

Memorandum 78-13

Subject: Study F-30.300 - Guardianship-Conservatorship Revision

The staff had hoped to be able to produce a draft of the entire tentative recommendation of the guardianship-conservatorship revision for the March meeting. The task of producing and typing the entire draft proved to be beyond our capabilities.

We have produced, however, the entire new guardianship-conservatorship statute. We attach to this memorandum the portions of the statute not previously distributed as attachments to various memorandums dealing with particular subjects. We will not be considering at the March meeting the following statutory provisions that will be included in this recommendation: Part 5 (Uniform Veterans' Guardianship Act), Part 6 (Homesteads and Community Property of Incompetent Persons) and Part 7 (Miscellaneous Protective Provisions). All of the staff and Mr. Elmore's resources have been devoted to the material produced for the March meeting, and we have not had time to devote to further work on the homestead and community property of incompetent persons portion of the statute. We expect to present a revised draft on the homestead-community property at the April meeting. We also need to produce the preliminary part containing a narrative description of our proposals and to draft the conforming revisions to the various sections in other codes.

The staff believes that we should send the basic statute (to be reviewed at the March meeting) to the State Bar Subcommittee for review after the March meeting. We will make the changes needed to reflect Commission decisions at the March meeting before we send the material to the State Bar Subcommittee. We also believe that it would be useful to send the State Bar Subcommittee a fairly good summary statement that would be the equivalent of the preliminary portion of the tentative recommendation. We would like to do this with the warning that it is prepared by the staff as a rough working draft and has not been reviewed by and does not necessarily reflect the views of the Commission. We believe that the general overview that this background statement would provide the subcommittee members would greatly aid them in their review

of the draft statute. We would also send the same material to the Committee of the California Land Title Association that has been specially appointed to work with us on this project and to other interested groups, such as banks.

We believe that it will be a substantial task to put together and check the various portions of the statute we will be considering at the March meeting, to correct any technical deficiencies, to make revisions to reflect Commission decisions, and to prepare the background overview statement. We will do it as soon as possible after the March meeting.

The staff also suggests that we request that the State Bar Subcommittee provide written comments (reflecting the views of the subcommittee rather than the individual members) to the Commission by June 15 and that we schedule this matter for discussion and resolution at our July 6-8 meeting and that we invite the members of the State Bar Subcommittee to sit with us at that meeting.

The recommendation would be approved for printing at the September meeting and for submission to the 1979 Legislature. This goal would require that the staff produce the remaining portions of the recommendation and that the Commission consider those portions on a schedule that will permit us to meet this date.

The attached portions of the statute are presented for review and approval at the March meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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

An act 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:

Tentatively Approved - Sept. 1977

Probate Code §§ 1400-1700 (repealed). Guardian and ward

SECTION 1. 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 501 (1978).

Tentatively Approved - Sept. 1977

Probate Code §§ 1701-2207 (repealed). Conservatorship

SEC. 2. 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 501 (1978).

Tentatively Approved - Sept. 1977

Probate Code §§ 1400-3603 (added). Guardianship, conservatorship, and other protective proceedings

SEC. 3. 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. DEFINITIONS

Tentatively Approved - Sept. 1977

§ 1400. Application of definitions

1400. Unless the context otherwise requires, the words and phrases defined in this chapter govern the construction of this division.

Comment. Section 1400 is new.

Tentatively Approved - Sept. 1977
Technical Staff Revision - March 1978

§ 1403. Absentee

1403. "Absentee" means either of the following:

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

Comment. Section 1403 continues the definition of "absentee" contained in former Section 1751.5. "Secretary concerned" is defined in Section 1430.

Note. The term "absentee" is used in Sections 1803, 1813, 1840-1844, 1864, and 3500-3508. See also Section 1479.

18/481

Tentatively Approved - Sept. 1977

§ 1406. Account in an insured savings and loan association

1406. "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 1406 continues the substance of the fourth paragraph of former Section 1510.

Note. The phrase "account in an insured savings and loan association" is used in Sections ____.

29185

Tentatively Approved - Jan. 1978

§ 1412. Conservator of the estate; conservatorship of the estate

1412. "Conservator of the estate" includes a conservator of the person and estate and "conservatorship of the estate" includes conservatorship of the person and estate and as so used the terms refer to those aspects of a conservatorship of the person and estate which relate to the estate.

Comment. Section 1412 is new and avoids the need, when referring to a conservator of the estate, to refer to a conservator of the "estate or of the person and estate" as was sometimes done under prior law. See, e.g., former Sections 1802, 1852, 1853, 1901, 2204.

Tentatively Approved - Jan. 1978

§ 1415. Conservator of the person; conservatorship of the person

1415. "Conservator of the person" includes a conservator of the person and estate and "conservatorship of the person" includes conservatorship of the person and estate and as so used the terms refer to those aspects of a conservatorship of the person and estate which relate to the person.

Comment. Section 1415 is new. See the Comment to Section 1412. The definitions provided in Section 1415 do not apply if the context otherwise requires. See Section 1400. For an example of where the context otherwise requires, see Section 2322.

Tentatively Approved - Sept. 1977

§ 1418. Court

1418. In the case of a guardianship or conservatorship proceeding, "court" means the court in which the guardianship or conservatorship proceeding is pending.

Comment. Section 1418 is new. This definition does not apply where the context otherwise requires. See Section 1400. For examples of where the context otherwise requires, see Sections 1452, 1512, 2215, 2803, and 2903.

§ 1421. [Reserved]

29186

Tentatively Approved - Jan. 1978

§ 1424. Guardian of the estate; guardianship of the estate

1424. "Guardian of the estate" includes a guardian of the person and estate and "guardianship of the estate" includes guardianship of the person and estate and when so used the terms refer to those aspects of a guardianship of the person and estate which relate to the estate.

Comment. Section 1424 is new. See the Comment to Section 1412. and 1415.

Tentatively Approved - Jan. 1978

§ 1427. Guardian of the person; guardianship of the person

1427. "Guardian of the person" includes a guardian of the person and estate and "guardianship of the person" includes guardianship of the person and estate and when so used the terms refer to those aspects of a guardianship of the person and estate which relate to the person.

Comment. Section 1427 is new. See the Comments to Sections 1412 and 1415.

Tentatively Approved - Sept. 1977

§ 1430. Secretary concerned

1430. "Secretary concerned" has the same meaning as defined in United States Code, Title 37, Section 101.

Comment. Section 1430 continues the substance of subdivision (b) of former Section 1751.5.

Note. The phrase "secretary concerned" is used in Section 1403.

Tentatively Approved - Sept. 1977

§ 1433. Shares of an insured credit union

1433. "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 1433 continues the substance of the fifth paragraph of former Section 1510.

Note. The phrase "shares of an insured credit union" is used in Sections ____.

26962

Tentatively Approved - Sept. 1977

§ 1436. Single-premium deferred annuity

1436. "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 1436 continues the substance of the sixth paragraph of former Section 1510.

Tentatively Approved - Sept. 1977

§ 1439. Trust company

1439. "Trust company" means a trust company authorized to transact a trust business in this state.

