be in such

amount as the court may determine to be for the best interests of the ward or conservatee.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Section 1200.

(c) The guardian or conservator is not required to account for such allowance other than to establish that it has been paid to the ward or conservatee. The funds so paid are subject to the sole control of the ward or conservatee.

Comment. Section 2511 continues the substance of former Section 1861 (conservatorship) and generalizes the provisions to apply to guardianships as well. Terms used in this section are defined in Section 2500.

045/210

§ 2512. Payment of wage claims

2512. (a) The payments required by this section shall be made only after the payments required by Section 2510 have been made. The payments required by this section are not required to be made to the extent that the making of such payments would impair the ability to continue to provide necessities of life to the ward or conservatee and to those legally entitled to support by the ward or conservatee.

(b) The guardian or conservator shall promptly pay wage claims for work done or services rendered for the ward or conservatee within 30 days prior to the date the petition for appointment or confirmation of the guardian or conservator was filed. The payments made pursuant to this subdivision shall not exceed six hundred dollars (\$600) to each claimant. If there is insufficient money to pay all the claims described in this subdivision up to six hundred dollars (\$600), the money available shall be distributed among such claimants in proportion to the amount of their respective claims.

(c) After the payments referred to in subdivision (b) have been made, the guardian or conservator shall pay wage claims for work done or services rendered for the ward or conservatee within 90 days prior to the date the petition for appointment or confirmation of the guardian or conservator was filed, excluding the claims described in subdivision (b). The payments made pursuant to this subdivision shall not exceed six hundred dollars (\$600) to each claimant. If there is insufficient

money to pay all the claims described in this subdivision up to six hundred dollars (\$600), the money available shall be distributed among such claimants in proportion to the amount of their respective claims.

(d) The guardian or conservator may require sworn claims to be presented. If there is reasonable cause to believe that the claim is not valid, the guardian or conservator may refuse to pay the claim in whole or in part but shall pay any part thereof that is not disputed without prejudice to the claimant's rights as to the balance of the claim. The guardian or conservator shall withhold sufficient money to cover the disputed portion until the claimant has had a reasonable opportunity to establish the validity of the claim by bringing an action, either in the claimant's own name or through an assignee, against the guardian or conservator.

(e) If the guardian or conservator neglects or refuses to pay all or any portion of a claim which is not in dispute, the court shall order the guardian or conservator to do so upon the informal application of any wage claimant or the assignee or representative of such claimant.

Comment. Section 2512 is based on former Section 1501a. The section is restated to clarify the provisions concerning priority and proration of payments. The "necessaries of life" standard used in subdivision (a) is drawn from the first sentence of former Section 1858 and replaces the "reasonable current needs" standard of former Section 1501a. The phrase "to those legally entitled to support by the ward or conservatee" has been substituted for "the spouse and minor children of the ward." See also Section 2327 (payment of debts) also using the necessaries of life standard. As to instructions from the court, see Section 2504. Terms used in this section are defined in Section 2500.

968/902

§ 2513. Order for support notwithstanding third party liable

2513. Upon petition of the guardian or conservator or of any party interested in the guardianship or conservatorship, the court may for good cause order the ward or conservatee to be wholly or partially supported, maintained, or educated out of the estate notwithstanding the existence of a third party legally obligated to provide such support, maintenance, or education. Such order may be made for a limited period of time. If not so limited, it continues in effect until modified or revoked.

Comment. Section 2513 continues the substance of former Section 1857 and supersedes former Sections 1504 and 1505. To accomplish the

purposes of this section, the guardian or conservator may sell or encumber property of the estate. Section 2510. Terms used in this section are defined in Section 2500.

Note. The standard under Section 2513 is "good cause." Under Section 1504, the standard is: "If a minor having parents living has property, the income of which is sufficient for his or her support, maintenance, and education in a manner more expensive than his or her parents can reasonably afford, regard being had to the situation of the family and to all the circumstances of the case, the expenses of the support, maintenance and education of such minor may be defrayed out of the income of his or her own property, in whole or in part, as judged reasonable, and as directed by the court." The standard under Section 1505 is: "if a guardian has been appointed over the estate of a spouse by reason of the mental incompetency of the spouse and the other spouse is unable to provide the support otherwise required by law, the expense of providing the support may, to the extent necessary, be charged against and defrayed out of the estate, as directed by the court or as approved by the court in settling the accounts of the guardian." For these two provisions, the standard under the guardianship statute--for good cause--is adopted in Section 2513 which continues the substance of Section 1857 (guardianship statute). Note that a prior court order is required in every case under proposed Section 2513 (which continues Section 1857) while Section 1505 (guardian of incompetent) permits the incurring of the expense subject to approval of the court when the accounts of the guardian are settled.

968/602

§ 2514. Payment of surplus income to next of kin of conservatee

2514. (a) On petition of the conservator or of the next of kin of the conservatee, the court may by order direct the conservator to pay and distribute surplus income of the estate, or any part of such surplus income, not used for the support and maintenance of the conservatee, to the next of kin whom the conservatee would, in the judgment of the court, have aided but for the existence of the conservatorship.

(b) The granting of the order and the amounts and proportions of the payments are discretionary with the court, but the court shall consider all of the following:

(1) The amount of surplus income available after adequate provision has been made for the comfortable and proper support, maintenance, and education of the conservatee.

(2) The circumstances and condition of life to which the conservatee and next of kin have been accustomed.

(3) The amount which the conservatee would in the judgment of the court have allowed the next of kin but for the existence of the conservatorship.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Section 1200. When the conservatee is or has been during the conservatorship confined in a state hospital in this state, notice of hearing and a copy of the petition shall be mailed or delivered to the Director of Health at the director's office in Sacramento at least 15 days before the hearing.

Comment. Section 2514 continues the substance of former Sections 1558 and 1856. Unlike the other powers and duties in this chapter, the provisions of Section 2514 apply only to conservatorships and not to guardianships. Terms used in this section are defined in Section 2500.

Note. The comparable provision in existing Section 1558 (guardianship) applies only to an adult incompetent. Garrett Elmore in his draft proposed extending this provision to minor's guardianships. Policy question: Should we do so?

045/197

Article 3. Management Duties Generally

§ 2520. Representation in actions or proceedings; collection of debts

2520. (a) Unless another person is appointed for that purpose, the guardian or conservator shall institute and maintain all actions and other proceedings for the benefit of and defend all actions and other proceedings against the ward or conservatee or the estate.

(b) The guardian or conservator shall demand, sue for, and collect all debts due to the ward or conservatee or, with the approval of the court, may give the debtor a discharge on such terms as may appear to the court to be for the best interest of the estate.

Comment. Section 2520 is the same in substance as the second and third sentences of former Section 1501, but subdivision (a) is phrased in language drawn from Section 1853. Terms used in this section are defined in Section 2500. As to instructions from the court, see Section 2504.

Note. This section is inconsistent with existing Section 1853 (additional powers) which authorizes the conservator to maintain or defend actions only upon permission of the court and "to take, collect, and hold the property of the conservatee." This inconsistency must be resolved. Compare Section 2525 (partition actions). Should subdivision (b) require approval of the court "under Section 2526?"

§ 2521. Deposit or investment of money

2521. (a) The guardian or conservator may deposit any money belonging to the estate in one or more banks within this state or may invest any such money in an account in an insured savings and loan association or in shares of an insured credit union. Upon such deposit or investment, the guardian or conservator is discharged from further care or responsibility for the money until the money is withdrawn.

(b) The money so deposited or invested may be withdrawn without order of court unless the money is:

(1) Deposited pursuant to a court order under the provisions of the Banking Law, Division 1 (commencing with Section 99) of the Financial Code.

(2) Invested pursuant to a court order under the provisions of the Savings and Loan Association Law, Division 2 (commencing with Section 5000) of the Financial Code, or of the California Credit Union Law, Division 5 (commencing with Section 14000) of the Financial Code.

(3) Otherwise deposited or invested pursuant to a court order which requires a further order or authorization from the court for withdrawal.

Comment. Section 2521 is the same in substance as former Section 1513 except that paragraph (3) has been added to subdivision (b). See also Section 2522 (deposit with trust company). Terms used in this section are defined in Section 2500. See also the definitions in Sections ____ (bank), ____ (trust company), ____ (account in an insured savings and loan association), ____ (insured credit union).

968/618

§ 2522. Deposit of personal assets with trust company

2522. The guardian or conservator may deposit personal assets of the estate with a trust company, and the bond of the guardian or conservator be reduced, as provided by the Banking Law, Division 1 (commencing with Section 99) of the Financial Code.

Comment. Section 2522 is the same in substance as former Section 1514. For definitions of "guardian," "conservator," and "estate," see Section 2500. For the definitions of "trust company," see Section _____. See also Section 2328 (deposit of money or other property subject to court control).

§ 2523. Deposit of securities in securities depository

2523. (a) Securities which constitute all or part of the estate may be deposited in a securities depository as defined in Section 30004 of the Financial Code which is either licensed under Section 30200 of the Financial Code or exempted from such licensing by Section 30005 or 30006 of the Financial Code.

(b) If the securities have been deposited with a trust company pursuant to Section 2522, the trust company may deposit the securities in a securities depository as provided in subdivision (a).

(c) The securities depository may hold securities deposited with it in the manner authorized by Section 775 of the Financial Code.

Comment. Section 2523 continues the substance of former Sections 1514.5 and 1520.

§ 2524. Rights with respect to corporate shares or memberships

2524. With respect to any shares of stock of a domestic or foreign corporation held in the estate, any membership in a nonprofit corporation held by the estate, or any property held in the estate, a guardian or conservator may do any or all of the following:

(a) Vote in person, and give proxies to exercise, any voting rights with respect to such shares or memberships or property.

(b) Waive notice of and consent to any meeting of shareholders, members, or property owners.

(c) Authorize in writing any action which could be taken by shareholders, members, or property owners.

Comment. Section 2524 continues the substance of former Section 1517 except that the section is broadened to authorize action with respect to memberships in nonprofit corporations. See also Corp. Code §§ 702(a) (guardian or conservator may vote shares), 705(a) (person entitled to vote shares may give proxy). Terms used in this section are defined in Section 2500.

Note. Section 1853 (additional powers of conservators) includes the following additional powers: "to vote in person or by proxy all shares and securities held by the conservator; to exercise stock rights and stock options; to participate in and become subject and to consent to the provisions of any voting trust and of any reorganization, consolidation, merger, dissolution, liquidation or other modification or adjustment affecting conservatorship property."

§ 2525. Partition actions

2525. (a) The guardian or conservator may commence and prosecute an action for partition under Title 10.5 (commencing with Section 972) of Part 2 of the Code of Civil Procedure if the court has first made an order authorizing the guardian or conservator to do so. The court may make such an order ex parte on a petition filed by the guardian or conservator.

(b) The guardian or conservator may consent and agree, without an action, to a partition of the property and to the part to be set off to the estate, and may execute deeds or conveyances to the owners of the remaining interests of the parts to which they may be respectively entitled if the court has made an order under Section 2526 authorizing the guardian or conservator to do so.

(c) If the ward or conservatee, or the guardian or conservator as such, is made a defendant in a partition action, the guardian or conservator may defend the action without leave of court.

Comment. Section 2525 continues the substance of former Sections 1506, 1507, and 1508 except that a reference to Section 2526 has been inserted for the notice provision of former Section 1507. In subdivision (a), the reference to Title 10.5 of Part 2 of the Code of Civil Procedure replaces the former reference to a ward owning an undivided interest in real or personal property. Under Section 872.210 of the Code of Civil Procedure, a partition action may be commenced and maintained by a coowner of personal property or by an owner of an estate of inheritance, an estate for life, or an estate for years in real property. Terms used in this section are defined in Section 2500. As to instructions from the court, see Section 2504.

Note. Subdivision (c)--leave not required to defend action--appears to be inconsistent with present Section 1853 (additional powers upon leave of court). Also, should the reference to Section 2526 be inserted? Existing Section 1507 provides: "Upon filing the petition, the clerk of the court shall set the same for hearing by the court and cause notice thereof to be mailed, at least 10 days before the hearing, to such relatives of the ward residing in the state as the court or judge deems proper."

4465

§ 2526. Compromise of claims and actions; extension, renewal, or modification of obligations

2526. (a) The guardian or conservator may, with the approval of the court, do any of the following:

(1) Compromise, compound, or settle any suit, claim, or demand, by or against the ward or conservatee, the guardian or conservator as such, or the estate, by the transfer of specific assets of the estate or otherwise.

(2) Extend, renew, or in any manner modify the terms of any obligation owing to or running in favor of the ward or conservatee or the estate on such terms and conditions as may be approved by the court.

(b) To obtain the approval of the court, the guardian or conservator shall file a verified petition showing the advantage of the compromise, composition, settlement, extension, renewal, or modification. The clerk shall set the petition for hearing by the court and notice thereof shall be given for the period and in the manner required by Section 1200.

(c) If under this section the court authorizes the transfer of real property of the estate, conveyances shall be executed by the guardian or conservator. Such conveyances shall refer to the order authorizing the transfer, and a certified copy of the order shall be recorded in the office of the recorder of the county in which the real property or any portion thereof lies. Conveyances so made convey all the right, title, interest, and estate of the ward or conservatee in the property at the time of the conveyance.

Comment. Section 2526 continues the substance of Section 1530a. Terms used in this section are defined in Section 2500.

045/218

§ 2527. Payment of debts

2527. (a) The payments required by this section shall be made only after the payments required by Sections 2510 and 2512 have been made. The payments required by paragraphs (1), (3), and (4) of subdivision (b) are not required to be made to the extent such payments would impair the ability to continue to provide necessities of life to the ward or conservatee and the spouse and minor children of the ward or conservatee.

(b) The guardian or conservator shall pay the following from any principal and income of the estate:

(1) The just and reasonable debts incurred by the ward or conservatee before creation of the guardianship or conservatorship.

(2) The just and reasonable debts incurred by the ward or conservatee during the guardianship or conservatorship for the necessities of life. 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) The debts incurred by a minor ward or conservatee pursuant to a contract which is legally binding under the provisions of Part 1 (commencing with Section 25) of Division 1 of the Civil Code.

(4) In the case of a conservatorship, any other debts incurred by the conservatee during the conservatorship only if (i) the debts appear to be such as a reasonably prudent person might incur, (ii) the court has not made the determination authorized by Section 1832 that the conservatee lacks legal capacity, and (iii) the debts are within any limitation as to the type of transaction or money amount fixed by the court pursuant to Section 1832.

(5) The expenses of the guardianship or conservatorship.

(c) The guardian or conservator may petition the court under Section 2504 for instructions when there is doubt whether a debt should be paid under this section.

(d) Nothing in this section is intended to alter or affect the substantive rules governing the validity or enforceability of contracts.

Comment. Section 2527 is adapted from portions of former Sections 1501, 1501a, and 1858. The first sentence of subdivision (a) of Section 2527 makes express an order of priority which was only inferred by former law. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.23, at 171 (Cal. Cont. Ed. Bar 1968). The second sentence of subdivision (a) is based on a portion of the last sentence of former Section 1501a and a portion of the first sentence of former Section 1858.

The priorities given under paragraphs (1) and (2) of subdivision (b) to debts incurred before creation of the guardianship or conservatorship and to debts for necessities incurred after such creation are derived from former Section 1858. The requirement that such debts be "just" is derived from former Section 1501. The requirement that they be "reasonable" is new.

The provision in paragraph (3) for payment of a minor's or conservatee's debts pursuant to a contract which is enforceable under the pertinent provisions of the Civil Code is new and supersedes the provision of former Section 1501 which required payment merely of the ward's "just debts."

Paragraph (4) is based on the third sentence of former Section 1858 but recognizes that the court may withdraw or restrict the conservatee's

power to contract. See Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, ____ n.6, ____, 120 Cal. Rptr. 407, ____ n.6, ____ (1975).

Paragraph (5) is the same in substance as the last portion of the second sentence of former Section 1858, and subdivision (c) is the same in substance as the fourth sentence of former Section 1858. Both of these provisions are generalized to apply to guardianships as well as to conservatorships.

Subdivision (d) is new and makes clear that Section 2527 relates merely to the duty of the guardian or conservator to pay debts. The question of whether such debts are enforceable in a civil action is determined by the substantive rules of law apart from this section.

Terms used in this section are defined in Section 2500.

Note. Is subdivision (d) advisable? Is subdivision (c) necessary? This is an important section and needs to be carefully reviewed and may require further study.

968/696

§ 2528. Order compelling guardian or conservator to pay support or debts

2528. (a) If the guardian or conservator fails, neglects, or refuses to furnish comfortable and suitable support, maintenance, or education for the ward or conservatee, or to pay a debt, expense, or charge lawfully due and payable by the ward, the conservatee, or the estate, the court may, upon petition or upon its own motion, order the guardian or conservator to do so from the estate.

(b) The petition may be filed by the ward or conservatee or by the creditor or any person interested in the estate. Notice of hearing on the petition shall be given for the time and in the manner provided in Section 1200.

Comment. Section 2528 continues the substance of former Section 1859 with the addition of the reference to "education" (which appeared in former Section 1503) and supersedes former Section 1503. Terms used in this section are defined in Section 2500.

406/459

§ 2529. Advances by guardian or conservator

2529. The guardian or conservator may advance personal funds for the benefit of the ward or conservatee or the estate and may reimburse such advances out of the income and principal of the estate first available.

Comment. Section 2529 continues the substance of the last sentence of former Section 1858 which applied to conservators and extends its provisions to guardians. The addition of "personal" funds of the guardian or conservator is clarifying. Terms used in this section are defined in Section 2500. As to instructions from the court, see Section 2504.

404/128

§ 2530. Maintaining minor's insurance contract in force

2530. Subject to court approval, the guardian may pay out of the estate funds for the purpose of effecting or maintaining in force any contract entered into by the minor ward under Section 10112 of the Insurance Code.

Comment. Section 2530 continues the substance of former Section 1518. Terms used in this section are defined in Section 2500.

043/169

§ 2531. Dedication or conveyance of real property or easement with or without consideration

2531. (a) If it is for the advantage, benefit, and best interests of the estate and those interested therein, the guardian or conservator, with the approval of the court, may do any of the following either with or without consideration:

(1) Dedicate or convey any real property of the estate or any interest therein to the state, to any county or municipal corporation, or to the United States or any agency or instrumentality thereof, for street or highway purposes or for any other purpose.

(2) Dedicate or convey an easement over any real property of the estate to the state, to any county, municipal corporation, or public district, to any person, firm, association, or public or private corporation, or to the United States or any agency or instrumentality thereof.