Comment. Section 1439 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

Tentatively Approved - Sept. 1977

§ 1450. Petitions, accounts, and inventories and appraisements to be verified

1450. Except as otherwise specifically provided, a petition, application, account, or inventory and appraisal filed under this division shall be verified.

Comment. Section 1450 is new. It establishes a general requirement that supersedes various provisions of the former guardianship and conservatorship statutes that required that petitions, applications, accounts, and inventories and appraisements be verified. For an exception to Section 1450, see Section 2643.

29188

Tentatively Approved - Sept. 1977

§ 1451. Clerk to set matters for hearing

1451. When a petition or other paper which requires a hearing is filed with the clerk of the court pursuant to this division, the clerk shall set the matter for hearing.

Comment. Section 1451 is based on a portion of Section 1200, which was made applicable to guardianship and conservatorship proceedings by former Sections 1606 and 1702. Section 1451 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 1827, 1863.

21978

Staff Draft - March 1978

§ 1452. Trial by jury

1452. Except as otherwise specifically provided, there is no right to trial by jury in proceedings under this division.

Comment. Section 1452 is new and eliminates the ambiguity under former law as to whether there was a right to jury trial when the statute was silent on the question. See, e.g., *Budde v. Superior Court*, 97 Cal. App.2d 615, 218 P.2d 103 (1950) (guardianship of incompetent adult); *W. Johnstone & G. Zillgitt, California Conservatorships* § 2.26, at 44 (Cal. Cont. Ed. Bar 1968). The effect of Section 1452 is to narrow

somewhat the situations in which the right to jury trial will exist in conservatorship proceedings. As under prior law, the right to jury trial is continued in a hearing on a petition for appointment of a conservator (see Section 1827) or for termination of conservatorship (see Section 1863). See also Section 2917 (Uniform Veterans' Guardianship Act). However, unlike former law, there is no longer a right to jury trial on a petition for removal of the conservator (see former Section 1951; W. Johnstone & G. Zillgitt, supra § 7.8, at 264) or on a petition to transfer the conservatorship proceeding to another county (see W. Johnstone & G. Zillgitt, supra § 2.26, at 44).

Section [3851] grants a right to trial by jury on the issue of alleged incompetency in a proceeding for court approval of a single transaction affecting community or homestead property. The former statute did not contain a comparable provision.

Tentatively Approved - Sept. 1977

§ 1453. Guardian ad litem

1453. The provisions of this division do not limit the power of any 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.

Tentatively Approved - Jan. 1978

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 shall be given at least 10 days before the day of the hearing as provided in this section.

(b) 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) 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 ward if over the age of 12, or the conservatee, unless the court for good cause dispenses with such notice.

(3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse, unless the court for good cause dispenses with such notice.

(d) Nothing in this section affects requirements for notice to a person who has requested special notice pursuant to Chapter 9 (commencing with Section 2700) of Part 4.

Comment. Section 1460 is based on portions of Section 1200 which under prior law was incorporated and made applicable to guardianship and conservatorship proceedings by various sections. Absent a request for special notice, the notice requirement under prior law apparently required notice only to the guardian or conservator. Under Section 1460, notice also is required to be given to the ward (if over the age of 12) or the conservatee and to the spouse of the ward or conservatee (if the ward or conservatee has a spouse) unless the court for good cause dispenses with such notice. Any interested person may receive notice of certain specified matters by filing and serving a request for special notice under Section 2700.

The provision in Section 1200 for mailing of notice to the county seat when a mailing address is not known is not carried over into

Section 1460; but, where the court determines that the notice otherwise required is insufficient under the particular circumstances, the court may require under subdivision (b) of Section 1462 that further or additional notice be given as the court requires.

The court may dispense with the notice required by paragraphs (2) and (3) of subdivision (c) where good cause is shown. This authority will permit the court to dispense with notice, for example, where the person specified to receive the notice is in such a mental or physical condition that giving the person notice would be useless or detrimental to the person or where the whereabouts of the person is unknown.

The court may for good cause shorten or lengthen the 10-day notice required by this section. Section 1462.

Subdivision (d) is included to make clear that the provisions of this section have no effect on the requirements for notice to a person who has requested special notice. Any notice required under Chapter 9 (commencing with Section 2700) of Part 4 is in addition to the notice required under this section. Thus, although the court may have dispensed with notice to the ward or conservatee under Section 1460, the ward or conservatee may still request special notice under Chapter 9 and is thereafter entitled to receive special notice. See Section 2700 and the Comment thereto.

Section 1460 does not deal with the effect of giving notice or the failure to receive notice. See Section 1464(b) and Comment thereto. Proof of the giving of notice shall be made at or before the hearing as provided in Section 1464.

Definitions

Court, § 1418

NOTE. THE COMMISSION PARTICULARLY SOLICITS COMMENTS ON THE ADVISABILITY OF CONTINUING THE POSTING REQUIREMENT SET FORTH IN SUBDIVISION (b) OF SECTION 1460.

404/991

Tentatively Approved - Jan. 1978

§ 1461. Notice to Director of Mental Health or Director of Developmental Services

1461. (a) As used in this section, "director" means:

(1) The Director of Mental Health when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Mental Health.

(2) The Director of Developmental Services when the hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Developmental Services.

(b) Except as provided in subdivision (c), 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 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 Mental Health or the State Department of Developmental Services.

(2) The petition, account, report, or other paper is filed under any one or more of the following provisions: Section 1510, 1820, 1861, 2211, 2503, or 2513; Article 5 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2580, 2592, 2620, or [3406 of prior draft].

(c) If the ward or conservatee has been discharged from the state hospital, the director, 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, compliance with this section thereafter is not required unless the certificate is revoked by the director and notice of the revocation is filed with the court.

(d) The statute of limitations does not run against any claim of the State Department of Mental Health or the State Department of Developmental Services 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 (b) of Section 1461 generalizes various provisions scattered throughout the former guardianship and conservatorship statutes. Subdivision (c) continues former Sections 1554.1 and 1906 but adds a provision for revoking the certificate and substitutes the "director" for the "Attorney General" as the one executing the certificate. Subdivision (c) supersedes former Section 1906. Subdivision (d) continues the last sentence of former Section 1554 and supersedes the broader provision of the last sentence of former Section 1905. For other provisions concerning notice to the Director of Mental Health or the Director of Developmental Services, see Sections 1543, 2611, and 2621.

Definitions

Court, § 1418

Tentatively Approved - Jan. 1978

§ 1462. Court may extend or shorten time for notice or require additional notice

1462. (a) Except for the notice required by Section 1511 or 1822, the court may for good cause shorten the time for giving any notice required by this division.

(b) Where the court determines that the notice otherwise required under this division is insufficient in the particular circumstances, the court may require that further or additional notice, including a longer period of notice, be given as the court requires.

Comment. Section 1462 supersedes the last clause of former Section 2001 (conservatorship). The provision of former Section 2001 authorizing the court to dispense with notice is not continued in Section 1462. Under former Section 2001, it appears that the court's authority to dispense with or shorten time for notice was limited to cases in which notice was not prescribed directly by the conservatorship provisions. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.8, at 30 (Cal. Cont. Ed. bar 1968). For provisions authorizing the court to dispense with notice in particular situations, see Sections 1460(c)(2)-(3), 2250, 2255(b), 2572(b), and 2653(b).

The provision in subdivision (a) authorizing the court to shorten the time for any notice required by this division is based on Section 1005 of the Code of Civil Procedure and broadens the court's limited authority under prior law. See W. Johnstone & G. Zillgitt, supra.

Subdivision (b) continues the last portion of the last clause of former Section 2001, with the addition of language adapted from Section 1204. The authority of the court to require a longer period of notice is made explicit. This authority was implied under former law. See W. Johnstone & G. Zillgitt, supra.

Definitions

Court, § 1418

Tentatively Approved - Jan. 1978

§ 1463. Form of notice

1463. (a) When notice of the time and place of hearing is required to be given by any provision of this division, the notice shall be in the form prescribed by the Judicial Council.

(b) Section 1201 does not apply to proceedings under this division.

Comment. Section 1463 is new. Subdivision (a) requires that the Judicial Council form of notice of hearing be used. Compare Section 1200.1 (estates of deceased persons). See also Cal. Const., Art. VI, § 6 (Judicial Council shall adopt rules for court administration, practice, and procedure); Govt. Code § 68511 (Judicial Council may prescribe by rule the form and content of forms used in the courts of this state).

Subdivision (b) constitutes an exception to Section 2100 which applies the provisions of Division 3 (commencing with Section 300) to proceedings under this division when no specific provision of this division is applicable. Section 1201 relates to additional notice by publication 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.

404/992

Tentatively Approved - Sept. 1977

§ 1464. Proof of giving of notice

1464. (a) Proof of the giving of notice under this division shall be made at or before the hearing to the satisfaction of the court. Such proof may be made by, but is not limited to, 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 and place 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.

(5) Proof of notice, however given, may be made by testimonial evidence presented 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, and such order, when it becomes final, is conclusive on all persons.

Comment. Section 1464 is based on the last sentence of Section 1200, but subdivision (a) of Section 1464 makes clear that proof of notice is allowed at or before the hearing and specifies the manner of

proof. 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. Paragraph (5) is new but continues existing practice. See W. Johnstone & G. Zillgitt, *supra* § 2.15, at 37. A declaration may be used in lieu of an affidavit required by this section in many instances. See Code Civ. Proc. § 2015.5.

Subdivision (b) is the same as the last portion of the last sentence of Section 1200. The case law has developed exceptions to the rule of conclusiveness stated in Section 1200 and duplicated in subdivision (b) of Section 1464. See, e.g., *State v. Broderon*, 247 Cal. App.2d 797, 56 Cal. Rptr. 58 (1967) (finality of decree not protected by notice given because of presence of extrinsic fraud). See also *Estate of Clarke*, 66 Cal.2d 142, 424 P.2d 337, 56 Cal. Rptr. 897 (1967); *Estate of Reed*, 259 Cal. App.2d 14, 66 Cal. Rptr. 193 (1968). The provision in subdivision (b) for waiver of notice is derived from former Section 2005.

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

Definitions

Court, § 1418

CHAPTER 4. TRANSITIONAL PROVISIONS

Note. This chapter is drafted on the assumption that the proposed legislation will be submitted to the 1979 legislative session and will become operative on January 1, 1981.

405/464

Tentatively Approved - Jan. 1978

§ 1470. Definitions

1470. As used in this chapter:

(a) "Operative date" means January 1, 1981.

(b) "Prior law" means the applicable law in effect on December 31, 1980.

Comment. Section 1470 is new.

405/466

Tentatively Approved - Jan. 1978

§ 1471. Operative date

1471. This division becomes operative on January 1, 1981.

Comment. Section 1471 defers the operative date of this division for one year 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

Tentatively Approved - Sept. 1977

§ 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. For an exception to this general rule, see Section 1475.

Definitions

Operative date, § 1470

Tentatively Approved - Sept. 1977

§ 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.

Definitions

Operative date, § 1470

Tentatively Approved - Sept. 1977

§ 1474. Appointments or confirmations made under prior law

1474. The changes made in prior law by this division on and 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 1474 is consistent with the general rule stated in Section 1472.

Definitions

Operative date, § 1470

Prior law, § 1470

Staff Draft - March 1978

§ 1475. Pending matters arising under prior law

1475. Subject to Section 1476:

(a) Any petition, application, accounting, defense, or other matter instituted or maintained before the operative date shall be continued under this division, so far as applicable, unless in the opinion of the court application of a particular provision would substantially interfere with the effective conduct of a matter in progress or with the rights of the parties or other interested persons, in which case the

particular provision does not apply and the law applicable thereto prior to the operative date applies.

(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 constitutes a limited exception to the general rule stated in Section 1472.

Definitions

Operative date, § 1470

Prior law, § 1470

405/761

Tentatively Approved - Sept. 1977

§ 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 law 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 1831 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, 604-05, 275 P. 794, ____ (1929). However, such a person is not deemed to lack capacity to make decisions concerning necessary medical treatment unless the court orders otherwise. See Section 2405. See also Section 1831.

Section 1831 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).

Definitions

Operative date, § 1470

405/762

Tentatively Approved - Sept. 1977

§ 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 or before the time of the court's next biennial review as provided in Section 1850 to reflect that the conservatee lacks legal capacity. 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.

Definitions

Operative date, § 1470

404/935

Tentatively Approved - Jan. 1978

§ 1478. Effect on nomination by adult of a guardian

1478. If, under prior law, an adult has in a written instrument nominated a person to serve as guardian if a guardian is in the future appointed for such adult, such nomination shall be deemed to be a nomination of a conservator. This section applies whether or not the written instrument was executed in the same manner as a witnessed will so long as the person executing the instrument had at that time sufficient capacity to form an intelligent preference.

Comment. Section 1478 ensures that a nomination of a guardian made under former Section 1463 will be given effect under the new law (Section 1810).

Under Section 1810, a conservator may be nominated in a written instrument whether or not the instrument is executed in the same manner as a witnessed will. The second sentence of Section 1478 applies the

same standard to a written instrument executed under prior law and purporting to nominate a guardian, even though the instrument may not have met the stricter requirement of former Section 1463.

Definitions

Prior law, § 1470

405/764

Tentatively Approved - Sept. 1977

§ 1479. References in statutes

1479. (a) When used in any statute of this state with reference to an adult or to the person of a married minor, "guardian" 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 former Section 1510 of the Probate Code shall be deemed to be a reference to the definitions of those terms in this division.

Comment. Section 1479 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.

405/765

Tentatively Approved - Sept. 1977

§ 1480. Rules of Judicial Council

1480. 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 1480 makes clear the authority of the Judicial Council to prescribe rules prior to the operative date for the orderly transition of pending proceedings on the operative date.