(3) Convey, release, or relinquish to the state or any county or municipal corporation any access rights to any street, highway, or freeway from any real property of the estate.

(b) To obtain the approval of the court, the guardian or conservator or any person interested in the estate shall file a verified petition with the court. The clerk shall set the petition for hearing by the court and notice thereof shall be given for the period and in the manner required by Section 1200.

Comment. Section 2531 continues the substance of former Section 1515 except that the petition is required to be verified. Terms used in this section are defined in Section 2500.

Note. Should this section be compiled in Article 5 (commencing with Section 2550)?

404/281

§ 2532. Conveyance of property claimed by another

2532. (a) If the ward or conservatee is in possession of, or holding title to, real or personal property and the property or some interest therein is claimed to belong to another, the court may authorize and direct the guardian or conservator to convey the property or the interest to the person entitled thereto.

(b) The proceedings to obtain such an order and the proceedings thereunder shall conform, as nearly as may be, to the provisions of this code concerning conveyances by executors or administrators of property claimed to belong to another.

Comment. Section 2532 continues the substance of former Section 1537.5. Terms used in this section are defined in Section 2500.

Note. Should this section be compiled in Article 5 (commencing with Section 2550)?

968/916

§ 2533. Acceptance of deed in lieu of foreclosure

2533. (a) If it is to the advantage of the estate to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust, the guardian or conservator may, with the approval of the court and upon such terms and conditions as may be imposed by the court, accept a deed conveying the property to the ward.

(b) To obtain the approval of the court, the guardian or conservator shall file a verified petition showing the advantage to the estate of accepting the deed. The clerk shall set the petition for hearing by the court and notice thereof shall be given for the period and in the manner required by Section 1200.

Comment. Section 2533 continues the substance of former Section 1515.5.

§ 2534. Purchase of insurance

2534. The guardian or conservator may secure necessary insurance for the proper protection of the estate.

Comment. Section 2534 is new. It provides express authority that formerly was implied from the authority to manage the estate. The language of Section 2534 is drawn from former Section 1853.

Note. Section 2534 is too narrowly drawn. It should cover insurance reasonably necessary for the guardian of the person, guardian of the estate, and guardian of the person and estate (potential liability for negligence of guardian of person in supervising ward and potential liability of guardian of estate for injuries resulting from condition of property of the estate, etc.) and for the conservator of the person and estate or person or estate. It perhaps also should cover insurance necessary for the ward or conservatee (as, for example, automobile liability insurance).

404/675

§ 2535. Care of estate pending delivery to personal representative

2535. The guardian or conservator shall continue to have the duty of custody and conservation of the estate after the death of the ward or conservatee pending the delivery thereof to the personal representative of the ward's or conservatee's estate or other disposition according to law.

Comment. Section 2535 is based on a portion of the first sentence of former Section 1755 (conservator) which is made generally applicable to both guardians and conservators. The phrase "or other disposition according to law" has been added.

404/382

Article 4. Sales§ 2540. Purposes for which sale may be authorized

2540. Subject to the requirements of this article, the guardian or conservator may sell any real or personal property of the estate in any of the following cases:

(a) The income of the estate is insufficient for the comfortable and suitable support, maintenance, and education of the ward or conservatee (including care, treatment, and support of the ward or conservatee if a patient in a state hospital under the jurisdiction of the State Department of Health) or of those legally entitled to support, maintenance, or education from the ward or conservatee.

(b) The personal property of the estate and the income from real property of the estate is insufficient to pay the debts referred to in Sections 2512 and 2527.

(c) It is for the advantage, benefit, and best interest of the ward or conservatee, of the estate, and of those legally entitled to support, maintenance, or education from the ward or conservatee.

Comment. Section 2540 continues the substance of former Section 1530 insofar as that section related to the cases where sale of real or personal property was authorized with the following revisions: (1) A reference to the education of the ward or conservatee has been added, (2) a reference to those legally entitled to support has been substituted for the former reference to family members the ward is legally obligated to support, (3) a reference to the ward or conservatee being a patient in a state hospital under the jurisdiction of the State Department of Health has been substituted for the former reference to the ward being "confined in a state hospital for the insane," and (4) a reference has been added to Sections 2512 and 2527 in subdivision (b). Terms used in this section are defined in Section 2500. See also Section 2510(b) (sale or encumbrance when income insufficient for support, maintenance, and education), 2550 (encumbrance for purposes of this section).

404/383

§ 2541. Terms of sales

2541. (a) All sales shall be for cash or for part cash and part deferred payments. In no case shall credit exceed 20 years from the date of sale. The terms of sale are subject to the approval of the court.

(b) If real property is sold for part deferred payments:

(1) The guardian or conservator shall demand and receive from the purchaser a note and a mortgage or deed of trust on the property sold with such additional security as the court determines is necessary and sufficient to secure the prompt payment of the amounts so deferred and the interest thereon.

(2) The mortgage or deed of trust shall be subject only to encumbrances existing at date of sale and such other encumbrances as the court may approve.

(c) If real or personal property of the estate sold for part deferred payments consists of an undivided interest, a joint tenancy interest, or any other interest less than the entire ownership, and the owner or owners of the remaining interests in the property join in the

sale, the note and deed of trust or mortgage may be made to the ward or conservatee and the other owner or owners. The interest of the ward or conservatee in the note and deed of trust or mortgage shall be in the same tenancy and in the same proportion as the interest of the ward or conservatee in the property prior to the sale.

Comment. Section 2541 continues the substance of former Section 1532 (as amended in 1977 by Assembly Bill 673). Terms used in this section are defined in Section 2500.

404/384

§ 2542. Manner of sale

2542. (a) Sales by guardians or conservators may be at public auction or private sale, as the guardian or conservator deems best.

(b) Unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or conservators, giving notice of sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by administrators, other than the Independent Administration of Estates Act, Article 2 (commencing with Section 591) of Chapter 8 of Division 3.

Comment. Section 2542 continues the substance of former Section 1534 except that the exception in the case of the Independent Administration of Estates Act is new. The purpose of the act, enacted in 1974, was to eliminate much of the normally required court supervision of intermediate steps in the administration of estates. 7 B. Witkin, Summary of California Law Wills and Probate §§ 443A, 443B (8th ed. Supp. 1976). The provisions of the act are not appropriate for sales under this section. As to the requirement of an additional bond before a sale of real property is confirmed, see Section 2331.

404/385

§ 2543. Notice to Director of Health

2543. If the ward or conservatee is or has been during the guardianship or conservatorship a patient in a state hospital under the jurisdiction of the State Department of Health, notice of the hearing of

the application for confirmation of the sale shall be given to the Director of Health at the director's office in Sacramento at least 15 days before the hearing.

Comment. Section 2543 continues the substance of former Section 1535 except that "patient" has been substituted for "confined," and "under the jurisdiction of the State Department of Health" has been added.

404/388

§ 2544. Disposition of proceeds of sale

2544. The guardian or conservator shall apply the proceeds of the sale to the purposes for which it was made, as far as necessary, and the residue, if any, shall be managed as the other assets of the estate.

Comment. Section 2544 supersedes former Section 1536. Terms used in this section are defined in Section 2500.

404/393

§ 2545. Mines and mining claims

2545. Agreements for the sale of, or for giving options to purchase, mining claims or real property worked as mines may be executed by the guardian or conservator only upon obtaining an order of court authorizing the same. The proceedings to obtain such an order and the proceedings thereunder shall conform, as nearly as may be, to the provisions of this code concerning similar proceedings by administrators.

Comment. Section 2545 is the same in substance as a portion of former Section 1538. Terms used in this section are defined in Section 2500.

Note. Division 3 will be checked to determine whether a more general provision than this would be appropriate.

404/655

§ 2546. Limitation of action to recover property sold

2546. No action for the recovery of any property sold by a guardian or conservator can be maintained by the ward or conservatee or by any person claiming under the ward or conservatee unless commenced within whichever of the following is the later time:

(a) Three years after the termination of the guardianship or conservatorship.

(b) When a legal disability to sue exists by reason of minority or otherwise at the time the cause of action accrues, within three years after the removal thereof.

Comment. Section 2546 continues the substance of former Section 1539.

968/918

Article 5. Notes, Mortgages, Leases,
Conveyances, and Exchanges

§ 2550. Borrowing money and giving security therefor

2550. (a) In any case described in Section 2540 or Section 2551, the guardian or conservator, after authorization by order of the court, may borrow money upon a note or notes, either unsecured, or to be secured by a chattel mortgage or other lien on the personal property of the estate, or any part thereof, or to be secured by a mortgage or deed of trust on the real property of the estate, or any part thereof. The proceedings to obtain such an order shall conform, as nearly as may be, to the provisions of this code concerning similar proceedings by administrators.

(b) Upon any foreclosure or sale under any such lien, mortgage, or deed of trust, if the proceeds of the sale of the encumbered property are insufficient to pay the note or notes, the lien, mortgage, or deed of trust, and the costs or expenses of sale, no judgment or claim for any deficiency shall be had or allowed against the ward or conservatee or the estate.

Comment. The first sentence of subdivision (a) of Section 2550 continues the substance of the first portion of former Section 1533, but a reference to Sections 2540 and 2551 has been substituted for "will benefit his ward" which appeared in former Section 1533 and the types of security that may be given have been made more specific by drawing on language of Section 830 (executors and administrators). The second sentence of subdivision (a) continues the substance of a portion of former Section 1538. Subdivision (b) continues the last sentence of former Section 1533. Terms used in this section are defined in Section 2500.

§ 2551. Refinancing or improving or repairing property

2551. (a) The guardian or conservator may give a chattel mortgage or other lien upon the personal property of the estate, or any part thereof, or a mortgage or deed of trust upon the real property of the estate, or any part thereof, after authorization by order of the court as provided in Section 2550, for any of the following purposes:

(1) To pay, reduce, extend, or renew a lien, mortgage, or deed of trust already existing on property of the estate.

(2) To erect, alter, or repair buildings or other structures upon, or otherwise to improve, the property proposed to be mortgaged or subjected to a deed of trust, or some part thereof.

(b) If property of the estate consists of an undivided interest in real or personal property, or any other interest therein less than the entire ownership, and it appears to be to the advantage of the estate to borrow money to improve, utilize, operate, or preserve the property jointly with the owner or owners of the other interests therein, or to pay, reduce, extend, or renew a lien, mortgage, or deed of trust already existing on all of the property, the guardian or conservator, after authorization by order of the court as provided in Section 2550, may join with the owner or owners of such other interests in the borrowing of money and the execution of a joint and several note or notes and such lien, mortgage, or deed of trust as may be required to secure the payment of the note or notes. The note or notes may be for such sum as is required for the purpose.

Comment. Section 2551 continues a portion of the substance of former Section 1533. Terms used in this section are defined in Section 2500. As to instructions from the court, see Section 2504.

405/474

§ 2552. Order authorizing lease required

2552. Except as provided in Section 2554, leases may be executed by the guardian or conservator with respect to the property of the estate only upon obtaining an order of court authorizing the lease. The proceedings to obtain such an order shall conform, as nearly as may be, to the provisions of this code concerning similar proceedings by administrators.

Comment. Section 2552 continues the substance of a portion of former Section 1538. Terms used in this section are defined in Section 2500.

405/441

§ 2553. Leases generally

2553. (a) An order authorizing the execution of a lease shall set forth the minimum rental or royalty and the period of the lease, which shall be for such time as the court may authorize.

(b) The order may authorize other terms and conditions, including, with respect to a lease for the purpose of production of minerals, oil, gas, or other hydrocarbon substances, any of the following:

(1) A provision for the payment of rental and royalty to a depository.

(2) A provision for the appointment of a common agent to represent the interests of all the lessors.

(3) A provision for the payment of a compensatory royalty in lieu of rental and in lieu of drilling and producing operations on the land covered by the lease.

(4) A provision empowering the lessee to enter into any agreement authorized by Section 3301 of the Public Resources Code with respect to the land covered by the lease.

(5) A provision for pooling or unitization by the lessee.

(c) If the lease covers additional property owned by other persons or an undivided or other interest of the ward or conservatee less than the entire ownership in the property, the lease may provide for division of rental and royalty in the proportion that the land or interest of each owner bears to the total area of the land or total interests covered by such lease.

(d) A lease for the purpose of production of minerals, oil, gas, or other hydrocarbon substances may be for a fixed period and any of the following:

(1) So long thereafter as minerals, oil, gas, or other hydrocarbon substances are produced in paying quantities from the property leased or mining or drilling operations are conducted thereon.

(2) If the lease provides for the payment of a compensatory royalty, so long thereafter as such compensatory royalty is paid.

(3) If the land covered by the lease is included in an agreement authorized by Section 3301 of the Public Resources Code, so long thereafter as oil, gas, or other hydrocarbon substances are produced in paying quantities from any of the lands included in any such agreement or drilling operations are conducted thereon.

Comment. Section 2553 continues the substance of former Section 1538.5.

101/142

§ 2554. Leases permitted without court order

2554. The guardian or conservator may lease real property without an order of court when the rental does not exceed two hundred fifty dollars (\$250) a month and the term does not exceed one year or, regardless of the amount of the rental, when the lease is from month to month.

Comment. Section 2554 continues the substance of former Section 1538.6.

405/970

§ 2555. Conveyance to complete contract

2555. If an adult conservatee is bound by a contract in writing to convey any real property, executed by the conservatee while competent or executed by the conservatee's predecessor in interest, or if a ward has succeeded to the interest of a person bound by a contract in writing to convey any real property, the court may by order authorize and direct the guardian or conservator to convey the property to the person entitled thereto. The proceedings to obtain such an order shall conform, as nearly as may be, to the provisions of this code concerning conveyances by administrators of property contracted to be sold by their decedents.

Comment. Section 2555 continues the substance of former Section 1537. Terms used in this section are defined in Section 2500.

992/950

§ 2556. Exchange of property

2556. If property may be exchanged to the advantage and best interests of the ward or conservatee and those entitled to support, maintenance, and education from the ward or conservatee, the guardian or conservator may, after authorization by order of the court, execute a

conveyance to the person with whom the exchange is made to effectuate the exchange. The provisions of this code governing exchanges of property by administrators apply to and govern exchanges of property by guardians or conservators so far as applicable.

Comment. Section 2556 continues the substance of former Section 1540 except that the reference to those entitled to support, maintenance, and education from the ward or conservatee is substituted for the former reference to members of the ward's family the ward is legally bound to support and maintain.

404/662

Article 6. Investments and Purchase of Property

§ 2570. Authority to invest generally

2570. Subject to the requirements of this article, the guardian or conservator may invest the proceeds of sales, and any other money of the estate, in real property or in any other manner that is for the advantage, benefit, and best interest of the estate.

Comment. Section 2570 supersedes the portion of former Section 1557 which authorized investments in real property or in any other manner most to the interest of the ward. The standard provided in Section 2570 is the same as that provided in Section 2540(c) (purposes for which sale may be authorized). The authority under Section 2570 is subject to the requirements of this article which include a court order made after a hearing. Terms used in this section are defined in Section 2500. As to the deposit or investment of money in a bank, savings and loan association, or insured credit union, see Section 2521. See also Sections 2522 (deposit of personal assets with trust company), 2516 (payment of surplus income to next of kin of conservatee).

404/663

§ 2571. Purchase of home for ward or conservatee or those entitled to support from same

2571. Subject to the requirements of this article, the guardian or conservator may purchase real property in this state as a home for the ward or conservatee or those legally entitled to support and maintenance from the ward or conservatee if such purchase is for the advantage, benefit, and best interest of the ward or conservatee and of those legally entitled to support and maintenance from the ward or conservatee.

Comment. Section 2571 continues what appears to be the intended purpose of the authority granted by former Section 1557.1 insofar as that section authorized purchase of real property other than for investment purposes. For somewhat similar authority, see Section 1661.5 (Uniform Veterans' Guardianship Act). The authority under Section 2571 is subject to the requirements of this article which include a court order made after a hearing. Terms used in this section are defined in Section 2500.

404/664

§ 2572. Petition; hearing; order

2572. (a) A petition under this article may be filed by the guardian or conservator, the ward or conservatee, or any person interested in the estate.

(b) Upon the filing of the petition, the clerk of court shall set it for hearing by the court. Notice of the hearing on the petition shall be given for the period and in the manner provided in Section 1200. The court may order the notice to be given for a shorter period or dispensed with.

(c) The court shall hear the petition and any objection thereto and may require such additional proof of the fairness and feasibility of the transaction as the court determines is necessary.

(d) If the required showing is made, the court may make an order authorizing the transaction and may prescribe in the order the terms and conditions upon which the transaction shall be made.

Comment. Section 2572 is new. Subdivision (a) is drawn from the first portion of former Section 1557 and expands the persons who were authorized to file a petition under former Section 1557. Subdivision (b) supersedes a portion of former Sections 1557 and 1557.1 and has the effect of requiring 10 rather than five days' notice of the hearing unless the court shortens the time of notice or dispenses with the notice. Subdivision (c) is drawn from former Section 1557.1 and is made generally applicable. Subdivision (d) is drawn from the last sentence of former Section 1557.1 and is made generally applicable. Terms used in this section are defined in Section 2500.

09739

§ 2573. Order authorizing purchase of real property

2573. An order authorizing the guardian or conservator to purchase real property may authorize the guardian or conservator to join with the spouse of the ward or conservatee or with any other person or persons in

the purchase of the real property, or an interest, equity, or estate therein, in severalty, in common, in community, or in joint tenancy, for cash or upon a credit or for part cash and part credit. When the court authorizes the purchase of real property, the court may order the guardian or conservator to execute all necessary instruments and commitments to complete the transaction.

Comment. Section 2573 continues the substance of a portion of former Section 1557.1. Terms used in this section are defined in Section 2500.

09740

§ 2574. Order authorizing investment in governmental bonds

2574. An order authorizing investment in bonds issued by any state of the United States or of any city, county, city and county, political subdivision, public corporation, district, or special district of any state of the United States may authorize the guardian or conservator to select from among bonds issued by any such issuer, without specifying any particular issuer or issue of bonds, if the type of issuer is designated in general terms and the order specifies as to such bonds a minimum quality rating as shown in a recognized investment service, a minimum interest coupon rate, a minimum yield to maturity, and the date of maturity within a five-year range.

Comment. Section 2574 continues the substance of a portion of former Section 1557. The terms "guardian" and "conservator" are defined in Section 2500.

09741

§ 2575. Release of guardian or conservator

2575. An order of court made pursuant to this article is final and releases the guardian or conservator and the sureties from all claims of any persons affected thereby based upon any act directly authorized in the order if the guardian or conservator has fully and fairly complied with the order. The release does not operate in favor of a guardian or conservator or surety where the order was obtained by fraud, conspiracy, or misrepresentation as to any material fact contained in the order.

Comment. Section 2575 continues the substance of former Section 1557.2.

Article 7. Independent Exercise of Powers
by Guardian or Conservator

Comment. Article 7 (commencing with Section 2590) supersedes former Sections 1853 and 1854. Unlike the former sections which applied only to conservators, Article 7 applies both to guardians and conservators. The purpose of the article is to permit the court to authorize an experienced and qualified guardian or conservator to exercise independently one or more of the powers to which the article applies without continually petitioning the court for authority or approval. In appropriate cases, use of the authority under this article will save time and expense in the management of the estate while preserving adequate safeguards through the requirements of accounting. These provisions, which formerly were limited to conservators, are extended to guardians because the considerations that justify the granting of one of the specified powers to a conservator may justify granting the same power to a guardian in an appropriate case.

18321

§ 2590. Definitions

2590. As used in this article:

(a) "Conservator" means the conservator of the estate or the person and estate.

(b) "Court" means the court in which the guardianship or conservatorship proceeding is pending.

(c) "Estate" means the estate of the ward or conservatee.

(d) "Guardian" means the guardian of the estate or person and estate.

Comment. Section 2590 is new. The section is included to avoid needless repetition in the sections included in this article.

18322

§ 2591. Order granting authority for independent exercise of powers

2591. The court may, in its discretion, make an order granting the guardian or conservator any one or more or all of the powers specified in Section 2592 if the court determines that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. Subject only to such requirements, conditions, or limitations as are specifically and expressly provided, either directly or by reference, in the order granting the power or powers, the guardian or conservator may exercise

the granted power or powers with or without notice, hearings, confirmation, or approval of the court and without regard to whether or not other requirements of this code have been complied with.

Comment. Section 2591 is based on a portion of the first paragraph of, and on the second sentence of the third paragraph of, former Section 1853. The standard--that the court determine that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to grant the power or powers--has been added to indicate that the court is to consider the circumstances of the particular case and the need for the grant of the power or powers in making a determination whether to make an order under this article. The court may withdraw or limit a power previously granted under this article. See Section 2594. Although, if so ordered, powers may be exercised under this article without notice, hearings, confirmation, or approval or concern with other Probate Code requirements, any sale or purchase of estate property not previously approved by the court is expressly made subject to review by the court on the next accounting of the guardian or conservator. See Section 2624.

18323

§ 2592. Powers that may be granted

2592. The powers referred to in Section 2591 are:

- (1) The power to take, collect, and hold the property of the ward or conservatee.
- (2) The power to contract for the guardianship or conservatorship and to perform outstanding contracts and thereby bind the estate.
- (3) The power to operate at the risk of the estate any business, farm, or enterprise constituting an asset of the estate.
- (4) The power to grant and take options.
- (5) The power to sell at public or private sale any real or personal property of the estate.
- (6) The power to create by grant or otherwise easements and servitudes.
- (7) The power to borrow money and give security for the repayment thereof.
- (8) The power to purchase real or personal property.
- (9) The power to alter, improve, and repair or raze, replace, and rebuild property of the estate.

(10) The power to let or lease property of the estate for any purpose including exploration for and removal of gas, oil, and other minerals and natural resources and for any period, including a term commencing at a future time.

(11) The power to loan money on adequate security.

(12) The power to exchange property of the estate.

(13) The power to sell property of the estate on credit if any unpaid portion of the selling price is adequately secured.

(14) The power to exercise stock rights and stock options.

(15) The power to participate in and become subject and to consent to the provisions of any voting trust and of any reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property.

(16) The power to pay, collect, compromise, arbitrate, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship, including those for taxes.

(17) The power to abandon valueless property or property which cannot be economically recovered.

(18) The power to employ attorneys, accountants, investment counsel, agents, depositaries, and employees and to pay the expense.

Comment. Section 2592 continues the list of powers that was contained in the second paragraph of former Section 1853 except that the following formerly listed powers are not continued in Section 2592: The powers to "institute and maintain all actions and other proceedings for the benefit of and to defend all actions and other proceedings against the conservatee or the conservatorship estate" (not included because this power is exercisable without prior court approval, unless another person is appointed for that purpose, under Section 2520), "to vote in person or by proxy all shares and securities held by the conservator" (not included because authorized without court approval under subdivision (a) of Section 2524), "to effect necessary insurance for the proper protection of the estate" (not included because exercisable without court approval under Section 2534). The power to abandon valueless property is expanded to include the power to abandon property which cannot be economically recovered.

The listing of a power in this section does not require the guardian or conservator to obtain an order under this article in order to exercise the power. See Section 2596(b). In some instances, a power listed in this section may be exercised by the guardian or conservator without prior court approval under one of the general powers of a guardian or conservator. See, e.g., Section 2554 (leases permitted without

court order). However, the power is listed in this section because, in other instances, exercise of the same power requires court approval, and an order under this article may permit exercise of the power without such prior court approval. See Section 2553 (leases generally).

404/668

§ 2593. Petition

2593. (a) The guardian or conservator may apply by petition for an order under Section 2591.

(b) The application for the order may be included in the petition for the appointment or confirmation of the guardian or in the petition for the appointment of the conservator. In such case, the notice of hearing on the petition shall include a statement that the petition includes an application for the grant of one or more powers under Section 2591 and shall list the specific power or powers applied for.

(c) If the application for the order is made by petition filed after the filing of the petition for the appointment or confirmation of the guardian or conservator, notice of hearing on the petition shall be given for the period and in the manner prescribed in Section 1200, including notice to the ward or conservatee. If the ward or conservatee is or has been during the guardianship or conservatorship a patient in a state hospital under the jurisdiction of the State Department of Health, notice of the hearing and a copy of the petition shall be mailed or delivered to the Director of Health at the director's office in Sacramento at least 15 days before the hearing.

Comment. Section 2593 continues the substance of the third sentence of former Section 1853 but adds the requirement of the second sentence of subdivision (b) and specifies the time for delivery to the Director of Health.

404/669

§ 2594. Withdrawal or subsequent limitation of powers

2594. (a) The court, on its own motion or on verified petition, when it appears to be for the best interests of the ward or conservatee or the estate, may withdraw any or all of the powers previously granted pursuant to this article or may impose restrictions, conditions, and limitations on the exercise of such powers by the guardian or conservator.

(b) Notice of a petition under this section shall be given in the same manner and to the same persons as a petition under Section 2593. If the guardian or conservator is not the petitioner, the petitioner shall mail or deliver notice of hearing and a copy of the petition to the guardian or conservator not less than 10 days before the hearing.

Comment. Subdivision (a) of Section 2594 continues the substance of a portion of former Section 1854 except that subdivision (a) permits the court to continue the grant of the powers subject to such restrictions, conditions, and limitations as the court may order. Subdivision (b) is new.

404/670

§ 2595. Contents of letters; when new letters required

2595. (a) When a power or powers are granted pursuant to this article, the letters of guardianship or conservatorship shall state the power or powers so granted and the restrictions, conditions, or limitations, if any, prescribed in the order and shall refer to this article.

(b) When a power or powers are granted by a subsequent order, new letters shall be issued in the form described in subdivision (a).

(c) If the powers are withdrawn, or if the powers are restricted, conditioned, or limited by a subsequent order after they are granted, new letters shall be issued accordingly.

Comment. Subdivisions (a) and (b) of Section 2595 continue the substance of the fourth and fifth sentences of the third paragraph of former Section 1853 except that the requirement that the letters state any restrictions, conditions, or limitations is new. Subdivision (c) continues the substance of a portion of former Section 1854 except that it is conformed to Section 2594. See the Comment to that section.

404/671

§ 2596. Effect of article

2596. (a) The grant of a power or powers pursuant to this article does not affect the right of the guardian or conservator to petition the court as provided in Section 2504 or to petition the court under other provisions of this code, as to a particular transaction or matter, in the same manner as if the power or powers had not been granted pursuant to this article.

(b) Where authority exists under other provisions of law, either general or specific, for the guardian or conservator to do any act or to enter into any transaction described in Section 2592, the guardian or conservator may proceed under such other provisions of law and is not required to obtain authority under this article.

Comment. Section 2596 is new. Subdivision (a) continues the substance of the last sentence of former Section 1853 and makes clear that the guardian or conservator may submit any transaction or matter to the court in the same manner as if the power or powers had not been granted. See Section 2504 (instructions and confirmation). Subdivision (b) is added to make clear that this article does not preclude the exercise of powers that may exist under other provisions of law. See the last paragraph of the Comment to Section 2592. Compare L.A. Probate Policy Memo 903 with Olson v. U.S., 437 F.2d 981 (Ct. Cl. 1971).

CHAPTER 7. INVENTORY AND ACCOUNTS

Article 1. Definitions and General Provisions§ 2600. Definitions

2600. As used in this chapter, unless the context otherwise requires:

(a) "Conservator" means the conservator of the estate or the conservator of the person and estate.

(b) "Court" means the court in which the guardianship or conservatorship proceeding is pending.

(c) "Estate" means the estate of the ward or conservatee, as the case may be.

(d) "Guardian" means the guardian of the estate or the guardian of the person and estate.

Comment. Section 2600 is new. The definitions are included to avoid needless repetition in various sections in this chapter.

404/285

§ 2601. Wages of ward or conservatee

2601. (a) Unless otherwise ordered by the court, if the ward or conservatee is at any time during the continuance of the guardianship or conservatorship employed:

(1) The wages or salaries for such employment are not a part of the estate and the guardian or conservator is not accountable for such wages or salaries.

(2) The wages or salaries for such employment shall be paid to the ward or conservatee and are subject to his or her control to the same extent as if the guardianship or conservatorship did not exist.

(b) Any court order referred to in subdivision (a) is binding upon the employer only after notice of the order has been received by the employer.

Comment. Section 2601 continues the substance of former Sections 1561 and 1910 but extends the provisions to minors.

Note. The Commission previously approved a staff recommendation not to extend this provision to minors. After discussion with our consultant, Mr. Elmore, however, the staff now recommends that the provision be so extended. In this connection, see Section 2613.

Article 2. Inventory and Appraisement of Estate

§ 2610. Filing inventory and appraisement

2610. (a) Within three months after appointment, or within such further time as the court for reasonable cause may allow, the guardian or conservator shall file with the clerk of the court an inventory and appraisement of the estate, made as of the date of the appointment of the guardian or conservator. The guardian or conservator shall make oath to the inventory.

(b) The property described in the inventory (other than money) shall be appraised by the guardian or conservator and an inheritance tax referee in the manner provided for the inventory and appraisement of estates of decedents. The guardian or conservator may appraise the assets which an executor or administrator could appraise under Section 605.

(c) If there is a conservatorship 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 (other than money) shall be appraised by the conservator, and the requirement contained in subdivision (b) of an appraisal by an inheritance tax referee does not apply.

Comment. Subdivisions (a) and (b) of Section 2610 continue the substance of the first, third, and fourth sentences of subdivision (a) of former Section 1550 and the first, third, and fourth sentences of former subdivision (a) of former Section 1901. Subdivision (b) continues the substance of subdivision (b) of former Section 1550 and subdivision (b) of former Section 1901. As to temporary guardians and conservators, see Section 2253. As to instructions from the court concerning duties under this article, see Section 2504.

§ 2611. Sending copy to Director of Health

2611. If the ward or conservatee is or has been during the guardianship or conservatorship a patient in a state hospital under the jurisdiction of the State Department of Health, the guardian or conservator shall deliver or mail a copy of the inventory and appraisement filed under Section 2610 to the Director of Health at the director's office in Sacramento.

Comment. Section 2611 continues the fifth sentence of former Section 1550 and the fifth sentence of former Section 1901. The language has been revised to make clear that it is a copy of the inventory and appraisal filed under Section 2610 that is to be mailed to the director.

404/297

§ 2612. Sending copy to county assessor

2612. If a timely request is made, the clerk of court shall deliver or mail a copy of the inventory and appraisal filed under Section 2610 to the county assessor.

Comment. Section 2612 continues the substance of the second sentence of former Section 1550 and the second sentence of former Section 1901. The language has been revised to permit delivery by mail.

404/299

§ 2613. Subsequently discovered or acquired property

2613. Whenever any property of the ward or conservatee is discovered that was not included in the inventory, or whenever any other property is inherited or acquired by the ward or conservatee (other than by the actions of the guardian or conservator in the investment and management of the estate), the guardian or conservator shall file a supplemental inventory and appraisal for the property so discovered, inherited, or acquired, and like proceedings shall be followed with respect thereto as in the case of an original inventory.

Comment. Section 2613 continues the substance of the last sentence of subdivision (a) of former Section 1550 and the last sentence of subdivision (a) of former Section 1901. Wages or salary of the ward or conservatee from employment during the guardianship or conservatorship are not part of the estate unless otherwise ordered by the court. See Section 2601.

Note. Section 611--the comparable provision of the Probate Code for executors and administrators--includes the following: "The inventory and appraisal shall be filed within two months after the discovery. . . ."

404/300

§ 2614. Objections to appraisals

2614. (a) Within 15 days after the inventory and appraisal is filed, the guardian or conservator, or any creditor or other person interested in the estate, may file written objections to any or all appraisals.

(b) The clerk shall set the objections for hearing not less than 15 days after their filing and shall give notice thereof in the manner provided in Section 1200.

(c) At least 10 days before the hearing, the party filing the written objections shall mail a notice of the time and place of the hearing and a copy of the objections to all of the following:

(1) The guardian or conservator unless the guardian or conservator is the one filing the objections.

(2) Relatives of the ward or conservatee within the second degree.

(3) The inheritance tax referee.

(d) The court shall determine the objections and may fix the true value of any asset to which objection has been filed.

(e) For the purpose of subdivision (d), the court may cause an independent appraisal or appraisals to be made by at least one additional appraiser at the expense of the estate or, if the objecting party is not the guardian or conservator and the objection is rejected by the court, the court may assess the cost of any such additional appraisal or appraisals against the objecting party.

Comment. Section 2614 continues former Section 1901.5 (conservators) and supersedes former Section 1550.1. The former requirement that notice of hearing and a copy of the objections be "served" on the persons listed in subdivision (c) has been replaced by the requirement that such notice and copy be "mailed" to such persons. "Creditor" has been added to subdivision (a) for clarity. See Section 2616(a)(3).

404/302

§ 2615. Consequences of failure to file inventory

2615. (a) If a guardian or conservator fails to file any inventory required by this article within the time prescribed, the court, on its own motion or on petition of any party interested in the estate, upon notice served upon the guardian or conservator as provided or permitted by Section 2653, may revoke the letters of the guardian or conservator.

(b) If a guardian or conservator fails to file any inventory required by this article within the time prescribed, the guardian or conservator is liable for damages for any injury to the estate, or to any person interested in the estate, resulting from the failure timely to file the inventory. Any damages awarded pursuant to this subdivision

are a charge upon the bond of the guardian or conservator. If the bond is insufficient, or if there is no bond, the damages are a charge against the personal assets of the guardian or conservator.

Comment. Section 2615 continues the substance of former Section 1902 and supersedes former Section 1551. As to removal of a guardian or conservator for failure to file an inventory within the prescribed time, see Chapter 8 (commencing with Section 2650).

Note. Subdivision (a) of Section 2615 could be deleted since failure to file an inventory on time is a ground for removal under Chapter 8 and that chapter includes procedural details on the hearing, persons who may file petitions for removal, and other details. If subdivision (a) is retained, there will be two different procedures for removal for failure to file an inventory on time, and subdivision (a) lacks needed procedural details. The staff doubts that the court will revoke the letters on its own motion since notice to the guardian or conservator is required before the letters can be revoked, and such notice ordinarily must be served in the manner provided for an original summons and complaint.

404/333

§ 2616. Examination concerning assets of estate

2616. (a) A verified petition may be filed under this section by any one or more of the following:

(1) The guardian or conservator.

(2) The ward or conservatee.

(3) A creditor or other person interested in the estate, including persons having only an expectancy or prospective interest in the estate.

(b) The petition may allege any one or more of the following:

(1) A named person is suspected of having embezzled, concealed, smuggled, or falsely or fraudulently obtained or wrongfully disposed of any property of the ward or conservatee.

(2) A named person has in such person's possession or has knowledge of any instrument in writing belonging to the ward or conservatee.

(3) A named person asserts a claim against the ward or conservatee or the estate.

(4) The estate asserts a claim against a named person.

(c) Upon the filing of a petition under this section, the court may cite the named person to appear before the court, and the court and the petitioner may examine the named person under oath upon the matters recited in the petition. If the named person is not in the county where

letters issued, the examination shall be made under this section but otherwise the procedure and the rights and duties of the parties shall be governed by the provisions of Sections 613, 614, and 615.

Comment. Section 2616 continues the substance of former Section 1903 and supersedes the somewhat narrower provisions of former Section 1552. The reference to "Section 613" in former Section 1903 has been replaced by a reference to "Sections 613, 614, and 615." This change is consistent with the broad general reference found in former Section 1552. The reference to Section 614 is a useful clarification since that section appears to authorize the use of written interrogatories as well as oral examination. Sections 614 and 615 also include provisions relating to the enforcement of the right of examination. The estate is liable for the necessary expenses of an examinee who appears and is found innocent. Prob. Code § 613.

Note. The last sentence of Section 2616 continues existing language that "the examination shall be made under this section." The staff does not know what this language means.

404/339

Article 3. Accounts

§ 2620. Presentation of account for settlement and allowance

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court, the guardian or conservator shall present under oath the account of the guardian or conservator to the court for settlement and allowance.

(b) When an account is rendered by or on behalf of two or more joint guardians or conservators, the court, in its discretion, may settle and allow the account upon the oath of any of them.

Comment. Section 2620 continues the substance of former Section 1904 and supersedes former Section 1553. The phrase "under oath" has been added to subdivision (a) to conform the subdivision to subdivision (b). As to instructions from the court concerning duties under this chapter, see Section 2504. See also Sections 2511 (allowance for ward or conservatee), 2517 (advances by guardian or conservator). Terms used in this section are defined in Section 2600.