Definitions

Operative date, § 1470

PART 2. GUARDIANSHIPCHAPTER 1. APPOINTMENTArticle 1. Appointment of Testamentary Guardian

Tentatively Approved - Sept. 1977

§ 1500. Appointment of general testamentary guardian by parent

1500. (a) Either parent of a minor child, living or likely to be born, may by will or by a signed writing 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) 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 substitutes a broader provision authorizing a parent to appoint a testamentary guardian by a "signed writing" for the former narrower provision authorizing the appointment by deed. "Signed writing" includes but is broader than "deed." The word "general" which appeared before the word "guardian" 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 2104 (several guardians for one ward), 2105 (one guardian for several wards).

3074

Tentatively Approved - Sept. 1977

§ 1501. Appointment of special testamentary guardian

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

(c) A guardianship created pursuant to this section may coexist with a general guardianship, in which case the guardian appointed pursuant to this section controls the property referred to in this section and the general guardian controls the balance of the estate.

Comment. Subdivisions (a) and (b) of Section 1501 continue the substance of former Section 1402 but substitute a broader provision authorizing a parent to appoint a special testamentary guardian by a "signed writing" for the former narrower provision authorizing the appointment by deed. "Signed writing" includes but is broader than "deed." As to when the appointment becomes effective, see Section 1502. See also Sections 2104 (several guardians for one ward), 2105 (one guardian for several wards). Subdivision (c) is new and codifies the rule set forth in 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 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. Guardianship of Joaquin, supra.

4253

Tentatively Approved - Sept. 1977

§ 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.

Definitions

Court, § 1418

Article 2. Court Appointment or Confirmation Generally

Tentatively Approved - Jan. 1978

§ 1510. Petition for appointment or confirmation

1510. (a) A relative or other person on behalf of the minor, or the minor if 14 years of age or older, may file a petition for the appointment or confirmation of a guardian of the minor.

(b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed or confirmed, shall specify the proposed guardian, and shall state that such appointment or confirmation is necessary or convenient.

(c) The petition shall set forth, so far as known to the petitioner, the names and residence addresses of all of the following:

- (1) The parents of the proposed ward.
- (2) The person having the care of the proposed ward.
- (3) The relatives of the proposed ward within the second degree.

(4) In the case of a guardianship of the estate, the spouse of the proposed ward.

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

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration.

Comment. Subdivision (a) of Section 1510 continues the substance of the second sentence of subdivision (a) of former Section 1440. In authorizing a petition for confirmation of a testamentary guardian appointed under Section 1500 or 1501, subdivision (a) continues the substance of the last sentence of former Section 1405.

The "necessary or convenient" standard of subdivision (b) is taken from the first sentence of subdivision (a) of former Section 1440. The requirement that the petition specify the proposed guardian is new but continues former practice. See Petition for Appointment of Guardian of Minor (Form Approved by Judicial Council of California, effective January 1, 1976).

Subdivision (c) is new and is drawn in part from the second sentence of former Section 1754 (conservatorship). This subdivision will

facilitate compliance with the notice requirements of Section 1511. The subdivision continues existing guardianship practice except that the former practice is broadened to include relatives within the second degree who reside outside of California and the spouse of the minor. (Note that a guardian of the person may not be appointed for a married minor. See Section 1515.) See Petition for Appointment of Guardian of Minor (Form Approved by the Judicial Council of California, effective January 1, 1976).

Subdivision (d) continues the substance of a portion of former Section 1461.3. Subdivision (e) is new, and is based on the penultimate sentence of former Section 1754 (conservatorship) and on former Section 1655 (Uniform Veterans' Guardianship Act).

A petition for appointment or confirmation of a guardian must be verified. See Section 1450. For additional requirements concerning the petition in cases of certain nonrelative guardianships, see Sections 1541 and 1542. See also Sections 2104 (several guardians for one ward), 2105 (one guardian for several wards). As to appointments to fill vacancies, see Section 2106. For provisions for notice to the Director of Mental Health or the Director of Developmental Services in certain cases, see Section 1461.

30/930

Tentatively Approved - Jan. 1978

§ 1511. Notice of hearing

1511. (a) Except as provided in subdivisions (f) and (g), notice of the time and place of the hearing on the petition for the appointment or confirmation of the appointment of a guardian shall be given at least 15 days before the hearing as provided in this section. The notice shall be accompanied by a copy of the petition.

(b) The notice shall be served 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, on all of the following:

- (1) The proposed ward if 12 years of age or older.
- (2) The person having the care of the proposed ward.
- (3) The parents of the proposed ward.

(c) Notice shall be given by mail sent to their residence addresses stated in the petition, or in such manner as may be authorized by the court, to all of the following:

- (1) The spouse named in the petition.
- (2) The relatives named in the petition.

(d) If notice is required by Section 1461 or Section 1543 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed or delivered as so required.

(e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed or delivered to the office of the Veterans Administration referred to in Section 2908.

(f) Unless the court orders otherwise, notice need 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.

(g) Notice need not be given to any person if the court so orders upon a determination that the person cannot with reasonable diligence be given the notice.

(h) Before the appointment of a guardian is made or confirmed, proof shall be made to the court that all persons entitled to notice under this section either:

(1) Have been given notice as required by this section; or

(2) Have not been given notice as required by this section because they cannot with reasonable diligence be given the notice.

Comment. Section 1511 supersedes former Section 1441 and substantially broadens the notice required. Subdivisions (b) and (c) of Section 1511 retain the former requirement of notice to the parents and to the person having the care of the proposed ward but adds a requirement of notice to the proposed ward if 12 years of age or older and to the spouse of the proposed ward. The 12-years-of-age-or-older requirement for service of notice on the proposed ward is taken from Code of Civil Procedure Section 416.60 (service of summons on minor). The former requirement of notice to "such relatives of the minor residing in the state as the court or judge deems proper" is expanded by subdivision (c) of Section 1511 to require notice to all relatives of the proposed ward within the second degree (see Section 1510) outside of as well as within California. Subdivisions (d) and (e) are included to alert the practitioner to the need to give notice to the Director of Mental Health or the Director of Developmental Services and to the Veterans Administration in certain cases.

Subdivision (a) requires that notice be given at least 15 days before the hearing, and this time may not be shortened by the court. See Section 1462. If there is urgency, a temporary guardian may be appointed. See Section 2250. See also Section 1512 (order for temporary custody).

Subdivision (f) continues the last sentence of former Section 1441 with two changes. First, the former provision specified that notice "shall" not be given, whereas subdivision (f) provides that notice

"need" not be given. Second, subdivision (f) authorizes the court to require that notice be given whereas the court had no comparable authority under the former provision.

Subdivisions (g) and (h) are based on the last portion of the second sentence of former Section 1441. The court can order that notice need not be given where the person to be given notice cannot be located or where for other good cause the notice cannot be given. The provision for proof of notice is generalized to apply to all notices required by Section 1511.