404/341

§ 2621. Notice to Director of Health

2621. (a) If the ward or conservatee is or has been during the guardianship or conservatorship a patient in a state hospital under the jurisdiction of the State Department of Health, the account of the

guardian or conservator shall not be settled or allowed unless notice of the time and place of hearing and a copy of the account have been mailed to the Director of Health at the director's office in Sacramento at least 15 days before the hearing or unless the court for good cause dispenses with such notice. Unless the court dispenses with such notice, if the account is settled without giving the notice required by this subdivision, the statute of limitations does not run against any claim of the State Department of Health against the estate for board, care, maintenance, or transportation of the ward or conservatee.

(b) If the ward or conservatee is no longer a patient in a state hospital under the jurisdiction of the State Department of Health and is not indebted to the state, the Attorney General, upon ascertaining the facts, shall file a certificate to that effect with the clerk of the court and thereafter the mailing of the notices and copies of accounts under subdivision (a) is not required.

Comment. Section 2621 is based on former Sections 1554, 1554.1, 1905, and 1906. The second sentence of subdivision (a) is limited to a claim for "board, care, maintenance, or transportation"; former Section 1554 was so limited but former Section 1905 was not. The word "shall" is substituted in subdivision (b) for "may" which appeared in the former provisions.

404/342

§ 2622. Compensation and expenses of guardian or conservator

2622. (a) The guardian or conservator shall be allowed ~~all of the~~ following:

(1) The amount of the reasonable expenses incurred in the execution of the trust, including the cost of any surety bond furnished and reasonable attorney's fees.

(2) Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.

(3) All reasonable disbursements made before appointment as guardian or conservator.

(4) In the case of termination other than by the death of the ward or conservatee, all reasonable disbursements made after the termination of the conservatorship but prior to the discharge of the guardian or conservator by the court.

(5) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred prior to the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the executor or administrator of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.

(b) In the case of a guardian or conservator which is a nonprofit charitable corporation described in Section 2152:

(1) The corporation's compensation shall be awarded only for services actually rendered and shall not be based on the value of the estate.

(2) Any fee allowed for an attorney shall be for services actually rendered and shall not be based on the value of the estate.

Comment. Subdivision (a) of Section 2622 continues the substance of subdivision (1) of former Section 1908 and supersedes the first paragraph of former Section 1556. Subdivision (b) continues the substance of subdivision (2) of former Section 1908 (conservatorship) in a much more concise form and extends the same limitations to guardianships. The reference to the cost of a surety bond in paragraph (1) of subdivision (a) continues a provision found in the first portion of former Section 1908 and supersedes the similar provisions of former Section 1556.5. As to petitions for orders fixing compensation, see Sections 2630 and 2631. As to instructions from the court generally, see Section 2504. Terms used in this section are defined in Section 2600.

404/344

§ 2623. Investment of funds

2623. Upon each accounting, the guardian or conservator shall show that, during the period covered by the account, all cash has been kept invested in interest bearing accounts or investments authorized by law except for such amounts of cash as are reasonably necessary for the orderly administration of the estate.

Comment. Section 2623 continues former Sections 1556.3 and 1612.

404/346

§ 2624. Accounting and review of sales or purchases of property

2624. Any sale or purchase of property not previously approved or disapproved during administration of the guardianship or conservatorship

estate is subject to review by the court upon the next succeeding accounting of the guardian or conservator after the sale or purchase is made. Upon such accounting and review, the court may hold the guardian or conservator liable for any violation of his or her duties with respect to such sale or purchase. Nothing in this section shall be construed to affect the validity of any such sale or purchase.

Comment. Section 2624 continues the substance of former Sections 1519 and 1862. As to instructions from the court, see Section 2504. Terms of a sale of property are subject to approval of the court. See Section 2531. Purchases of property are subject to approval of the court. See Section 2571.

404/347

§ 2625. Termination of proceeding upon exhaustion of estate

2625. If it appears upon the settlement of any account that the estate has been entirely exhausted through expenditures or disbursements which are approved by the court, the court, upon settlement of the account, shall order the proceeding terminated and the guardian or conservator forthwith discharged.

Comment. Section 2625 continues former Sections 1559 and 1909. As to the time limitations on bringing action against sureties on the bond, see Section 2334.

404/352

Article 4. Court Order Fixing Compensation for
Guardian, Conservator, or Attorney

§ 2630. Petition by guardian or conservator

2630. (a) At any time after the filing of the inventory and appraisal, but not before the expiration of three months from the issuance of letters, the guardian or conservator may petition the court for an order fixing and allowing compensation for services rendered by the guardian or conservator to that time and for an order fixing and allowing compensation to the attorney for services rendered by the attorney to the guardian or conservator.

(b) Notice of the hearing shall be given for the period and in the manner required by Section 1200 and such additional notice, if any, as the court may require shall also be given.

(c) Upon the hearing, the court shall make an order allowing (1) such compensation as the court determines is just and reasonable to the guardian or conservator for services rendered to the estate and (2) such compensation as the court determines is reasonable to the attorney for services rendered to the guardian or conservator. The compensation so allowed shall thereupon be charged to the estate.

(d) If the guardian or conservator is a nonprofit charitable corporation described in Section 2152, the compensation of the guardian or conservator and the compensation of the attorney representing the guardian or conservator, in each instance, shall be for services actually rendered and shall not be based upon the value of the estate.

Comment. Section 2630 is based on former Section 1556 (second paragraph), with the addition in subdivision (d) of Section 2630 of provisions in former Sections 1907 and 1908 relating to nonprofit charitable corporations. See also Section 2643 (fee for attorney rendering account for dead or incompetent guardian or conservator).

404/357

§ 2631. Petition by attorney

2631. (a) At any time permitted by Section 2630 and upon the notice therein prescribed, an attorney who has rendered legal services to the guardian or conservator, including services rendered under Section 2643, may petition the court for an order fixing and allowing compensation for such services rendered to that time.

(b) Upon the hearing, the court shall make an order allowing such compensation as the court determines reasonable to the attorney for services rendered to the guardian or conservator. The compensation so allowed shall thereupon be charged against the estate.

(c) If the guardian or conservator is a nonprofit charitable corporation described in Section 2152, the provisions of subdivision (d) of Section 2630 apply to the attorney's compensation.

Comment. Section 2631 is based on former Section 1556.1, relating to guardianships, with the addition of subdivision (c) which is based upon provisions in former Sections 1907 and 1908 relating to nonprofit charitable corporations. Former Section 1908 did not expressly provide for a direct petition by the attorney in case of conservatorships but referred to attorney's fees which may be included in the conservator's petition. The practice, in the case of conservatorships, was not uniform. Arguably, former Section 1702 authorized a direct petition by the

attorney in the case of a conservatorship although not expressly provided for in the guardianship statute. Direct petition by the attorney is provided for in probate estate procedure. See Section 911. The former guardianship provisions, which permitted the issue to be presented either by the guardian or conservator or by direct petition by the attorney, provided a desirable flexibility and are extended by Section 2631 to conservatorships. For provisions as to the appealability of an order fixing, allowing, or directing payment of an attorney's fee, see Section 2750(f). See also Section 2643 (fee for attorney rendering account for dead or incompetent guardian or conservator).

404/363

Article 5. Accounts on Termination of Guardianship
or Conservatorship

§ 2641. Continuing jurisdiction of court

2641. The termination of the relationship of guardian and ward or conservator and conservatee by the death of either, by the ward attaining majority, by the determination of the court that the guardianship or conservatorship is no longer necessary, or for any other reason, does not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the guardian or conservator or for any other purpose incident to the enforcement of the judgments and orders of the court upon such accounts or upon the termination of the relationship.

Comment. Section 2641 continues the substance of the first sentence of former Section 1555 and the first sentence of former Section 1907. The last portion of the first sentence of former Section 1907 is continued in Section 2641 and is made applicable to guardianships.

404/364

§ 2642. Death of ward or conservatee; disposition of assets

2642. (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 of the deceased ward or conservatee, or may pay the unpaid expenses of such last illness and funeral, in full or in part, 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) When a claim for such 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 judge, who shall in like manner endorse thereon an allowance or rejection, and, if approved, the claim shall be filed with the clerk within 30 days thereafter.

(c) After payment of such expenses, the guardian or conservator may transfer any remaining assets in accordance with and subject to the provisions of Section 630. The value of the property of the deceased ward or conservatee, for the purpose of ascertaining the right to transfer under Section 630, shall be determined after the deduction of the expenses so paid.

Comment. Section 2642 continues former Sections 1560 and 1811.

404/371

§ 2643. Account of dead or incompetent guardian or conservator

2643. (a) If the guardian or conservator dies or becomes incompetent, the account may be presented by:

(1) The executor or administrator of the guardian or conservator, if deceased.

(2) The conservator of the estate of the incompetent guardian or conservator.

(b) Upon petition of the successor of the deceased or incompetent guardian or conservator, the court shall compel such executor or administrator or the conservator of the estate of the incompetent guardian or conservator to render the account and shall settle the account as in other cases.

(c) If the guardian or conservator dies and there is no executor or administrator, or if the guardian or conservator becomes incompetent and has no conservator of the estate, or if the guardian or conservator absconds, the court may compel the attorney for the deceased, incompetent, or absconding guardian or conservator or the attorney of record in the guardianship or conservatorship proceeding to render an account of the guardianship or conservatorship to the extent that information or records are available to the attorney for the purpose. The account of the attorney need not be verified. A fee shall be allowed to the attorney by the court for this extraordinary service. If the guardian or conservator is a nonprofit charitable corporation described in Section 2152,

the fee allowed to the attorney by the court for extraordinary service shall be for services actually rendered and shall not be based on the value of the estate.

Comment. Section 2643 continues all of former Section 1555 except the first sentence which is continued in Section 2641 and all of former Section 1907 except the first sentence which is continued in Section 2461. The substance of the last paragraph of former Section 1907 is continued in Section 2643 and made applicable to guardianships. As to instructions from the court, see Section 2504.

CHAPTER 8. REMOVAL OR RESIGNATION

Article 1. Removal of Guardian or Conservator§ 2650. Causes for removal

2650. A guardian or conservator, however appointed, may be removed as provided in this article for any of the following causes:

- (a) Waste or mismanagement of the estate or abuse of the trust.
- (b) Failure to file an inventory or to render an account within the time allowed by law or by court order.
- (c) Continued failure to perform duties.
- (d) Incapacity to perform duties suitably.
- (e) Gross immorality or conviction of a felony.
- (f) Having an interest adverse to the faithful performance of the trust.
- (g) In the case of a guardian of the person or a conservator of the person, failure to comply with the provisions of Section 2403.
- (h) In the case of a guardian of the estate or a conservator of the estate, insolvency or bankruptcy of the guardian or conservator.
- (i) In any other case in which the court in its discretion determines that removal is in the best interests of the ward or conservatee; but, in considering the best interests of the ward, if the guardian was appointed by will or by deed, the court shall take that fact into consideration.

Comment. Section 2650 continues the substance of the portions of former Sections 1580 and 1951 enumerating the causes for removal of a guardian or conservator except that the provisions for removal of a guardian when it is "no longer necessary that the ward should be under guardianship" and for removal of a conservator when the conservatorship is "no longer required" are not continued. In such cases, termination of the guardianship or conservatorship is the appropriate remedy, and not removal. See Sections 1601, 1861. See also Section 2615 (revocation of letters for failure to file inventory within prescribed time).

§ 2651. Petition for removal

2651. The ward or conservatee, or any relative or friend of the ward or conservatee, or any person interested in the estate of the ward or conservatee, may apply by verified petition to the court in which the guardianship or conservatorship proceeding is pending to have the guardian or conservator removed. The petition shall state facts showing cause for removal.

Comment. Sections 2651-2654 supersede that portion of former Sections 1580 and 1951 which provided that notice of removal proceedings shall be as provided in former Section 1755 (termination of conservatorship). Section 2651 is comparable to Section 1861 (termination of conservatorship).

4644

§ 2652. Setting petition for hearing

2652. Upon the filing of the petition, the clerk shall set the petition for hearing.

Comment. See the Comment to Section 2651. Section 2652 is comparable to Section 1862 (termination of conservatorship).

4645

§ 2653. Notice of hearing

2653. (a) At least 15 days before the hearing, a copy of the petition and of the notice of the time and place of hearing shall be mailed as follows:

(1) In the case of a guardianship, to the persons specified in Section 1512.

(2) In the case of a conservatorship, to the conservatee and to the persons specified in Section 1823.

(b) At least 10 days before the hearing, a copy of the petition and of the notice of the time and place of hearing shall be served on the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as the court may order. If the guardian or conservator cannot with reasonable diligence be so served, the court may dispense with service.

Comment. See the Comment to Section 2651. Section 2653 is comparable to Section 1863 (termination of conservatorship). The time for service under subdivision (b) is increased from five to 10 days.

4646

§ 2654. Hearing and judgment

2654. (a) The court shall hear and determine the matter according to the laws and procedure relating to the trial of civil actions except that there is no right to trial by jury. The guardian or conservator, the ward or conservatee, any relative or friend of the ward or conservatee and any person interested in the estate, may appear and oppose the action.

(b) If the court determines that cause for removal of the guardian or conservator exists, the court shall make such a finding, shall revoke the letters of guardianship or conservatorship, and shall enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, shall order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto.

Comment. See the Comment to Section 2651. Section 2654 is comparable to subdivision (a) of Section 1864 (hearing on termination of conservatorship) except that, under Section 2654, there is no right to jury trial in removal proceedings. Subdivision (b) is based in part on the first sentence of former Section 1581.

4647

§ 2655. Surrender of estate and suspension of powers pending hearing

2655. Whenever it appears that the ward or conservatee, or the estate of the ward or conservatee, may suffer loss or injury during the time required for notice and hearing under this chapter, the court, on its own motion or on verified petition, may do either or both of the following:

(a) Suspend the powers of the guardian or conservator pending notice and hearing to such extent as the court deems necessary.

(b) Compel the guardian or conservator to surrender the estate of the ward or conservatee to a custodian designated by the court.

Comment. Section 2655 continues the substance of former Section 1952 and supersedes former Section 1581.

4648

Article 2. Resignation of Guardian or Conservator

§ 2660. Resignation of guardian or conservator

2660. A guardian or conservator may at any time file a petition for permission to resign. The petition shall be filed in the court in which the guardianship or conservatorship proceeding is pending. The court may allow such resignation when it appears proper, to take effect at such time as the court may fix.

Comment. Section 2660 supersedes former Section 1953 and the first portion of former Section 1582. Section 2660 continues the substance of former Section 1953 except that the resignation takes effect at such time as the court may fix rather than upon settlement of the accounts of the guardian or conservator. The court may appoint a successor to the resigning guardian or conservator after notice and hearing. See Section 2155.

CHAPTER 9. REQUESTS FOR SPECIAL NOTICE

§ 2700. Request for special notice

2700. (a) At any time after the issuance of letters of guardianship or conservatorship, any relative or creditor of the ward or conservatee or any other interested person or governmental agency, in person or by attorney, may file with the clerk of the court where the proceeding is pending a written request for special notice of the filing or commencing of any one or more or all of the following:

(1) Petitions for the sale, lease, mortgage, giving of a deed of trust, encumbrance, or confirmation of sale of any property of the ward or conservatee.

(2) Accounts of the guardian or conservator.

(3) Petitions for partition of any property of the ward or conservatee.

(4) Petitions for allowances of any nature payable from the estate of the ward or conservatee.

(5) Petitions for the investment of funds of the estate.

(6) Petitions for the removal, suspension, or discharge of the guardian or conservator.

(7) Proceedings for the final termination of the guardianship or conservatorship proceedings.

(8) Petitions filed pursuant to Section 2504 or Article 7 (commencing with Section 2590) of Chapter 6.

(9) Applications for removal of the ward or conservatee or property of the ward or conservatee to a foreign jurisdiction.

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent.

(c) A copy of the request shall be served on the guardian or conservator or on the attorney for the guardian or conservator.

(d) The original of the request when filed with the clerk shall be accompanied by a written admission or proof of service.

Comment. Subdivisions (a), (c), and (d) of Section 2700 continue the substance of former Sections 1600 and 2002. Subdivision (a) in its first clause is based on former Section 2002, but the balance is derived from former Section 1600.

Subdivision (b) continues the substance of the first sentence of former Section 2003 and supersedes that sentence and the first clause of the first sentence of Section 1601.

Note. This section must be reviewed after the powers and duties provisions have been drafted and allocated to Parts 2, 3, and 4. If Sections 1853 and 1860 are generalized, paragraphs (1), (3), (4), and (5) of subdivision (a) will be redundant.

65196

§ 2701. Modification or withdrawal of request; new request

2701. (a) A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request and is deemed to be withdrawn at a date three years from the date it was served.

(b) A new request for special notice may be served and filed at any time as provided in the case of an initial request.

Comment. Section 2701 continues the substance of the second, third, and fourth sentences of former Section 2003. The former guardianship statute contained no express provision comparable to Section 2701.

65195

§ 2702. Petitioner required to give requested special notice

2702. In any case to which a request for special notice applies, the party filing the petition, account, or application, or commencing the proceeding, shall give written notice of the filing or commencement, together with the time and place set for the hearing thereon, by mailing the notice to the person named in the request at the address set forth in the request, or by causing the notice to be personally delivered to such person, at least 10 days before the time set for the hearing or within such shorter time as the court may order.

Comment. Section 2702 supersedes the last portion of former Section 1601 and all of former Section 2004. Section 2702 continues the substance of former Section 2004 except that the provision for shortening time for the notice is new. The provision of former Section 1601 that no notice is required when the petition is for the sale of perishable or certain other property is not continued; notice is required in such a case, but an order shortening time may be appropriate. Also provisions of former Section 1601 which required a copy of the petition, application, account, or proceeding to accompany the notice have not been continued. No comparable requirement was contained in the conservatorship statute.

§ 2703. Proof of service

2703. (a) Proof of mailing or of personal delivery of the notice required by Section 2702 shall be made at the hearing.

(b) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order. When the order becomes final, it is conclusive upon all persons.

Comment. Section 2703 continues the substance of former Sections 1602 and 2005.

10010

§ 2704. Request for, and furnishing of, notice of filing of inventory and appraisement

2704. (a) At any time after the issuance of letters of guardianship or conservatorship, any person or entity described in Section 2700, in person or by attorney, may file with the clerk of the court where the proceeding is pending a written request for special notice of the filing with the court of the inventory and appraisement by the guardian or conservator, including any supplementary inventory and appraisement.

(b) The request shall be entitled "request for special notice of filing of inventory and appraisement" and shall set forth the name of the person and the address to which notices of filings shall be sent.

(c) A copy of the request shall be served on the guardian or conservator or on the attorney for the guardian or conservator.

(d) The original of the request when filed with the clerk shall be accompanied by a written admission or proof of service.

(e) If a person serves and files a request under this section, the guardian or conservator shall give written notice of the filing of the inventory and appraisement by mailing the notice to the person named in the request at the address set forth in the request, or by causing the notice to be personally delivered to such person, not later than 10 days after the filing of the inventory and appraisement with the court. Proof of mailing or of personal delivery of the notice shall be filed with the court.

Comment. Section 2704 had no counterpart in the former guardianship or conservatorship statute. The section is based on Section 1202.5 (executors and administrators) with modifications to make the section consistent with other sections in this chapter. The inventory and appraisement is that required by Article 2 (commencing with Section 2610) of Chapter 7.

CHAPTER 10. APPEALS

§ 2750. Appealable orders

2750. An appeal may be taken from the making of, or the refusal to make, a judgment, order, or decree doing any of the following:

(a) Granting or revoking letters of guardianship or conservatorship except letters of temporary guardianship or temporary conservatorship.

(b) Directing, authorizing, or confirming the sale, lease, encumbrance, conveyance, or exchange of property.

(c) Adjudicating the merits of any claim under Section 2532.

(d) Settling an account of a guardian or conservator.

(e) Instructing or directing a guardian or conservator.

(f) Directing or allowing payment of a debt, claim, or attorney's fee.

(g) Fixing, directing, or allowing payment of the compensation or expenses of a guardian or conservator.

(h) Directing, approving, or modifying payments for the support, maintenance, or education of the ward or conservatee.

Comment. Section 2750 supersedes former Sections 1630 (guardianship) and 2101 (conservatorship). The introductory portion of Section 2750 and subdivisions (a), (d), and (e) continue the substance of former Section 1630 (guardianship) with the addition of wording in subdivision (a) to make clear that it does not apply to letters of temporary guardianship or temporary conservatorship. Subdivisions (b), (c), and (f)-(h) are new and are adapted from Section 1240 (estates in probate). Section 2750 has the effect of broadening appealable orders in guardianship while narrowing appealable orders in conservatorship. See, e.g., Guardianship of Jacobson, 30 Cal.2d 312, 182 P.2d 537 (1947) (order for allowance of counsel fees to guardian not appealable); but see Conservatorship of Smith, 9 Cal. App.3d 324, 88 Cal. Rptr. 119 (1970) (appeals in conservatorship limited).

992/936

§ 2751. Stay

2751. (a) Except as provided in subdivision (b), an appeal pursuant to Section 2750 stays the operation and effect of the judgment, order, or decree.

(b) For the purpose of preventing injury or loss to person or property, the trial court may direct the exercise of the powers of the guardian or conservator, or may appoint a temporary guardian or temporary conservator to exercise the powers, from time to time, as though no

appeal were pending. All acts of the guardian or conservator, or temporary guardian or temporary conservator, pursuant to the directions of the court are valid, irrespective of the result of the appeal.

Comment. Section 2751 continues the substance of former Sections 1631 (guardianship) and 2102 (conservatorship) and broadens the guardianship provisions to apply to all appeals in guardianship. Cf. Gold v. Superior Court, 3 Cal.3d 275, 475 P.2d 193, 90 Cal. Rptr. 161 (1970) (stay provisions in guardianship limited to appeal from order appointing guardian for incompetent person). Any problems caused by broadening the stay provisions are subject to the trial court's continuing jurisdiction. For provisions governing temporary guardians and conservators, see Chapter 3 (commencing with Section 2250).

999/549

§ 2752. Reversal of order appointing guardian or conservator

2752. If an order appointing a guardian or conservator is reversed on appeal for error, all lawful acts of the guardian or conservator performed after qualification and prior to the reversal are as valid as though the order were affirmed.

Comment. Section 2752 continues the substance of former Section 1632 (guardianship); there was no comparable provision for conservatorship. Although appeal of an order appointing a guardian or conservator stays the order pursuant to Section 2751, there may be an interval between appointment and appeal during which the guardian or conservator acts.

CHAPTER 11. TRANSFER OF PROCEEDINGS OUT OF STATE

§ 2800. Authority to transfer proceeding

2800. The court in which the guardianship of the estate or person and estate or conservatorship of the estate or person and estate is pending may, upon petition therefor, transfer the proceeding to the appropriate court in any other state in which the ward or conservatee resides at the time of application for the transfer.

Comment. Section 2800 continues the substance of portions of former Sections 1603 (guardianship) and 2051 and 2052 (conservatorship) with added wording to confine the procedure to a proceeding where the estate is involved. This limitation conforms to the apparent intent of the former statutes. For provisions governing transfer of proceedings between counties within this state, see Article 2 (commencing with Section 2160) of Chapter 2.

Note. This chapter apparently should apply only to guardianship or conservatorship of estate and not person. Cf. Section 2806 (termination of guardianship or conservatorship of estate).

Consideration should be given to making comparable provisions for transfer in.

27645

§ 2801. Who may petition for transfer

2801. A petition for transfer may be filed by any of the following persons:

(a) The guardian or conservator, the ward or conservatee, or any relative or friend of the ward or conservatee, or any person interested in the estate of the ward or conservatee.

(b) The duly appointed and acting guardian, conservator, committee, or comparable fiduciary in the state to which the proceeding is to be transferred.

Comment. Section 2801 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship) except that the list of persons who may file a petition has been expanded to include "the ward or conservatee, or any relative or friend of the ward or conservatee, or any person interested in the estate of the ward or conservatee." See also former Section 1603 (guardianship).

27800

§ 2802. Contents of petition

2802. The petition shall be verified and shall set forth all of the following:

(a) The court and jurisdiction to which the proceeding is to be transferred.

(b) The residence address of the ward or conservatee.

(c) A brief description of the character, value, and location of the property of the ward or conservatee.

(d) The reasons for the transfer.

(e) The names and residence addresses, so far as they are known to the petitioner, of (1) the spouse and relatives of the ward or conservatee within the second degree and (2) the guardian or conservator if the petitioner is not the guardian or conservator.

(f) Competent evidence that there is a duly appointed and acting guardian, conservator, committee, or comparable fiduciary in the state to which the proceeding is to be transferred.

Comment. Section 2802 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship); see also former Section 1603 (guardianship).

27801

§ 2803. Notice of hearing

2803. (a) Upon the filing of the petition to transfer, the clerk shall set the petition for hearing.

(b) Notice of the hearing shall be given as provided in Section 1200. In addition, the petitioner shall cause written notice of the hearing and a copy of the petition to be mailed to all persons required to be listed in the petition at least 10 days before the date set for the hearing.

Comment. Section 2803 continues the substance of the first two sentences of former Section 2053 (conservatorship); see also former Section 1603 (guardianship).

27802

§ 2804. Hearing

2804. (a) Any of the following persons may appear and file written objections to the petition:

(1) Any person required to be listed in the petition.

(2) Any creditor of the ward or conservatee or of the estate.

(3) The ward or conservatee.

(4) The guardian or conservator.

(b) If the court determines that the transfer requested in the petition will be for the best interests of the ward or conservatee, it shall make an order transferring the proceeding to the appropriate court in the other state.

Comment. Section 2804 continues the substance of the third and fourth sentences of former Section 2053 (conservatorship) except that "guardian or conservator" is added to the list of persons in subdivision (a). This addition reflects the fact that the persons who may file the petition has been expanded. See Section 2801. See also former Section 1603 (guardianship).

27803

§ 2805. Transfer

2805. (a) Upon the court order of transfer, the clerk shall transmit to the clerk of the court to which the proceeding is transferred a certified or exemplified copy of the order, together with all papers in the proceeding on file with the clerk. The clerk, or at the court's direction the petitioner, shall obtain the receipt for the papers from the clerk of the court to which the transfer is made as a condition to the delivery of the papers.

(b) The clerk of the court from which the removal is made shall receive no fee therefor but shall be paid out of the estate all expenses incurred by the clerk in the removal.

Comment. Subdivision (a) of Section 2805 continues the substance of the last two sentences of former Section 2053 (conservatorship). Subdivision (b) continues the substance of the first sentence of former Section 2054 (conservatorship). See also former Section 1603 (guardianship).

27804

§ 2806. Termination of guardianship or conservatorship

2806. (a) Upon filing the receipt of the remaining assets by the guardian, conservator, committee, or comparable fiduciary in the other state with the clerk of the court, and upon settlement of the final account, the guardian or conservator shall petition for discharge.

(b) Unless notice is waived, a copy of the final account of the guardian or conservator and of the petition for discharge, together with

a notice of the hearing thereon, shall be mailed at least 30 days before the date of the hearing to all persons required to be listed in the petition for transfer and to the duly appointed and acting guardian, conservator, committee, or comparable fiduciary in the other state.

(c) At the hearing, unless good cause to the contrary is shown, the court shall order the guardianship or conservatorship terminated and the guardian or conservator discharged.

Comment. Section 2806 continues the substance of former Section 2055 (conservatorship) with the addition of "unless good cause to the contrary is shown" in subdivision (c). See also former Section 1603 (guardianship).

Uniform Veterans' Guardianship Act

The Uniform Veterans' Guardianship Act¹ should be removed from the division on guardianship and be relocated in a separate part of the new statute. This relocation will reflect the fact that the Uniform Act under California procedure contemplates guardians for unmarried minors and conservators for married minors and for adults.

Two sections of the Uniform Act should not be continued. Section 1663 relates to the procedure for commitment or transfer of persons of unsound mind to a facility operated by the Veterans Administration or other agency of the United States Government, and Section 1664 relates to the discharge of such persons from such facilities. These sections are superseded by the comprehensive provisions of the Lanterman-Petris-Short Act, which generally eliminates judicial commitments for mentally disordered persons and persons gravely disabled as a result of mental disorder. Treatment for such persons is authorized under the Lanterman-Petris-Short Act in United States government hospitals.²

A few technical revisions should be made in the Uniform Act.³

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1. Chapter 15 (commencing with Section 1650) of Division 4 (Guardian and Ward) of the Probate Code.
 2. See Welf. & Inst. Code §§ 5008(c), 5358. See also Welf. & Inst. Code §§ 4123 (transfer to federal institution from state institution), 5366.1 (persons detained as of June 30, 1969, in facility of Veterans Administration or other agency of United States Government).
 3. The technical changes are noted in the Comments to the sections of the proposed legislation. Two of the more significant technical changes are: (1) A provision is added to make clear that, in determining who shall be appointed guardian of the person of an unmarried minor under the Uniform Act, the same standard--Civil Code Section 4600--applies as in other proceedings where there is an issue as to the custody of a minor and (2) uniform language is provided to prescribe the manner of giving notice to the Veterans Administration of various petitions and notices.

PART 5. UNIFORM VETERANS' GUARDIANSHIP ACT**§ 2900. Short title**

2900. This part may be cited as the "Uniform Veterans' Guardianship Act."

Comment. Section 2900 continues former Section 1666.

§ 2901. Definitions

2901. As used in this part:

(a) "Person" means an individual, a partnership, a corporation, or an association.

(b) "Veterans Administration" means the Veterans Administration, its predecessors, or successors.

(c) "Income" means moneys received from the Veterans Administration and revenue or profit from any property wholly or partially acquired therewith.

(d) "Estate" means income on hand and assets acquired partially or wholly with "income."

(e) "Benefits" means all moneys paid or payable by the United States through the Veterans Administration.

(f) "Administrator" means the Administrator of Veterans Affairs of the United States or successor.

(g) "Ward" means a beneficiary of the Veterans Administration.

(h) "Guardian" means any fiduciary for the person or estate of a ward.

Comment. Section 2901 continues former Section 1650.

§ 2902. Manner of appointment of guardian

2902. Whenever, pursuant to any law of the United States or regulation of the Veterans Administration, it is necessary, prior to payment of benefits that a guardian be appointed, the appointment may be made in the manner provided in this part.

Comment. Section 2902 continues former Section 1651.

§ 2903. Petition; filing; contents.

2903. (a) A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within 30 days after mailing of notice by the Veterans Administration to the last known address of such person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of this state.

(b) The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the Veterans Administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(c) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the person proposed for appointment as guardian. Except as provided in subdivision (e), notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other person as guardian, if the court determines it is for the best interest of the ward.

(d) In the case of a mentally incompetent ward, the petition shall show that such ward has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans Administration.

(e) In appointing a guardian of the person of a minor (other than a minor who is or has been married) under this section, the court is governed by Section 4600 of the Civil Code.

Comment. Section 2903 continues former Section 1652 except for subdivision (e) which is new. Subdivision (e) makes clear that, in determining who shall be appointed guardian of the person of an unmarried minor under the Uniform Veterans' Guardianship Act, the same standards are applied as in other proceedings where there is an issue of the custody of a minor. In the case of a married minor, a conservator instead of a guardian is appointed, and the appointment may not be made on the grounds of minority alone. See Sections 1800, 2919.

§ 2904. Evidence of necessity for guardian of minor

2904. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or the administrator's authorized representative, setting forth the age of the minor as shown by the records of the Veterans Administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the Veterans Administration is prima facie evidence of the necessity for the appointment.

Comment. Section 2904 continues former Section 1653.

§ 2905. Evidence of necessity for guardian for incompetent

2905. Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or the administrator's duly authorized representative, that such person has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans Administration and that the appointment of a guardian is a condition precedent to the payment of any moneys due the ward by the Veterans Administration, is prima facie evidence of the necessity for the appointment.

Comment. Section 2905 continues former Section 1654.

§ 2906. Notice

2906. Upon the filing of a petition for the appointment of a guardian under this part, notice shall be given to the ward, to such other persons, and in such manner, as is provided by the general law of this state. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

Comment. Section 2906 continues former Section 1655. Concerning the last sentence of Section 2906, see the Comment to Section 2908.

§ 2907. Fitness of appointee; bond

(a) Before making an appointment under the provisions of this part, the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed.

(b) Upon the appointment being made, the guardian shall execute and file the bond required by law. Where a bond is tendered by a guardian with personal sureties, such sureties shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and that they are each worth the sum named in the bond as the penalty thereof over and above all their debts and liabilities and exclusive of property exempt from execution.

Comment. Section 2907 continues former Section 1656.

405/960

§ 2908. Petitions and accounts; notices and hearings

(a) Every guardian who has received or shall receive on account of the ward any moneys or other thing of value from the Veterans Administration shall file with the court annually, or at such other intervals as are directed by the court, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys or other things of value so received by the guardian, all earnings, interest or profits derived therefrom and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in hands of the guardian at the date of the account and how invested.

(b) At the time of filing in the court any account, a true copy thereof shall be sent by the guardian to the office of the Veterans Administration having jurisdiction over the area in which the court is located. The clerk shall fix a time and place for the hearing on the account, not less than 15 days nor more than 30 days from the date same is filed, unless a different available date be stipulated in writing. Written notice of the time and place of hearing shall be given the Veterans Administration office concerned and the guardian and any others entitled to notice not less than 15 days prior to the date fixed for the

hearing. The notice may be given by mail in which event it shall be deposited in the mails not less than 15 days prior to the date fixed for the hearing.

(c) If the guardian is accountable for property derived from sources other than the Veterans Administration, the guardian is accountable as is or may be required under the applicable law of this state pertaining to the property of minors or incompetent persons who are not beneficiaries of the Veterans Administration, and as to such other property is entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section.

Comment. Section 2908 continues former Section 1657. Sections 2906, 2910, 2911, 2912, and 2913 incorporate the procedure under subdivision (b) of Section 2908. Uniform language incorporating the procedure under Section 2908 has been substituted in these sections to replace the varying language formerly used in the various provisions from which the sections were derived.

405/968

§ 2909. Penalty for failure to account

2909. If a guardian fails to file with the court any account as required by this part, or by an order of the court, when any account is due or within 30 days after citation issues as provided by law, or fails to furnish the Veterans Administration a true copy of any account as required by this part, such failure shall in the discretion of the court be ground for the removal of the guardian.

Comment. Section 2909 continues former Section 1658.

405/971

§ 2910. Compensation of guardians

2910. Compensation payable to guardians shall not exceed five percent of the income of the ward during the year, except that, in any case in which five percent of the money received during such period is less than twenty-five dollars (\$25), the court may in its discretion, and without a showing of extraordinary services by the guardian, allow a reasonable compensation, not to exceed twenty-five dollars (\$25). In

the event of extraordinary services rendered by such guardian, the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of the ward reasonable premiums paid by the guardian to any corporate surety upon the guardian's bond.

Comment. Section 2910 continues former Section 1659. "Veterans Administration" has been substituted for "bureau" in former Section 1659. Concerning the provision for sending a copy of the petition and giving notice of the hearing to the Veterans Administration, see the Comment to Section 2908.

405/973

§ 2911. Investments

2911. (a) Every guardian shall invest the surplus funds of the ward's estate in such securities or property as authorized under the laws of this state, or may deposit funds of the estate with any bank or trust company or in an account in an insured savings and loan association, but only upon prior order of the court. A signed duplicate or certified copy of the petition for authority to invest shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

(b) Notwithstanding subdivision (a), the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States.

Comment. Section 2911 continues former Section 1660. Subdivision (a) has been revised to permit deposit with a "trust company" as well as a "bank." For definitions of terms used in this section, see Sections _____ (account in an insured savings and loan association), _____ (bank), _____ (trust company). Concerning the last sentence of subdivision (a) of Section 2911, see the Comment to Section 2908.

§ 2912. Maintenance and support of person other than ward

2912. A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person other than the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration, in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

Comment. Section 2912 continues former Section 1661. Concerning the last sentence of Section 2912, see the Comment to Section 2908.

§ 2913. Purchase of home for ward

2913. (a) The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward, or to protect the interest of the ward, or (if the ward is not a minor) as a home for the ward's dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

(b) Before authorizing such investment, the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This section does not limit the right of the guardian on behalf of the ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such be necessary to protect the ward's interests and upon prior order of the court in which the guardianship is pending, to agree with cotenants of

the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty.

Comment. Section 2913 continues former Section 1661.5. Concerning the last sentence of subdivision (a) of Section 2913, see the Comment to Section 2908.

405/977

§ 2914. Furnishing copies of record without charge

2914. When a copy of any public record is required by the Veterans Administration to be used in determining the eligibility of any person to participate in benefits made available by the Veterans Administration, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on the applicant's behalf or the authorized representative of the Veterans Administration with a certified copy of such record.

Comment. Section 2914 continues former Section 1662.