Definitions

Court, § 1418

4272

Tentatively Approved - Sept. 1977

§ 1512. Order for temporary custody

1512. (a) When it appears to the court 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 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 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 1512 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

Tentatively Approved - Sept. 1977

§ 1513. Investigation by probation officer or domestic relations investigator

1513. (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 person petitioning for appointment as guardian, or the attorney for such 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 1513 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 1513 to conform to Civil Code Section 4602. Subdivision (b) of Section 1513 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).

Definitions

Court, § 1418

4440

Tentatively Approved - Sept. 1977

§ 1514. Appointment or confirmation of guardian

1514. (a) Upon hearing of the petition, if it appears necessary or convenient, the court may appoint or confirm a guardian of the person or estate of the minor or both.

(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 1514 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 or estate or both. See Section 2103. 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 officers or entities are also authorized to serve as a guardian. See Health & Saf. Code § 416 (Director of Developmental Services); Mil. & Vet. Code § 1046 (Veterans' Home of California); Welf. & Inst. Code § 8006 (public guardian). See also Sections 2104 (several guardians for one ward), 2105 (one guardian for several wards). As to appointments to fill vacancies, see Section 2106.

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, subdivision (b) applies. See Section 1427 (defining "guardian of the person"). 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 determining whether to approve 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 W. 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 Section 1501(c). 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*, 30 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 1514 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.

Definitions

Court, § 1418

4442

Tentatively Approved - Sept. 1977

§ 1515. No guardian of person for married minor

1515. Notwithstanding any other provision of this part, no guardian of the person shall be appointed or confirmed for a minor who is married or whose marriage has been dissolved. This section does not apply in the case of a minor whose marriage has been adjudged a nullity.

Comment. Section 1515 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 1515 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).

Definitions

Guardian of the person, § 1427

Article 3. Nonrelative Guardianships

Tentatively Approved - Sept. 1977

§ 1540. Application of article

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

(a) Where the petition is for guardianship of the estate exclusively.

(b) Where the petitioner is a relative of the proposed ward.

(c) Where the petitioner is one appointed as a guardian of the proposed ward under Section 1500.

(d) Where the Director of Developmental Services 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.

Tentatively Approved - Sept. 1977

§ 1541. Additional contents of petition for guardianship

1541. In addition to the other required contents of the petition for appointment of a guardian, the petition shall include all of the following:

(a) A statement 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 of when or where filed.

(c) A statement 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. For cases in which this article does not apply, see Section 1540.

Tentatively Approved - Sept. 1977

§ 1542. Amendment of guardianship petition if adoption petition filed

1542. 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. For cases in which this article does not apply, see Section 1540.

Tentatively Approved - Sept. 1977

§ 1543. Delivery of copy of petition to Department of Developmental Services

1543. The petitioner shall mail or deliver a notice of the hearing and a copy of the petition to the Director of Developmental Services 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. See Section 1464.

For cases in which this article does not apply, see Section 1540.

Tentatively Approved - Sept. 1977

§ 1544. Report on suitability of guardian

1544. (a) 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. In other cases, the local agency to which 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 person petitioning for appointment as guardian, or the attorney for such 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, is comparable to subdivision (b) of Section 1513, and is based on the comparable provision of Civil Code Section 4602. See also Section 1513 (investigation by probation officer or domestic relations investigator). For cases in which this article does not apply, see Section 1540. For provisions concerning delegation of foster family home licensure, see Health & Saf. Code § 1511.

Definitions

Court, § 1418

CHAPTER 2. TERMINATION

Tentatively Approved - Sept. 1977

§ 1600. Majority, death, or marriage of ward

1600. (a) A guardianship of the person or estate or both 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. See also Section 1515 (no guardian of person of married minor); Section 2626 (ward reaching majority may settle accounts with guardian).

Tentatively Approved - Sept. 1977

§ 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 it is in the ward's best interest to do so.

Comment. Section 1601 continues the first portion of subdivision (3) of former Section 1590 but deletes the provision relating to restoration to capacity under former Chapter 5 since that chapter has been repealed. The standard for termination of the guardianship--that it is in the ward's best interest to do so--was not formerly specified in the statute. The court retains jurisdiction of the guardianship proceeding despite termination of the guardianship. See Section 2641.

Definitions

Court, § 1418

PART 4. PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIPCHAPTER 1. GENERAL PROVISIONS

Tentatively Approved - Sept. 1977

§ 2100. Law governing guardianships and conservatorships

2100. 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 2100 supersedes former Sections 1606 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 by the language "[i]f no specific provision of this division is applicable."

Tentatively Approved - Sept. 1977

§ 2101. Relationship confidential and subject to law of trusts

2101. 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 2101 continues the substance of the fifth sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702. For the duty to use ordinary prudence in the management of the estate, see Section 2501.

Tentatively Approved - Sept. 1977

§ 2102. Control by court

2102. 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 2102 continues the substance of the last sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702.

Definitions

Court, § 1418

Tentatively Approved - Sept. 1977

§ 2103. Effect of court authorization, approval, or confirmation

2103. 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 2103 continues the substance of former Section 2103 (conservatorship,) except that new Section 2103 applies to inaction approved by the court as well as to action, and the provision of former Section 2103 that for the last sentence to apply the misrepresented fact must be contained in the petition or order is not continued. New Section 2103 supersedes former Section 1557.2 (guardianship) which applied only to orders authorizing purchases of real estate or investments.

045/054

Tentatively Approved - Sept. 1977

§ 2104. Nonprofit charitable corporation as guardian or conservator

2104. (a) A nonprofit charitable corporation may be appointed as a guardian or conservator of the person or estate, or both, 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 2104 continues the substance of a portion of former Sections 1400 and 1701. The petition must be verified. See Section 1450.

968/897

Tentatively Approved in Substance - Jan. 1978

§ 2105. Several guardians or conservators

2105. (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:

(1) Each shall qualify in the same manner as a sole guardian or conservator.

(2) The act of a majority is valid.

(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 2105 continues the substance of a portion of the second sentence of former Section 1405 and the last sentence of former Section 1751.

Subdivision (b) supersedes the third sentence of former Section 1405. Under the former provision, one of several guardians was "governed and liable in all respects as a sole guardian." Under paragraph (1) of subdivision (b), each of several guardians or conservators shall "qualify" in the same manner as a sole guardian or conservator. See, e.g., Sections 2300 (oath and bond required), 2326 (joint bond permitted). Paragraph (2) is based on the last sentence of Section 570 which appears to have been applied to guardianship and conservatorship proceedings by former Sections 1606 and 1702. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.84, at 225 (Cal. Cont. Ed. Bar 1968).

Where there are several guardians or conservators, one may be held liable for the act of a co-guardian or co-conservator. See W. Johnstone & G. Zillgitt, supra § 3.6, at 56. Mere dissent from the action proposed by the majority may be insufficient to insulate the dissenting

guardian or conservator from liability since there may be a duty to disclose questionable actions of a co-guardian or co-conservator. Cf. In re Estate of Osborne, 87 Cal. 1, 25 P. 157 (1890) (co-executors).

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.

Definitions

Court, § 1419

968/915

Tentatively Approved - Sept. 1977

§ 2106. One guardian or conservator for several wards or conservatees

2106. (a) The court, in its discretion, may appoint or confirm one guardian or conservator for several wards or conservatees.

(b) The appointment of one guardian or conservator for several wards or conservatees may be requested in the initial petition filed in the proceeding or may be requested subsequently upon a petition filed in the same proceeding and noticed and heard in the same manner as an initial petition for appointment of a guardian or conservator.

Comment. Subdivision (a) of Section 2106 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. Two or more guardians or conservators may serve as joint guardians or conservators for several wards or conservatees. See Section 2105. Subdivision (b) is new. See also Section 2327 (separate bonds or single bonds where proceeding involves more than one ward or conservatee).

Definitions

Court, § 1418

968/905

Tentatively Approved - Sept. 1977

§ 2107. Appointment to fill vacancy

2107. 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 2107 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.

Definitions

Court, § 1418

CHAPTER 2. JURISDICTION AND VENUEArticle 1. Jurisdiction and Venue

Tentatively Approved - Sept. 1977

§ 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).

Tentatively Approved - Jan. 1978

§ 2201. Venue for residents

2201. (a) The proper county for the commencement of a guardianship or conservatorship proceeding for a resident of this state is either of the following:

(1) The county in which the proposed ward or proposed conservatee resides or is domiciled.

(2) Such other county as may be for the best interests of the proposed ward or proposed conservatee.

(b) If guardianship or conservatorship proceedings of a resident are instituted in more than one county, the court which first makes an order appointing a guardian or conservator, including a temporary guardian or conservator, has exclusive jurisdiction so long as the proceeding is pending.

Comment. Subdivision (a) of 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), and 2051 (county in which proposed conservatee resides). The addition of the last phrase to subdivision (a) permits the court to exercise jurisdiction even though the place of residence or domicile 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). This avoids the need to litigate the issue of residence or domicile if the court determines that continuance of the proceeding in the county where filed is for the best interests of the ward or conservatee.

Subdivision (b) is new, and codifies existing law. See, e.g., *Browne v. Superior Court*, 16 Cal.2d 593, 107 P.2d 1 (1940); *Guardianship of Vierra*, 115 Cal. App.2d 869, 253 P.2d 55 (1953); *Milani v. Superior Court*, 61 Cal. App.2d 463, 143 P.2d 402, 935 (1943).

§ 2202. Venue for nonresidents

2202. (a) The proper county for the commencement of a proceeding for the guardianship or conservatorship of the person of a nonresident of this state is either of the following:

(1) The county in which the proposed ward or conservatee is temporarily living.

(2) Such other county as may be for the best interests of the proposed ward or proposed conservatee.

(b) The proper county for the institution of a proceeding for the guardianship or conservatorship of the estate for a nonresident of this state is any of the following:

(1) The county in which the proposed ward or proposed conservatee is temporarily living.

(2) Any county in which the proposed ward or proposed conservatee has property.

(3) Such other county as may be for the best interests of the proposed ward or proposed conservatee.

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

Comment. Subdivisions (a) and (b) of Section 2202 continue and clarify the substance of portions of former Sections 1440(a) (guardian of minor), 1570 (guardian of minor or incompetent), and 2051 (conservatorship) but adds the provision that venue is proper in "such other county as may be for the best interests of the proposed ward or proposed conservatee." See the Comment to Section 2201.

Subdivision (c) continues the substance of the last sentence of former Section 1570 (guardianship), except that the reference to a temporary guardianship or conservatorship is new. There was no provision under prior conservatorship law comparable to subdivision (c).

Article 2. Change of Venue

Tentatively Approved - Sept. 1977

§ 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 assets out of state, see Chapter 11 (commencing with Section 2800).

29219

Tentatively Approved - Sept. 1977

§ 2211. Who may petition for transfer

2211. The petition for transfer may be filed only by one or more of the following:

- (a) The guardian or conservator.
- (2) The ward or conservatee.
- (3) A relative or friend of the ward or conservatee.
- (4) A 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 and may expand the class of persons who may petition for transfer. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.21, at 40 (Cal. Cont. Ed. Bar 1968). See also former Section 1603 (guardianship).

29220

Tentatively Approved - Sept. 1977

§ 2212. Contents of petition

2212. The petition for transfer 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 address of the guardian or conservator if other than 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). The petition must be verified. See Section 1450.

29221

Tentatively Approved - Sept. 1977

§ 2213. Notice of hearing

2213. Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. 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 15 days before the date set for the hearing.

Comment. Section 2213 continues the substance of the first two sentences of former Section 2053 (conservatorship) except that the time for mailing the notice is extended from 10 to 15 days and the provision of the first sentence of former Section 2053 relating to the clerk setting the petition for hearing is continued in Section 1451. See also former Section 1603 (guardianship). Special notice of a petition to transfer may be requested. Section 2700(a)(2). For provisions for notice to the Director of Mental Health or the Director of Developmental Service in certain cases, see Section 1461.

29222

Tentatively Approved - Sept. 1977

§ 2214. Hearing and order

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).

29223

Tentatively Approved - Sept. 1977

§ 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

Tentatively Approved - Jan. 1978

§ 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:

- (1) A temporary guardian of the estate.
- (2) A temporary conservator of the person or estate or both.

(b) The petition shall establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the estate, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause dispenses with notice, notice shall be given to the proposed ward if 12 years of age or older or to the proposed conservatee before appointment of a temporary guardian or temporary conservator. The appointment of the temporary guardian or temporary conservator may be made with or without notice to other persons as the court may require.

Comment. Section 2250 continues the substance of former Section 1640 (special guardian) and the first paragraph of former Section 2201 (temporary conservator) with the addition of the phrase "or other showing as it may require" in subdivision (b) and the requirement in subdivision (c) of notice to the proposed ward if over 12 or to the proposed conservatee unless the court dispenses with such notice. A petition filed under this section must be verified. See Section 1450. For provisions relating to temporary custody of a minor, see Section 1512.

Tentatively Approved - Sept. 1977

§ 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.

21984

Tentatively Approved - Jan. 1978

§ 2252. Powers and duties

2252. (a) Except as provided in subdivision (c), a temporary guardian or temporary conservator of the estate has only the power and authority and only the duties that are necessary to conserve and protect the property of the ward or conservatee from loss or injury.

(b) Except as provided in subdivision (c) and subject to this chapter, a temporary conservator of the person has only the power and authority and only the duties that are necessary to provide for the temporary care, maintenance, and support of the conservatee.

(c) Subject to Section 2253, the temporary guardian or temporary conservator has 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).

30946

Tentatively Approved - Jan. 1978

§ 2253. Change of conservatee's residence generally

2253. (a) If a temporary conservator of the person proposes to fix the residence of the conservatee to a place other than that where the conservatee resided prior to the commencement of the proceedings, such power shall be requested of the court in writing, unless such change of residence is required of the conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request shall specify in particular the place to which the temporary conservator proposes to move the conservatee, and the precise reasons why it is believed that the conservatee will suffer irreparable

harm if such change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

(b) Within seven days of the date of filing of a temporary conservator's request to remove the conservatee from his or her previous place of residence, the court shall conduct a hearing at which the conservatee shall be present unless such attendance would immediately jeopardize the conservatee's physical survival. The conservatee shall be represented by counsel as provided in Section 1870 and shall be granted the right to confront and cross-examine any witness presented by or on behalf of the temporary conservator and to present evidence on the conservatee's own behalf.