405/984

§ 2915. Certificate of majority or competency; discharge of guardian and release of sureties

2915. A certificate by the Veterans Administration showing that a minor ward has attained majority, or that an incompetent ward placed in or transferred to a United States Veterans Administration facility has been rated competent by the Veterans Administration upon examination in accordance with law, is prima facie evidence that the ward has attained majority or has recovered competency. Upon hearing after notice as provided by this part and the determination by the court that the ward has attained majority or has recovered competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the Veterans Administration as in case of other accounts, upon approval of the final account, and upon delivery to the ward of the assets due to the ward from the guardian, the guardian shall be discharged and the guardian's sureties released.

Comment. Section 2915 continues former Section 1662.5. The phrase "placed in" has been substituted for "committed" which appeared in former Section 1662.5.

§ 2916. Application of part

2916. The provisions of this part relating to surety bonds and the administration of estates of wards apply to all "income" and "estate" as defined in Section 2901 whether the guardian has been appointed under this part or under any other law of this state, special or general, prior or subsequent to the enactment of this part.

Comment. Section 2916 continues former Section 1665.

968/710

§ 2917. Inconsistent laws; application of laws relating to guardians and wards or conservators and conservatees

2917. (a) All acts or parts of acts relating to beneficiaries of the Veterans Administration inconsistent with this part are hereby repealed. Except where inconsistent with this part, the laws of this state relating to guardian and ward or to conservator and conservatee, as the case may be, and the judicial practice relating thereto, including the right to trial by jury and the right of appeal, shall be applicable to such beneficiaries and their estates.

(b) In the case of a minor who is or has been married or an adult, a conservator instead of a guardian shall be appointed under this part and references in this part to the guardian refer to such conservator and references to the ward refer to the conservatee.

(c) A guardian or conservator appointed under this part has only the rights, powers, privileges, and duties provided in, and is in all respects subject to, this part.

Comment. Subdivision (a) of Section 2917 continues former Section 1669 except that a reference to conservator and conservatee has been added. Subdivision (b) is new and conforms to the general rule under California law that only a conservator can be appointed for an adult or married minor. See Section 1800 and Comment thereto. Subdivision (b) supersedes a portion of former Section 2151 which permitted the appointment of a conservator under the Uniform Veterans' Guardianship Act. Subdivision (c) is the same as a portion of former Section 2151, but the provision of former law has been expanded to include a guardian as well as a conservator. It should be noted that a guardian or conservator appointed under the general provisions of California law (apart from this part) must comply with the provisions of this part relating to surety bonds and the administration of estates so far as "income" and

"estate" (as defined in Section 2901) are concerned. See Section 2916. See also Section 2908 (combined account for property derived from Veterans Administration and other sources permitted).

968/711

§ 2918. Uniform law; effectuation of uniformity

2918. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Comment. Section 2918 continues former Section 1667.

968/712

§ 2919. Severability

2919. If any provision of this part or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the part which can be given effect without the invalid provision or application, and to this end the provisions of this part are declared to be severable.

Comment. Section 2919 continues former Section 1668.

Transactions Not Requiring Guardianship or Conservatorship

There are a number of provisions found in the existing guardianship or conservatorship statute that relate to transactions not requiring guardianship or conservatorship. These provisions should be compiled in a new part of the Probate Code rather than as a part of the guardianship or conservatorship statute.

The following provisions should be compiled without substantive change in the new part relating to transactions not requiring guardianship or conservatorship:

- (1) Small estates of minors (Probate Code Sections 1430, 1430.5).
- (2) Accounting by parent for money received on behalf of minor (Probate Code Section 1432).
- (3) Contract for attorney's fees for minor's litigation and approval of attorney's fees when judgment recovered for minor (Probate Code Section 1509).
- (4) Compromise of disputed claim of minor (Probate Code Section 1431).
- (5) Payment or delivery of property pursuant to compromise or judgment for minor or incompetent (Probate Code Section 1510).¹
- (6) Personal property of absentees (Chapter 2.5 (commencing with Section 1776) of Division 5 of the Probate Code).
- (7) Removal of property of nonresidents (based on a portion of Sections 1572, 1573, and 1574 of the Probate Code).

The provisions of Chapter 2A (commencing with Section 1435.1) of Division 4, relating to community or homestead property of incompetent

1. Section 1510 includes a provision that, where the property to be paid under the compromise or judgment for the benefit of a minor does not exceed \$1,000, the payment may be made to the parent of the minor as provided in Section 1430 of the Probate Code. This amount should be increased to \$2,000 to conform to the 1965 amendment to Section 1430 which made a similar increase in the amount to which that section applies. Probate Code Section 1511 authorizes the court to direct the judgment debtor to pay the attorney's fee fixed or approved by the court to the attorney and the balance of the judgment to the guardian ad litem or general guardian. Section 1511 should not be continued since it was superseded by a more comprehensive provision of Section 1510 which will be continued in the proposed legislation.

persons, should also be compiled in the new part relating to transactions not requiring guardianship or conservatorship. Various technical revisions should be made in the existing provisions, including revisions needed to reflect the new rules giving either spouse the management and control of community property and revisions needed to reflect the fact that, under the proposed legislation, a guardian is no longer provided for an adult.

PART 6. TRANSACTIONS NOT REQUIRING GUARDIANSHIP
OR CONSERVATORSHIP

CHAPTER 1. GENERAL PROVISIONS

§ 3050. Parent must account to minor for money received

3050. A parent who receives any money or property belonging to a minor under the provisions of this part shall account to the minor for the money or other property when the minor reaches the age of majority.

Comment. Section 3050 is based on former Section 1432, but Section 3050 expands the scope of the former section to include property other than money and to cover money or other property received under any of the provisions of this part, not just the provisions of this part that continue the substance of former Sections 1430, 1430.5, and 1431.

16958

§ 3051. Consent of court to permit hospital or medical care of
enlistment in armed forces

3051. Whenever it appears to the satisfaction of the superior court by verified application of the minor concerned that the consent of a parent or guardian is necessary to permit hospital or medical care or enlistment in the armed services for or by a minor of the age of 16 years or over residing in the State of California and that such minor has no parent or guardian available to give such consent, the court may summarily grant such consent. No fee shall be charged for proceedings under this section.

Comment. Section 3051 is the same as former Section 1444.

CHAPTER 2. SMALL ESTATES OF MINORS

Article 1. Minor's Total Estate Under \$2,500§ 3100. Delivery to parent of money or property not exceeding \$2,000

3100. Money or other property belonging to a minor or to the guardianship estate of a minor may be paid or delivered to a parent of the minor entitled to the custody of the minor to be held in trust for the minor until the minor reaches majority if all of the following requirements are satisfied:

(a) The minor has no guardian of the estate or, if the minor has a guardian of the estate, the value of the guardianship estate does not exceed two thousand dollars (\$2,000).

(b) The money and other property to be paid or delivered to the parent does not exceed two thousand dollars (\$2,000) in value.

(c) The parent to whom the money or other property is to be paid or delivered gives the person making the payment or delivery written assurance, verified by the oath of such parent, that the total estate of the minor, including the money or other property to be paid or delivered to the parent, does not exceed two thousand five hundred dollars (\$2,500) in value.

Comment. Sections 3100, 3101, and 3102 continue the substance of former Section 1430.

045/163

§ 3101. Deductions allowed in computing "total estate of the minor"

3101. In computing the "total estate of the minor" for the purposes of this article, the parent may deduct all of the following:

(a) "Custodial property" held pursuant to the California Uniform Gifts to Minors Act, Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code.

(b) Any money or property subject to court order pursuant to Chapter 3 (commencing with Section 3200) or Chapter 4 (commencing with Section 3300) of this part or Section 372 of the Code of Civil Procedure.

Comment. Section 3101 continues a portion of former Section 1430. The reference to the "California Gifts of Securities to Minors Act" in former Section 1430 has not been continued. That act was repealed by

1959 Cal. Stats., Ch. 709, § 1. Minors who received gifts under that act prior to its repeal have reached majority and the reference to the act accordingly is obsolete.

38895

§ 3102. Effect of written receipt of parent

3102. The written receipt of the parent giving the written assurance under subdivision (c) of Section 3100 shall be an acquittance of the person making the payment of money or delivery of other property pursuant to this article.

Comment. See the Comment to Section 3100.

38884

Article 2. Minor's Estate Between \$2,000 and \$20,000

§ 3110. Jurisdiction of court under this article

3110. The superior court of the county where a minor resides, or the superior court of the county having jurisdiction of the guardianship estate if the minor has a guardian of the estate, has jurisdiction under this article in each of the following cases:

(a) Where the minor has no guardian of the estate and there is money belonging to the minor in excess of two thousand dollars (\$2,000) but not exceeding twenty thousand dollars (\$20,000).

(b) Where the minor has a guardian of the estate and the sole asset of the guardianship estate is money belonging to the minor in excess of two thousand dollars (\$2,000) but not exceeding twenty thousand dollars (\$20,000).

Comment. Sections 3110-3113 continue the substance of former Section 1430.5.

38880

§ 3111. Deductions in computing "money belonging to the minor"

3111. This article does not apply to, and there shall be excluded in computing "money belonging to the minor" for the purposes of this article, all of the following:

(a) "Custodial property" held pursuant to the California Uniform Gifts to Minors Act, Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code.

(b) Any money or property subject to court order pursuant to Chapter 3 (commencing with Section 3200) or Chapter 4 (commencing with Section 3300) of this part or Section 372 of the Code of Civil Procedure.

Comment. See the Comment to Section 3110.

38879

§ 3112. Filing of petition

3112. A parent of the minor entitled to custody of the minor, or the person holding the money belonging to the minor, may file a verified petition requesting that the court take jurisdiction under this article over the disposition of the money.

Comment. See the Comment to Section 3110.

045/132

§ 3113. Order of court

3113. If the court determines that it has jurisdiction under this article, the court may do any one or more of the following:

(a) If there is a guardianship of the estate of the minor, order that the guardianship be terminated and that the money be deposited or invested as provided in subdivision (b) or prescribe other conditions as provided in subdivision (d).

(b) Order that the money be deposited in a bank or trust company or invested in an account in an insured savings and loan association or in shares of an insured credit union, subject to withdrawal only upon authorization of the court.

(c) Require that a guardian of the estate be appointed and the money paid to such guardian.

(d) Prescribe such other conditions as the court in its discretion determines to be in the best interests of the minor.

Comment. See the Comment to Section 3110.

CHAPTER 3. FEES OF MINOR'S ATTORNEY;
COMPROMISE OF MINOR'S DISPUTED CLAIM

Article 1. Fees of Minor's Attorney

§ 3200. Approval of contract for attorney's fees for minor; court fixing fees in absence of contract

3200. A contract for attorney's fees for services in litigation, made by or on behalf of a minor, is void unless the contract is approved by the court in which the litigation is pending or the court having jurisdiction of the guardianship estate of the minor, upon petition of any person interested. When no such contract is approved and a judgment is recovered by or on behalf of a minor, the attorney's fees chargeable against the minor shall be fixed by the court rendering the judgment.

Comment. Section 3200 is the same as former Section 1509 except that "guardianship" has been inserted before "estate." Although former Section 1509 was located in Chapter 7 of Division 4 (powers and duties of guardian), its application was not limited to cases in which a guardian of a minor had been appointed. See, e.g., *Leonard v. Alexander*, 50 Cal. App.2d 385, 122 P.2d 984 (1942); 1 B. Witkin, *California Procedure Attorneys* § 86, at 92 (2d ed. 1970).

045/053

Article 2. Compromise of Claim of Minor

§ 3210. Persons having right to compromise claim of minor

3210. When a minor has a disputed claim for damages, money, or other property against a third person, the following persons have the right to compromise, or execute a covenant not to sue on, the claim:

- (a) Either parent if the parents of the minor are not living separate and apart.
- (b) The parent having the care, custody, or control of the minor if the parents of the minor are living separate and apart.
- (c) The guardian of the estate, if any, of the minor.

Comment. Sections 3210-3212 continue the substance of former Section 1431.

§ 3211. Approval by court

3211. The compromise or covenant is valid only after it has been approved, upon the filing of a verified petition, by the superior court of the county where the minor resides.

Comment. See the Comment to Section 3210.

§ 3212. Payment of delivery of money or other property

3212. (a) Any money or other property to be paid or delivered for the benefit of the minor pursuant to the compromise or covenant shall be paid and delivered in the manner and upon the terms and conditions specified in Chapter 4 (commencing with Section 3300).

(b) The person having the right to compromise the disputed claim of the minor may execute a full release and satisfaction, or execute a covenant not to sue on the disputed claim, after the money or other property to be paid or delivered has been paid or delivered as provided in subdivision (a). If the court orders that all or any part of the money, to be paid under the compromise or covenant, be deposited in a bank or trust company or be invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity issued by an admitted life insurer, the release and satisfaction or covenant is not effective for any purpose until the money has been deposited or invested as directed in the order of the court.

Comment. See the Comment to Section 3210.

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

Article 1. Order for Payment of Expenses, Costs, and Fees

§ 3300. Order directing payment of expenses, costs, and fees

3300. Upon approval of a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or giving judgment for a minor or incompetent person, providing for the payment or delivery of money or other property, the court making the order or giving judgment, and as a part thereof, shall make a further order authorizing and directing a parent of the minor or the guardian of the estate of the minor or conservator of the estate of the incompetent person, or the payer of any money to be paid for the benefit of the minor or incompetent person, to pay, from the money or other property to be paid or delivered, such reasonable expenses (medical or otherwise and including reimbursement to a parent, guardian, or conservator), costs, and attorney's fees as the court shall approve and allow therein. The remaining balance of the money or other property shall be paid, delivered, or deposited as provided in Article 2 (commencing with Section 3310).

Comment. Section 3300 continues the substance of the third paragraph of former Section 1510. Former Section 1511, which authorized the court to direct the judgment debtor to pay the attorney's fee fixed or approved by the court to the attorney and the balance of the judgment to the guardian ad litem or general guardian, was superseded by the more comprehensive provision of former Section 1510 which is continued in Section 3300.

Article 2. Disposition of Money or Other Property

§ 3310. Application of article

3310. Except as otherwise specifically provided, this article applies where the court:

(a) Approves a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim for damages, money, or other property.

(b) Approves a compromise of a pending action or proceeding to which a minor or incompetent person is a party.

(c) Gives judgment for a minor or incompetent person.

Comment. Section 3310 is based on the introductory portion of former Section 1510.

15920

§ 3311. Property value not exceeding \$10,000

3311. If the money or the value of other property to be paid or delivered under the compromise, covenant, order, or judgment does not exceed ten thousand dollars (\$10,000), and there is no guardian of the estate of the minor or conservator of the estate of the incompetent person, the court making the order or giving judgment, in its discretion, may do any of the following:

(a) Require that the remaining balance of any money paid or to be paid under the compromise, covenant, order, or judgment, after payment of all expenses, costs, and fees as approved and allowed by the court, be deposited in a bank or trust company or be invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity issued by an admitted life insurer, subject to withdrawal only upon the authorization of the court.

(b) Require that a guardian of the estate or conservator of the estate be appointed and that the money or the other property be paid or delivered to the person so appointed.

(c) Prescribe such other conditions as the court in its discretion determines to be to the best interests of the minor or incompetent person.

Comment. Section 3311 continues the substance of a portion of former Section 1510. Where the money or property does not exceed \$2,000 and is for the benefit of a minor, the court in its discretion may make an order under this section or under Section 3313 or under both sections.

§ 3312. Property value exceeding \$10,000

3312. If the money or the value of other property to be paid or delivered under the compromise, covenant, order, or judgment exceeds ten thousand dollars (\$10,000), and there is no guardian of the estate of the minor or conservator of the estate of the incompetent person, the court making the order or giving judgment shall do either of the following:

(a) Require that a guardian of the estate or conservator of the estate be appointed and that the money or the other property be paid or delivered to the person so appointed.

(b) Instead of requiring the appointment of a guardian or conservator of the estate:

(1) Require that the remaining balance of any money paid or to be paid under the compromise, covenant, order, or judgment, after payment of all expenses, costs, and fees as approved and allowed by the court, be deposited in a bank or trust company or be invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity issued by an admitted life insurer, subject to withdrawal only upon order of the court; and

(2) Prescribe as to other property to be paid or delivered such conditions as the court determines to be to the best interests of the minor or incompetent person.

Comment. Section 3312 continues the substance of a portion of former Section 1510.

§ 3313. Property not exceeding \$2,000 for benefit of minor

3313. If the money or the value of other property to be paid or delivered under the compromise, covenant, order, or judgment does not exceed two thousand dollars (\$2,000), and the money or property is to be paid or delivered for the benefit of a minor, the court making the order or giving judgment may direct that all or any part of the money or the property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3100 of Chapter 2).

Comment. Section 3313 continues the substance of a portion of former Section 1510 except that the specified amount has been increased in Section 3313 from \$1,000 to \$2,000 to conform to the 1965 amendment to former Section 1430 making a similar increase in the amount under that section. In a case described in Section 3313, the court has discretion to make an order under Section 3313 or to make an order under Section 3311 or to do both.

15909

§ 3314. Reservation of jurisdiction where minor

3314. Notwithstanding any other provision of law, upon approval of a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor is a party, or giving judgment for a minor, providing for the payment or delivery of money or other property, in any case to which this article applies, the court making the order or giving judgment, and as a part thereof, may expressly retain jurisdiction of any part or all of the money paid, delivered, deposited, or invested until the minor reaches the age of 18 years.

Comment. Section 3314 continues a portion of former Section 1510.

CHAPTER 5. COMMUNITY OR HOMESTEAD PROPERTY OF INCOMPETENT PERSONS

Comment. Chapter 5 (commencing with Section 3400) is a recodification of former Chapter 2A (commencing with Section 1435.1) of Division 4.

References to a "guardian" have uniformly been converted in this part to references to a "conservator." This part is limited in its application to incompetent adults or incompetent married minors; only conservators--not guardians--are provided under this division for incompetent adults or incompetent married minors.

Article 1. Definitions and General Provisions§ 3400. Definitions

3400. As used in this article:

(a) "Incompetent" means a legal, not a medical, disability and is measured by functional incapacities. It means or refers to an adult or married minor who is substantially unable to manage his or her own financial resources. "Substantial incapacity" may not be proved solely by isolated instances of negligence or improvidence.

(b) "Property" includes real and personal property and any interest in real property or personal property or lien or encumbrance thereon.

Comment. Subdivision (a) of Section 3400 continues the substance of former Section 1435.2 with the exception of the provisions relating to guardianship of the person. This part is solely for the protection of property and not of the person. See Section 3401.