(c) The court may approve the request to remove the conservatee from the previous place of residence only if it finds by a preponderance of the evidence that such change of residence is required to prevent irreparable harm to the conservatee, and that no means less restrictive of the conservatee's liberty will suffice to prevent such harm. If an order is made approving the request to remove the conservatee from the previous place of residence, the order shall specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator shall not be authorized to remove the conservatee from the State of California unless it is additionally shown that such removal is required to permit the performance of specified nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from the State of California without authorization of the court is guilty of a felony.

(d) The court shall also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence. Under no circumstances shall a temporary conservator be permitted to sell or relinquish on the conservatee's behalf any lease or estate in real or personal property used as or within the conservatee's place of residence; nor shall the temporary conservator be permitted to sell or relinquish on the conservatee's behalf any estate or interest in other real or personal property without specific approval of the court, which may be granted only upon a finding

based on a preponderance of the evidence that such action is necessary to avert irreparable harm to the conservatee.

Comment. Section 2253 continues the substance of the second, third, fourth, and fifth paragraphs of former Section 2201. [These paragraphs were added to former Section 2201 by Chapter 1237 of the Statutes of 1977.]

30944

Tentatively Approved - Jan. 1978

§ 2254. Change of conservatee's residence in cases of emergency or with conservatee's consent

2254. (a) Notwithstanding Section 2253, a temporary conservator may remove a temporary conservatee from the temporary conservatee's place of residence without prior court approval if an emergency exists. For the purposes of this section, an emergency exists if the temporary conservatee's place of residence is unfit for habitation or if the temporary conservatee has a medical condition which presents an immediate threat to the temporary conservatee's physical survival.

(b) No later than one judicial day after the emergency removal of the temporary conservatee, the temporary conservator shall file a written request pursuant to Section 2253 for permission to fix the residence of the temporary conservatee other than the temporary conservatee's previous place of residence.

(c) Nothing in this chapter prevents a temporary conservator from removing a temporary conservatee from the place of residence to a health facility for treatment without court approval when the temporary conservatee has given informed consent to the removal.

Comment. Section 2254 continues the substance of former Section 2201.5. [Former Section 2201.5 was added to the Probate Code by Chapter 1237 of the Statutes of 1977.]

21987

Tentatively Approved - Sept. 1977

§ 2255. Inventory and appraisal of estate

2255. (a) Except as provided in subdivision (b), an inventory and appraisal of the estate shall be filed by the temporary guardian or temporary conservator of the estate as required by Article 2 (commencing with Section 2610) of Chapter 7.

(b) A temporary guardian or temporary conservator of the 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 2255 continues the substance of former Sections 1643 (special guardian) and 2204 (temporary conservator).

21989

Tentatively Approved - Sept. 1977

§ 2256. Accounts

2256. (a) Except as provided in subdivision (b), the temporary guardian or temporary conservator of the estate 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 of the estate is appointed guardian or conservator of the estate, 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, 2624, 2626, 2630, 2631, 2641, and 2643.

Comment. Section 2256 continues the substance of former Sections 1644 (special guardian) and 2205 (temporary conservator).

21990

Tentatively Approved - Sept. 1977

§ 2257. Termination

2257. (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 2257 continues the substance of former Sections 1645 (special guardian) and 2206 (temporary conservator).

21991

Tentatively Approved - Sept. 1977

§ 2258. Suspension, removal, resignation, and discharge

2258. 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 2258 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 BONDArticle 1. Requirement of Oath and Bond

Tentatively Approved - Sept. 1977

§ 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

Tentatively Approved - Sept. 1977

§ 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.

Tentatively Approved - Sept. 1977

§ 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.

28293

Tentatively Approved - Sept. 1977

§ 2312. Notice to ward or conservatee

2312. Before letters of guardianship or conservatorship may be issued, a copy of the order appointing the guardian or conservator shall be mailed or delivered to the ward if 12 years of age or older or to the conservatee.

Comment. Section 2312 continues the fourth sentence of former Section 1801, and extends the provision to a ward 12 years of age or older. The former provision has been clarified by substituting "mailed or delivered" for "served by mail."

31515

Article 3. Bonds of Guardians and Conservators

Tentatively Approved - Sept. 1977

§ 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 the lowest amount permitted under 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).

31516

Tentatively Approved - Sept. 1977

§ 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. Section 2321 applies only to conservatorship proceedings and not to guardianships.

31517

Tentatively Approved - Sept. 1977

§ 2322. Guardian or conservator of person only

2322. One 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

Tentatively Approved - Sept. 1977

§ 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

Tentatively Approved - Sept. 1977

§ 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

Tentatively Approved - Sept. 1977

§ 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

Tentatively Approved - Sept. 1977

§ 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 2105 (authority to appoint several guardians or conservators).

30187

Tentatively Approved - Sept. 1977

§ 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 2106 (authority to appoint one guardian or conservator for several wards or conservatees).

30188

Tentatively Approved - Sept. 1977

§ 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 personal assets which have been or will be deposited in a bank in this state or a 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 in this state or a trust company money, securities, or personal assets in such person's possession.

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

(3) Allow a bank in this state or a trust company to retain such money, securities, and personal assets 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 assets in addition to money and securities. In this respect, Section 2328 continues the substance of former Section 1804 (conservators) but omits wording which arguably referred to Financial Code Section 1586 for procedure when the deposit affects the amount of the bond. 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 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 1406 (account in an insured savings and loan association), 1439 (trust company). See also Sections 2523 (deposit or investment of money in bank or in account in an insured savings and loan association), 2524 (deposit of personal assets with trust company). Securities deposited with a trust company under Section 2328 may be deposited in a securities depository. See Section 2525(b).

Tentatively Approved - Sept. 1977

Technical Revision - March 1978

§ 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 in this state 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 2329 continues the substance of the fourth sentence of former Section 1405 but expressly covers conservatorships as well as guardianships. The requirement that the bank be "in this state" is new and added to make this section consistent with Section 2328. 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 1406 (account in an insured savings and loan association), 1439 (trust company).

Tentatively Approved - Sept. 1977

§ 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 petition setting forth the condition of the estate.

(b) Notice of hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. 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. A petition filed under Section 2330 must be verified. Section 1450. The clerk sets the petition for hearing. Section 1451.

30940

Tentatively Approved - Sept. 1977

§ 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 Section 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.

38035

Tentatively Approved - Sept. 1977

§ 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 or on later substitution of a surety bond or other adequate security.

Comment. Section 2332 continues former Sections 1480.5 and 1803.5, except that the language allowing return of the deposited security on

later substitution of a surety bond or other adequate security has been added.