Subdivision (b) defines "property" using the substance of the language of the first portion of the first sentence of former Section 1435.1.

§ 3401. Transactions involving property of incompetents authorized in manner provided in this chapter

3401. Notwithstanding Section 1242, 1243, 5125, or 5127 of the Civil Code, where property is owned by husband and wife as community property, or as community or separate property subject to a homestead, and one or both of the spouses is incompetent:

(a) The property may, in the manner provided in this chapter, be sold and conveyed, assigned, transferred, exchanged, conveyed pursuant

to any preexisting contract, encumbered (by pledge, deed of trust, mortgage, or otherwise), leased (including but not limited to a lease for the exploration for and production of oil, gas, minerals, or other substances), or unitized or pooled with other property for or in connection with such exploration and production.

(b) The property may, in the manner provided in this chapter, be assigned, transferred, or conveyed, in whole or in part, in compromise, composition, or settlement of any indebtedness, demand, or proceeding to which the property may be subject.

(c) The property may, in the manner provided in this chapter, be dedicated or conveyed, with or without consideration, for any purpose to the United States of America or any agency or instrumentality thereof or to the state or any county or municipal corporation.

(d) An easement in or over the property may, in the manner provided in this chapter, be dedicated or conveyed, with or without consideration, to the United States of America or any agency or instrumentality thereof, or to the state or any county or municipal corporation or any district or to any person, firm, association, or public or private corporation.

(e) Access rights to a street, highway, or freeway from the property may, in the manner provided in this chapter, be conveyed, released, or relinquished, without or without consideration, to the state or any county or municipal corporation.

Comment. Section 3401 continues the substance of the first sentence of former Section 1435.1 except that former Section 1435.1 has been expanded in subdivisions (c), (d), and (e) of Section 3401 to conform to the broader scope of former Section 1515, which is continued in Section _____. See also Section 3400(b) (defining "property"). The transactions described in this section can be accomplished only "in the manner provided in this chapter," which includes a court determination that the transaction is in the best interests of the spouses or their estates. See Sections 3406 and 3417. A reference to Section 5125 of the Civil Code has been included in the introductory clause of Section 3401; former Section 1435.1 did not include this reference.

§ 3402. Right of competent spouse to manage and control community property not affected

3402. If one spouse is competent and the other is incompetent, the competent spouse has the management and control of community property, including the power of disposition, to the same extent as if the incompetent spouse were competent.

Comment. Section 3402 is based on the second sentence of former Section 1435.1. However, Section 3402 refers to "community property," not just community personal property as did the second sentence of former Section 1435.1. Section 3402 includes the phrase "to the same extent as if the incompetent spouse were competent" to reflect the fact that either spouse has the management and control of community property and that the power of disposition of certain types of community personal property is limited, as is the power of disposition of community real property. See Civil Code §§ 5125, 5127.

Article 2. Petition

§ 3405. Persons who may file petition

3405. (a) If only one spouse is incompetent, a petition for an order under this chapter may be filed by:

(1) The competent spouse without the necessity of having a conservator appointed for the incompetent spouse.

(2) The conservator of the estate of the incompetent spouse.

(b) If both spouses are incompetent, a petition for an order under this chapter may be filed by the conservator of the estate of either spouse.

Comment. Section 3405 continues the substance of former Section 1435.3. "Incompetent" is defined in Section 3400(a) to mean one who is "substantially unable to manage his or her own financial resources." The application of this chapter is therefore somewhat narrower than the application of provisions for appointment of a conservator of the estate since the latter apply also to a person who is "substantially unable to . . . resist fraud or undue influence." See Section 1801.

§ 3406. Verification and contents of petition

3406. The petition shall be verified and shall set forth:

- (a) The name, age, and residence of both spouses.
- (b) If one or both of the spouses have been adjudged incompetent, the fact of such adjudication; otherwise, the facts establishing incompetency.
- (c) If there is an existing conservator for either or both of the spouses, the name of the conservator, the county in which the conservatorship proceeding is pending, and the court number of the proceeding.
- (d) The names and addresses of the adult relatives of the incompetent person or persons within the second degree residing in this state, other than a spouse, if such names and addresses are known to the petitioner.
- (e) Whether the property described in the petition is community property or is subject to a homestead, or both.
- (f) The estimated value of the property.
- (g) A sufficient legal description of the property.
- (h) The terms and conditions of the proposed transaction, including the names of all parties thereto.
- (i) Facts, in addition to the incompetency of the spouse or spouses, that show that the order sought is for one or more of the following purposes:
 - (1) The advantage, benefit, or best interests of the spouses or their estates.
 - (2) The care and support of either spouse or of such persons as either of them may be legally obligated to support.
 - (3) To pay taxes, interest, or other encumbrances and charges for the protection and preservation of the homestead or the community property.

Comment. Section 3406 continues the substance of the portion of former Section 1435.4 that related to the contents of the petition.

§ 3407. Incompetent spouse patient in state institution

3407. If the alleged incompetent spouse is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Health:

(a) The petition shall set forth the name of the institution.

(b) A copy of the notice of the hearing and of the petition shall be mailed to the office of the Director of Health in Sacramento at least 10 days prior to the hearing.

(c) The director may appear and represent the interests of the incompetent spouse.

Comment. Section 3407 is the same in substance as former Section 1435.6. The provision for the notice of the hearing is contained in Section 3412.

§ 3408. Venue

3408. (a) If the proceeding affects real property or any lien or encumbrance on real property, the petition shall be filed in the superior court of the county in which the real property, or some part thereof, is situated.

(b) If the proceeding affects only personal property other than a lien or encumbrance on real property, the petition shall be filed in the superior court of the county in which the spouses or either of them reside or in which a conservator for either spouse has been appointed.

Comment. Section 3408 continues the substance of that part of the introductory portion of former Section 1435.4 that specified the place of filing the petition.

Article 3. Citation and Notice of Hearing

§ 3410. Setting petition for hearing

3410. Upon the filing of the petition, the clerk shall set the petition for hearing by the court.

Comment. Section 3410 is the same as the first portion of the first sentence of former Section 1435.5.

§ 3411. Issuance and service of citation

3411. (a) Except as provided in subdivision (b), the clerk shall issue a citation directed to the spouse or spouses not petitioning, setting forth the time and place of the hearing.

(b) No citation to a spouse need be issued if (1) there is a conservator of the estate of the spouse and (2) a copy of the notice of the hearing and of the petition is served on the conservator at least 10 days before the hearing in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

(c) The citation and a copy of the petition shall be served on the spouse or spouses not petitioning, whether within or without the state, in the manner provided by law for the service of summons in a civil action, other than by publication, at least 10 days before the hearing if served within the state or at least three weeks before the hearing if served without the state. If the citation and copy of the petition cannot with reasonable diligence be so served on a spouse, service of the citation may be made by publication pursuant to Section 415.50 of the Code of Civil Procedure, and no copy of the petition need then be served on the spouse.

Comment. Subdivision (a) of Section 3411 continues the substance of the last portion of the first sentence of the first paragraph of former Section 1435.5. Subdivision (b) continues the substance of the first sentence of the fourth paragraph of former Section 1435.5. Subdivision (c) is the same in substance as the third sentence of the first paragraph and the entire second paragraph of former Section 1435.5.

The provision for the notice of the hearing is contained in Section 3412.

§ 3412. Notice of hearing

3412. (a) Notice of the hearing on the petition shall be given as provided in this section.

(b) The notice of the hearing shall give the name or names of the incompetent persons, the name of the petitioner, and the purpose for which the order is sought, referring to the petition for further particulars, and notifying all interested persons to appear at the time and

place mentioned in the notice and to show cause, if any they have, why the order should not be made.

(c) The petitioner shall mail a copy of the notice and petition by prepaid, first-class mail at least 10 days before the hearing to the adult relatives named in the petition at their addresses set forth in the petition.

(d) If there is no conservator of the estate of the incompetent spouse to whom the citation is issued, or if the conservator cannot be served as provided in subdivision (b) of Section 3411, a copy of the notice and petition shall be served personally upon the public guardian or public administrator of the county in which the petition was filed, or upon his or her deputy or assistant, in the manner provided in Section 415.10, 415.20(a), or 415.30 of the Code of Civil Procedure, at least 10 days prior to the hearing.

Comment. Subdivision (a) of Section 3412 continues the substance of the second sentence of the first paragraph of former Section 1435.5. Subdivision (b) continues the substance of the third paragraph of former Section 1435.5. Subdivision (c) continues the substance of the fifth paragraph of former Section 1435.5. Subdivision (d) continues the substance of a portion of the first sentence of the sixth paragraph of former Section 1435.5.

For provisions concerning mailing of a copy of the notice and petition to the Director of Health when the alleged incompetent is a patient in a state institution, see Section 3407.

405/966

Article 4. Hearing and Order

§ 3415. Representation of incompetent spouse at hearing

3415. (a) A conservator who is served as provided in subdivision (b) of Section 3411, or a public guardian or public administrator who is served as provided in subdivision (d) of Section 3412, shall appear at the hearing and represent the interests of the alleged incompetent spouse.

(b) If the alleged incompetent spouse is not represented at the hearing by a conservator, by the public guardian or public administrator or a deputy or assistant, or by the Director of Health, the court may in its discretion appoint a guardian ad litem to represent the interests of the spouse.

(c) The court may fix a reasonable fee, to be paid out of the cash proceeds of the transaction or otherwise as the court directs, for all services rendered by the public guardian, public administrator, or guardian ad litem.

Comment. Subdivision (a) of Section 3415 continues the substance of the second sentence of the fourth paragraph, and a portion of the first sentence of the sixth paragraph, of former Section 1435.5.

Subdivision (b) continues the substance of a portion of the second paragraph of former Section 1435.7. For provisions concerning representation of a patient in a state institution by the Director of Health, see Section 3407.

Subdivision (c) continues the substance of the second sentence of the sixth paragraph of former Section 1435.5 and a portion of the second paragraph of former Section 1435.7.

405/965

§ 3416. Presence of incompetent spouse at hearing

3416. (a) If a spouse alleged in the petition to be incompetent has not been so found in proceedings under this chapter or under the Uniform Veterans' Guardianship Act, Part 5 (commencing with Section 2900), and has not been determined to lack legal capacity as provided in Section 1831, or has been restored to capacity as provided in this code, the spouse, if able to attend, shall be produced at the hearing.

(b) If the spouse is not able to attend because of mental or physical condition, the affidavit or certificate of a duly licensed physician, surgeon, or other medical practitioner, or the certificate of the medical superintendent or acting medical superintendent of a state hospital in this state in which such spouse is a patient, is prima facie evidence of the facts therein stated as to the inability of the spouse to attend.

Comment. Section 3416 continues the substance of the first paragraph of former Section 1435.7.

405/958

§ 3417. Order

3417. (a) If it appears to the court that the property is the homestead or community property of the spouses, and that one or both of the spouses are then incompetent or have been so found under this chapter or under the Uniform Veterans' Guardianship Act, Part 5 (commencing

with Section 2900), or have been determined to lack legal capacity as provided in Section 1831, and have not been restored to capacity, the court shall so adjudge.

(b) If it further appears to the court that the petition should be granted, the court may then so order and may authorize the petitioner to do and perform all acts and to execute and deliver all papers, documents, and instruments necessary to effectuate the order.

Comment. Section 3417 continues the substance of former Section 1435.8.

405/976

§ 3418. Vacation of order; authorization for other sale or encumbrance

3418. (a) If any party to the transaction other than the petitioner neglects or refuses to consummate a transaction which has been authorized by the court under this chapter, the court may vacate its order authorizing the transaction after such notice to the parties to the transaction as the court on application of the petitioner shall direct.

(b) If the original order provided for the sale or encumbrance of property, the petitioner may by verified supplemental petition apply to the court for an order authorizing any other sale or encumbrance to the advantage, benefit, or best interests of the spouses or their estates. The supplemental petition shall be served and mailed as provided in Article 3 (commencing with Section 3410) except that no further citation need be issued. If it appears to the court that such other sale or encumbrance is to the advantage, benefit, or best interests of the spouses and that the supplemental petition should be granted, the court may so order and may authorize the petitioner to do and perform acts and to execute and deliver all papers, documents, and instruments necessary to effectuate the order.

Comment. Section 3418 continues the substance of former Section 1435.13. The section is revised somewhat for clarity and to parallel subdivision (b) of Section 3417.

Article 5. Bond§ 3420. Requirement of bond

3420. Unless the court for cause shown dispenses with the necessity of a bond, the court shall require the petitioner to give a bond conditioned on the duty of the petitioner to account for and apply the proceeds of the transaction to be received by the petitioner only as the court may by its original or any subsequent order direct.

Comment. Section 3420 is the same in substance as the first sentence and a portion of the last sentence of former Section 1435.9.

405/956

§ 3421. Sureties

3421. The surety or sureties on the bond shall be either of the following:

- (a) An authorized surety company.
- (b) Two or more persons to be approved by the court.

Comment. Section 3421 is the same in substance as a portion of the second sentence of former Section 1435.9. See also Code Civ. Proc. § 1056 (one surety will suffice if a "corporate or reciprocal insurer" authorized by Insurance Commissioner to write surety insurance).

405/935

§ 3422. Amount of bond

3422. Unless the court for cause shown determines that the bond may be in a lesser amount, the bond shall be in an amount equal to or greater than the following:

- (a) If the surety is an authorized surety company, the value of the personal property, including cash and any note or notes, to be received by the petitioner as determined by the court.
- (b) If the sureties do not include an authorized surety company, twice the value of the personal property, including cash and any note or notes, to be received by the petitioner as determined by the court.

Comment. Section 3422 is the same in substance as portions of the second and fourth sentences of former Section 1435.9.

§ 3423. Application of certain provisions

3423. The provisions of Sections 2330, 2335, 2336, and 2337 relating to guardians and conservators and their bonds apply to petitioners and their bonds under the provisions of this chapter.

Comment. Section 3423 continues the substance of the third sentence of former Section 1435.9.

Article 6. Effect of Order§ 3425. Execution and delivery of documents; recording order; sales on credit

3425. (a) The petitioner shall, upon receipt of the consideration therefor, execute, acknowledge, and deliver any necessary instruments or documents as directed by the court, setting forth therein that they are made by authority of the order.

(b) The petitioner shall cause a certified copy of the order to be recorded in the office of the recorder of each county in which is situated any land affected by the order or upon which there is a lien or encumbrance affected by the order.

(c) If a sale is made upon a credit in pursuance of the order, the petitioner shall take the note or notes of the person to whom the sale is made for the amount of the unpaid balance of the purchase money, with such security for the payment thereof as the court shall by order approve. Such note or notes shall be made payable to the petitioner or, if the petition was made as conservator, to the petitioner as conservator.

Comment. Subdivisions (a) and (b) of Section 3425 continue the substance of the first sentence of former Section 1435.10. Subdivision (c) continues the substance of the first paragraph of former Section 1435.12.

§ 3426. Validity of conveyance

3426. Any sale, conveyance, assignment, transfer, exchange, encumbrance, pledge, mortgage, deed of trust, lease, dedication, release, or relinquishment, and any instrument or document, made in pursuance of

the court's order is as valid and effectual as if the property affected thereby was the sole and absolute property of the person making it.

Comment. Section 3426 continues the substance of the second sentence of former Section 1435.10. The wording of the section has been revised to conform to Section 3401.

100/972

§ 3427. Liability of conservator

3427. Notes, encumbrances, pledges, mortgages, leases, or deeds of trust, executed as provided in this article by a petitioning conservator as such, create no personal liability against the conservator so executing unless the conservator is one of the spouses, and then only to the extent that personal liability would have resulted had both spouses been competent and joined in the execution.

Comment. Section 3427 continues the substance of former Section 1435.11.

100/973

§ 3428. Proceeds of community and homestead property

3428. (a) The proceeds, rents, issues, and profits of community property dealt with or disposed of under the provisions of this chapter, and any property taken in exchange therefor or acquired with such proceeds, is community property.

(b) The proceeds of homestead property sold under the provisions of this chapter, and any property taken in exchange for homestead property under the provisions of this chapter, or acquired with such proceeds, shall enjoy the exemptions prescribed in Sections 1265 and 1265a of the Civil Code, provided that in the case of property so taken or acquired the petitioner with leave of court makes the declaration required by Section 1265a of the Civil Code.

Comment. Section 3428 continues the substance of the last paragraph of former Section 1435.12 and the second sentence of the last paragraph of subdivision (c) of former Section 1435.16. The protection of proceeds of homestead property in subdivision (b) is not conditioned on court approval of the transaction (so conditioned under former Section 1435.12 but not under former Section 1435.16). See also Section 3448(b) (court approval of reinvestment under Article 8).

Article 7. Restoration to Capacity

§ 3430. Retention of jurisdiction to restore capacity

3430. In proceedings brought under this chapter, the court shall retain jurisdiction to hear and determine any petition for restoration to capacity as provided in this article.

Comment. Section 3430 continues the substance of the third sentence of former Section 1435.14.

§ 3431. Petition for restoration to capacity

3431. (a) Any person who has been found to be incompetent in proceedings under this chapter and is not then the subject of pending proceedings under Part 3 (commencing with Section 1800), or any relative or friend of such person, may at any time apply by a verified petition to have the fact of the person's restoration to capacity judicially determined.

(b) The petition shall be filed in the proceeding brought under this chapter and shall allege that the person is then competent.

Comment. Section 3431 continues the substance of the first two sentences of former Section 1435.14.

§ 3432. Rules for proceedings for restoration to capacity

3432. Proceedings on a petition for restoration to capacity brought under this article shall be as prescribed in Chapter 3 (commencing with Section 1860) of Part 3.

Comment. Section 3432 continues the substance of the fourth sentence of former Section 1435.14. The reference to former Sections 1471 and 1472 (guardianship) is replaced by a reference to the comparable provision of Part 3 (conservatorship).

§ 3433. No effect on acts done under prior order

3433. Any adjudication of restoration to capacity shall not prejudice or affect anything theretofore lawfully done pursuant to and

in accordance with any prior order made under the provisions of this chapter.

Comment. Section 3433 is the same as the fifth sentence of former Section 1435.14.

30/698

Article 8. Alternate Procedure Where Existing
Conservator of the Estate

§ 3440. Definitions

3440. As used in this article:

(a) "Competent spouse" means a spouse who has the legal capacity to contract and for whom no conservator of the estate has been appointed.

(b) "Conservatee spouse" means a spouse for whom a conservator of the estate has been appointed.

Comment. Section 3440 is new.

30/697

§ 3441. Article provides alternative procedure

3441. The provisions of this article may be used as an alternative to the procedure prescribed elsewhere in this chapter.

Comment. Section 3441 continues the substance of the first clause of former Section 1435.15.

30/696

§ 3442. Powers of court

3442. If there is an existing conservator of the respective estates of one or both of the spouses, the court in which the conservatorship proceeding is pending may, for the purpose of administration under this article, do all of the following:

(a) Determine the validity of any homestead and whether property is community property or the separate property of one or both of the spouses.

(b) After such determination, authorize the conservator to deal with or dispose of such property in the manner provided in this chapter or to join in any transaction or to concur therein when required by this article.

Comment. Section 3442 is the same in substance as former Section 1435.15. Court approval of action by the conservator is required in certain cases. See Section 3443.

30/695

§ 3443. Court approval required for action by conservator

3443. When a conservator is required by this article to join in any transaction or to concur therein, an order of court approving the same must first be obtained under Section [2504].

Comment. Section 3443 restates the requirement of court approval contained in subdivisions (a), (b), and (c) of former Section 1435.16, and in subdivisions (b) and (c) of former Section 1435.17.

30/693

§ 3444. Management, control, and disposition of community property where conservator of estate of one spouse

3444. Subject to Section 3447, if one spouse is competent and the other has a conservator of the estate:

(a) The competent spouse has the management and control, including the power of disposition, of community property, whether or not subject to a homestead, to the same extent as if the other spouse were competent.

(b) If the competent spouse consents thereto in writing, the conservator of the estate of the other spouse may deal with and dispose of community property, whether or not subject to a homestead, as part of the conservatorship estate.

Comment. Subdivision (a) of Section 3444 is based on the second sentence of former Section 1435.1. See also Section 3402.

Subdivision (b) is based on a portion of the first sentence of subdivision (a) of former Section 1435.16, the first sentence of subdivision (a) of, and a portion of subdivision (b) of, former Section 1435.17. The former provisions are revised to conform to Sections 5125 and 5127 of the Civil Code, which give either spouse the management and control of community property. In the case of community real property, both the conservator and the competent spouse must join in executing any instrument where both spouses would be required to join by Section 5127 of the Civil Code. See Section 3447. See also the Comment to Section 3402. Joinder by the conservator must first be authorized by order of court. See Section 3443.

§ 3445. Management, control, and disposition of separate property
subject to homestead where conservator of estate
of one spouse

3445. Subject to Section 3447, if one spouse is competent and the other spouse has a conservator of the estate:

(a) Either the competent spouse or, if the competent spouse consents in writing, the conservator may deal with and dispose of separate property of the conservatee spouse which is subject to a homestead other than a married person's separate homestead.

(b) The competent spouse may deal with and dispose of his or her own separate property which is subject to a homestead.

Comment. Section 3445 is based on portions of subdivisions (a) and (b) of former Section 1435.16. The former provisions have been revised to adopt a uniform rule--applicable both to husbands and wives--that consent of the competent spouse is required if the homestead is to be part of the conservatorship estate, whether such spouse is the husband or the wife. In addition, the rule of Civil Code Section 1242 is adopted that no consent is required where the homestead is a married person's separate homestead.

Subdivision (a) of Section 3445 makes clear that, where the competent spouse withholds consent to the conservator's dealing with separate property of the conservatee spouse which is subject to a homestead, the competent spouse has the power to deal with the property.

The introductory clause (which refers to Section 3447) makes clear that, except in the case of a married person's separate homestead, both the conservator and the competent spouse must join in any conveyance or encumbrance of the homestead property, whether the separate property of the conservatee spouse or the competent spouse. Such action by the conservator must have the prior approval of the court. See Section 3443.

Where the spouse has claimed a married person's separate homestead (Civil Code § 1300), that spouse or that spouse's conservator may deal with the property without the joinder or consent of the other spouse. See Civil Code § 1242; 5 B. Witkin, California Procedure Enforcement of Judgment § 34(b)(2), at 3415 (2d ed. 1971).

§ 3446. Management and disposition of community and homestead
property where conservator of estate of both
spouses

3446. When there are conservators of the estates of both spouses and both conservators concur in the transaction:

(a) An undivided one-half interest in the community property, whether or not subject to a homestead, may be included in, dealt with,

and disposed of as a part of the conservatorship estate of the husband, and an undivided one-half interest therein may be included in, dealt with, and disposed of as a part of the conservatorship estate of the wife.

(b) If property subject to a homestead, other than a married person's separate homestead, is the separate property of both spouses as joint tenants, tenants in common, or otherwise, the respective interests of each may be included in, dealt with, and disposed of as a part of their respective conservatorship estates.

Comment. Section 3446 is based on the first paragraph of subdivision (c) of former Section 1435.16 and the first paragraph of subdivision (c) of former Section 1435.17. The former provisions have been revised to make the rule with respect to community property subject to a homestead the same as the rule for community property not subject to a homestead, i.e., one-half in each conservatorship.

The concurrence required of both conservators by the introductory clause of Section 3446 is subject to prior approval by the court. Section 3443. Joinder of both conservators is required for certain transactions. See Section 3447.

30/691

§ 3447. Joinder required in certain transactions

3447. Whenever both spouses, if competent, would be required to join in any transaction under Section 1242, 1243, or 5127 of the Civil Code, both the conservator and the competent spouse, or both conservators, must join in such transaction for it to be effective under this article.

Comment. Section 3447 is based on portions of subdivisions (a), (b), and (c) of former Section 1435.16 and portions of subdivisions (a) and (b) of former Section 1435.17. The former provisions have been revised so that joinder is not required under this article in situations where joinder would not be required under Sections 1242, 1243, or 5127 of the Civil Code, e.g., in the case of separate property subject to a married person's separate homestead.

Before a conservator may join in a transaction referred to in this section, prior approval of the court must be obtained. Section 3443.

§ 3448. Character of property; reinvestment of proceeds

3448. (a) Proceedings under this article shall not alter the character of the property or of the proceeds, rents, issues, or profits thereof, or the rights of the respective spouses therein except with respect to the procedure for the management and disposition thereof as expressly provided in this article.

(b) The court, on petition of the conservator or the competent spouse, with such notice to the other as the court shall prescribe, may authorize the investment of the proceeds of homestead property or property received in exchange therefor in another home for the spouses to be held by the same tenure as the homestead property so sold or exchanged.

Comment. Section 3448 continues the substance of the last paragraph of subdivision (c) of former Section 1435.17 and the first sentence of the last paragraph of subdivision (c) of former Section 1435.16. Section 3448 applies both to community and to homestead property.

Under Section 3428, the proceeds of community property retain their community character, and the proceeds of homestead property may remain protected if proper steps are taken.

CHAPTER 6. PERSONAL PROPERTY OF ABSENTEES

Comment. Chapter 6 (commencing with Section 3500) continues former Chapter 2.5 (commencing with Section 1776) of Division 5, enacted as the P.O.W.-M.I.A. Family Relief Act of 1972. See 1972 Cal. Stats., Ch. 988, § 10. For related provisions, see Chapter 3 (commencing with Section 295) of Division 2a (administration of estates of absentees).

§ 3500. Definitions

3500. As used in this chapter:

(a) "Absentee" means either of the following:

(1) A member of a uniform service covered by United States Code, Title 37, Chapter 10, who is determined thereunder by the secretary concerned or the delegate of the secretary to be in missing status, as missing status is defined therein.

(2) An employee of the United States government or an agency thereof covered by United States Code, Title 5, Chapter 55, Subchapter VII, who is determined thereunder by the head of the department or agency concerned or by the delegate of the head to be in missing status as missing status is defined therein.

(b) "Eligible spouse" means the spouse of an absentee who has not commenced an action or proceeding for judicial or legal separation, divorce, annulment, adjudication of nullity, or dissolution of the marriage of the spouse and the absentee.

(c) "Family of an absentee" means an eligible spouse, if any, or if no eligible spouse, the child or children of an absentee, equally, or if no child or children, the parent or parents of an absentee, equally, and the guardian of the estate or conservator of the estate of any person bearing such relationship to the absentee.

(d) "Secretary concerned" has the same meaning as in 37 United States Code, Section 101.

Comment. Section 300 continues the substance of former Section 1776.

§ 3501. Setting aside personal property of absentee

3501. Upon petition as provided in this chapter, the court may set aside to the family of an absentee personal property of the absentee situated in this state for the purpose of managing, controlling, encumbering, selling, or conveying, or otherwise engaging in any transaction with respect to the property, if the court determines that to do so will be in the best interest of the absentee, including the interest of the absentee in providing for shelter, food, health care, education, transportation, or the maintenance of a reasonable and adequate standard of living for the family of the absentee. The absentee's interest in the property set aside shall not exceed five thousand dollars (\$5,000).

Comment. Section 3501 continues the substance of former Section 1777 but makes clear that the court may set aside property of the absentee in order not only to avoid "prejudice to the estates of such missing persons" but also to avoid "difficulty and hardship to their families [caused] by their inability to consummate transactions, such as to sell property, withdraw funds, cash checks, transfer securities and the like, upon which the families are dependent." 1972 Cal. Stats., Ch. 988, § 9. Cf. Section 295.1 (administration of estate of absentee); C. Stephenson & G. Cole, Supplement to 1 California Decedent Estate Administration § 3.31, at 36 (Cal. Cont. Ed. Bar 1976) (intended to provide for support of dependents of absentee).

§ 3502. Who may petition

3502. A petition that personal property of an absentee be set aside as provided in this chapter may be filed by any of the following persons:

- (a) A person in whose favor the personal property of the absentee may be set aside.
- (b) A person to whom the absentee has issued a general power of attorney while serving in the armed forces of the United States or while an employee of any agency or department of the United States, provided the power of attorney was valid and effective at the time issued, regardless whether it has expired or terminated.

Comment. Section 3502 continues the substance of a portion of the first sentence of former Section 1778.

§ 3503. Contents of petition

3503. (a) The petition shall be verified and contain all of the following:

- (1) A statement that the petition is filed under this chapter.
- (2) In its caption, the last known military rank or grade and the social security account number of the absentee.
- (3) A specific description and estimate of the value of all of the absentee's property, wherever situated (including all sums due the absentee from the United States).
- (4) A designation of the property to be set aside, and the facts establishing that setting aside the property is necessary and in the best interest of the absentee.
- (5) If the property is to be set aside for the benefit of the spouse of the absentee, an allegation that the spouse is an eligible spouse.
- (6) So far as known to the petitioner, the names and residences of all persons comprising the family of the absentee, and an allegation whether a guardian of the estate or a conservator of the estate of any member of the family of the absentee has been appointed.

(b) There shall be attached to the petition a certificate complying with Section 1283 of the Evidence Code showing the determination of the secretary of the military department or the head of the department or agency concerned or the delegate of the secretary or head that the absentee is in missing status. The certificate shall be received as evidence of that fact and the court shall not determine the status of the absentee inconsistent with the status shown in the certificate.

Comment. Section 3503 continues the substance of former Section 1778, with the exception of the statement of persons entitled to file the petition, the requirement that the court find that the spouse is an eligible spouse and the requirement that the petition contain a showing that this chapter is applicable and a prayer for relief. The statement of persons entitled to file the petition is continued in Section 3502. The requirement that the court find that the spouse is an eligible spouse is continued in Section 3505. The terms "eligible spouse" and "family of an absentee" are defined in Section 3500. The requirement that the petition contain a showing that the chapter is applicable has been replaced by a requirement that the petition include a statement that it is filed under this chapter; the detailed listing in Section 3503 of the required contents of the petition will contain the information necessary to show that the chapter is applicable. The requirement of a prayer for relief has been omitted as unnecessary.

§ 3504. Notice of hearing

3504. (a) Upon the filing of the petition, the court shall set the petition for hearing.

(b) Notice of the nature of the proceedings and the time and place of the hearing shall be given by the petitioner at least 15 days before the hearing date by all of the following means:

(1) By mail, together with a copy of the petition, to all persons comprising the family of the absentee.

(2) By delivery by a method that would be sufficient for service of summons in a civil action, together with a copy of the petition, to the secretary concerned or to the head of the United States department or agency concerned.

(3) By publication pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proceedings will be held.

(c) Whenever notice to an officer or agency of this state or of the United States would be required under Section 1823 upon petition for appointment of a conservator, like notice shall be given of the petition under this chapter.

Comment. Section 3504 continues the substance of former Section 1779, with the exception of the last sentence, which is continued in Section 3505. The reference to appointment of a guardian of an incompetent person in subdivision (c) has been replaced by a reference to appointment of a conservator and a specific reference to the relevant section of the conservatorship statute has been added. The terms "family of an absentee" and "absentee" are defined in Section 3500.

§ 3505. Hearing and order

3505. (a) Upon the hearing of the petition, any officer or agency of this state or the United States or the authorized delegate of the officer or agency, or any relative or friend of the absentee, may appear and oppose the petition.

(b) If the court determines that the allegations of the petition are true and correct, the court may order set aside to the family of the absentee personal property of the absentee situated in California (excluding any sums due the absentee from the United States) in which the

absentee's interest does not exceed five thousand dollars (\$5,000). The property set aside shall be specified in the order.

(c) No bond shall be required of any person to whom property of the absentee has been set aside by the court pursuant to this chapter.

Comment. Subdivision (a) of Section 3505 continues the substance of the last sentence of former Section 1779. Subdivisions (b) and (c) continue the substance of former Section 1780.

406/188

§ 3506. Jurisdiction of court not affected by size of absentee's estate

3506. A determination by the court that the value of all of the absentee's property, wherever situated, exceeds five thousand dollars (\$5,000) or that the absentee owns or has an interest in real property, wherever situated, does not deprive the court of jurisdiction to set aside to the family of the absentee personal property of the absentee situated in California in which the absentee's interest does not exceed five thousand dollars (\$5,000), and the court shall order set aside such personal property to the family of the absentee if the court finds that all of the other provisions of this chapter have been complied with. The property set aside shall be specified in the order.

Comment. Section 3506 continues the substance of former Section 1781. Compare Section 295.1 (administration of estate of absentee where estate consists of no real property and is less than \$5,000).

406/201

§ 3507. Joint tenancy property

3507. For the purposes of this chapter, any property or interest therein or lien thereon that the absentee holds as joint tenant shall be included in determining the property of the absentee and its value. The joint tenancy interest may be set aside to the family of the absentee as provided in this chapter but may only be set aside to a member of the absentee's family who was a joint tenant with the absentee in the property.

Comment. Section 3507 continues the substance of former Section 1782.

§ 3508. Accounting

3508. (a) Within six months after the absentee has returned to the controllable jurisdiction of the military department or civilian agency or department concerned, or within six months after the determination of death of the absentee by the secretary concerned or the head of the department or agency concerned or the delegate of the secretary or head, the former absentee or the personal representative of the deceased absentee may, by motion in the same proceeding, require the person or persons to whom the property of the absentee was set aside to account for the property and the proceeds, if any. The time of return to the controllable jurisdiction of the military department or civilian department or agency concerned or the determination of the time of death of the absentee shall be determined by the court under 37 United States Code, Section 556 or 5 United States Code, Section 5566. An official written report or record of the military department or civilian department or agency that the absentee has returned to its controllable jurisdiction or is deceased shall be received as evidence of that fact.

(b) This section does not in any manner derogate the finality and conclusiveness of any order, judgment, or decree previously entered in the proceeding.

Comment. Section 3508 continues the substance of former Section 1783.

CHAPTER 7. REMOVAL OF PROPERTY OF NONRESIDENT

§ 3600. Petition for removal

3600. (a) If a nonresident has a duly appointed, qualified, and acting guardian, conservator, committee, or comparable fiduciary in the place of residence and if no proceeding for guardianship or conservatorship of the nonresident is pending or contemplated in this state, the nonresident fiduciary may petition to have property owned by the nonresident removed to the place of residence.

(b) The petition for removal of property of the nonresident shall be filed in the superior court of the county in which the nonresident is or has been temporarily present or in which the property of the nonresident, or the principal part thereof, is situated.

Comment. Section 3600 continues the substance of portions of former Section 1572. The reference to the "state of residence" has been changed to "place of residence" since the place of residence may be a foreign nation as well as a foreign state.

§ 3601. Notice

3601. (a) The petition shall be made upon 10 days' notice, by mail or personal delivery, to all of the following persons:

(1) The executor or administrator or other person in whose possession the property may be.

(2) Persons in this state, known to the petitioner, who are obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident.

(b) The petition shall be made upon such additional notice, if any, as the court may order.

Comment. Section 3601 continues the substance of the first sentence of former Section 1573.

§ 3602. Certificate of nonresident fiduciary

3602. The nonresident fiduciary shall produce and file one of the following certificates:

(a) A certificate that the fiduciary is entitled, by the laws of the place of appointment of the fiduciary, to the possession of the estate of the nonresident. The certificate shall be under the hand of the clerk and seal of the court from which the appointment of the fiduciary was derived and shall show a transcript of the record of appointment and that the fiduciary has entered upon the discharge of the duties of the fiduciary.

(b) A certificate that the fiduciary is entitled, by the laws of the place of residence, to custody of the estate of the nonresident, without the appointment of any court. The certificate shall be under the hand of the clerk and seal of either (1) the court in the place of residence having jurisdiction of estates of persons that have a guardian, conservator, committee, or comparable fiduciary or (2) the highest court in the place of residence. In the case of a foreign country, the certificate shall be attested by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States.

Comment. Section 3602 continues the substance of the last sentence of former Section 1573. The persons authorized to attest the certificate in the case of a foreign country are expanded in conformity with Evidence Code Section 1530 (statement certifying genuineness of attestation to accuracy of copy of a writing).

21996

§ 3603. Order for removal

3603. (a) Upon the petition, if the court determines that removal of the property will not conflict with any restriction or limitation on the property or impair the right of the nonresident to the property or the rights of creditors or claimants in this state, the court shall make an order granting to the nonresident fiduciary leave to remove the property of the nonresident to the place of residence unless good cause to the contrary is shown.

(b) The order is authority to the fiduciary to sue for and receive the property in his or her own name for the use and benefit of the nonresident.

(c) The order is a discharge of the executor, administrator, or other person in whose possession the property may be at the time the order is made and of the person obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident, upon filing with the clerk of the court the receipt of the nonresident fiduciary for the property and transmitting a duplicate receipt, or a certified copy of the receipt, to the court, if any, from which the appointment of the nonresident fiduciary was derived.

Comment. Section 3603 continues the substance of former Section 1574 and a portion of former Section 1572.