Definitions

Account in an insured savings and loan association, § 1406

38044

Tentatively Approved - Sept. 1977

§ 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 1450.

Definitions

Court, § 1418

38046

Tentatively Approved - Sept. 1977

§ 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) Except as provided in subdivision (c), 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

Tentatively Approved - Sept. 1977

§ 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 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. The petition must be verified. See Section 1450.

90870

Tentatively Approved - Sept. 1977

§ 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 court 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 10 days rather than five days service of citation is required before the return day and 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

Tentatively Approved - Sept. 1977

§ 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 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 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.

PART 4. PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIPCHAPTER 1. GENERAL PROVISIONS

Tentatively Approved - Sept. 1977

§ 2100. Law governing guardianships and conservatorships

2100. 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 2100 supersedes former Sections 1606 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 by the language "[i]f no specific provision of this division is applicable."

Tentatively Approved - Sept. 1977

§ 2101. Relationship confidential and subject to law of trusts

2101. 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 2101 continues the substance of the fifth sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702. For the duty to use ordinary prudence in the management of the estate, see Section 2501.

Tentatively Approved - Sept. 1977

§ 2102. Control by court

2102. 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 2102 continues the substance of the last sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702.

Definitions

Court, § 1418

Tentatively Approved - Sept. 1977

§ 2103. Effect of court authorization, approval, or confirmation

2103. 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 2103 continues the substance of former Section 2103 (conservatorship,) except that new Section 2103 applies to inaction approved by the court as well as to action, and the provision of former Section 2103 that for the last sentence to apply the misrepresented fact must be contained in the petition or order is not continued. New Section 2103 supersedes former Section 1557.2 (guardianship) which applied only to orders authorizing purchases of real estate or investments.

045/054

Tentatively Approved - Sept. 1977

§ 2104. Nonprofit charitable corporation as guardian or conservator

2104. (a) A nonprofit charitable corporation may be appointed as a guardian or conservator of the person or estate, or both, 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 2104 continues the substance of a portion of former Sections 1400 and 1701. The petition must be verified. See Section 1450.

968/897

Tentatively Approved in Substance - Jan. 1978

§ 2105. Several guardians or conservators

2105. (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:

(1) Each shall qualify in the same manner as a sole guardian or conservator.

(2) The act of a majority is valid.

(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 2105 continues the substance of a portion of the second sentence of former Section 1405 and the last sentence of former Section 1751.

Subdivision (b) supersedes the third sentence of former Section 1405. Under the former provision, one of several guardians was "governed and liable in all respects as a sole guardian." Under paragraph (1) of subdivision (b), each of several guardians or conservators shall "qualify" in the same manner as a sole guardian or conservator. See, e.g., Sections 2300 (oath and bond required), 2326 (joint bond permitted). Paragraph (2) is based on the last sentence of Section 570 which appears to have been applied to guardianship and conservatorship proceedings by former Sections 1606 and 1702. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.84, at 225 (Cal. Cont. Ed. Bar 1968).

Where there are several guardians or conservators, one may be held liable for the act of a co-guardian or co-conservator. See W. Johnstone & G. Zillgitt, supra § 3.6, at 56. Mere dissent from the action proposed by the majority may be insufficient to insulate the dissenting

CHAPTER 7. INVENTORY AND ACCOUNTS

Article 1. Definitions and General Provisions

Tentatively Approved - Jan. 1978

§ 2600. Definitions

2600. As used in this chapter, unless the context otherwise requires:

(a) "Conservator" means a conservator of the estate as defined in Section 1412.

(b) "Guardian" means a guardian of the estate as defined in Section 1424.

Comment. Section 2600 is new. The definitions are included to avoid needless repetition in various sections in this chapter.

404/285

Tentatively Approved - Oct. 1977

§ 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. See also Section 2511 (personal allowance for ward or conservatee).

Definitions

Court, § 1418

Article 2. Inventory and Appraisement of Estate

Tentatively Approved - Oct. 1977

§ 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.

(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 (c) continues the substance of subdivision (b) of former Section 1550 and subdivision (b) of former Section 1901. An inventory and appraisement filed under Section 2610 must be verified. Section 1450.

As to temporary guardians and conservators, see Section 2255.

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Tentatively Approved - Oct. 1977

§ 2611. Sending copy to Director of Mental Health or Director of Developmental Services

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 Mental Health or the State Department of Developmental Services, the guardian or conservator shall deliver or mail a copy of the inventory and appraisalment filed under Section 2610 to the director of the appropriate department at the director's office in Sacramento. Compliance with this section is not required if an unrevoked certificate described in subdivision (c) of Section 1461 is on file with the court with respect to the ward or conservatee.

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 appraisalment filed under Section 2610 that is to be mailed to the director and the last sentence has been added to conform to Section 1461.

Definitions

Conservator, § 2600
Guardian, § 2600

Tentatively Approved - Oct. 1977

§ 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 appraisalment 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.

Tentatively Approved - Oct. 1977

§ 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.

Definitions

Conservator, § 2600

Guardian, § 2600

404/300

Tentatively Approved - Oct. 1977

§ 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. The clerk shall set the objections for hearing not less than 15 days after their filing.

(b) 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.

(c) The court shall determine the objections and may fix the true value of any asset to which objection has been filed. For the purpose of this subdivision, 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 (b) 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).

Definitions

Conservator, § 2600
Court, § 1418
Guardian, § 2600

404/302

Tentatively Approved - Oct. 1977

§ 2615. Consequences of failure to file inventory

2615. 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 a portion 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).

Definitions

Conservator, § 2600
Guardian, § 2600

404/333

Tentatively Approved - Oct. 1977

§ 2616. Examination concerning assets of estate

2616. (a) A 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. A petition filed under this section must be verified. Section 1450. 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.

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

404/339

Article 3. Accounts

Tentatively Approved - Oct. 1977

§ 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 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 account must be verified. Section 1450.

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

404/341

Tentatively Approved - Jan. 1978

§ 2621. Notice of hearing

2621. Notice of the hearing on the account of the guardian or conservator shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. If notice is required to be given to the Director of Mental Health or Director of Developmental Services under Section 1461, the account shall not be settled or allowed unless notice has been given as provided in Section 1461.

Comment. The first sentence of Section 2621 is new; the second sentence is based on portions of former Sections 1554 and 1905. Unless notice is given or waived as provided in Section 1461, if the account is settled without giving notice to the Director of Mental Health or the Director of Developmental Services in the cases where notice is required under Section 1461, the statute of limitations does not run against any claim of the State Department of Health or the State Department of Developmental Services against the estate for board, care, maintenance, or transportation of the ward or conservatee. See Section 1461(d). See also Section 2700 (request for special notice of accounts). The court may require further or additional notice. See Section 1462.

Definitions

Conservator, § 2600

Guardian, § 2600

Tentatively Approved - Oct. 1977

§ 2622. Objections to account

2622. The ward or conservatee, any relative or friend of the ward or conservatee, or any creditor or other person interested in the estate may file written objections under oath to the account of the guardian or conservator, stating the items of the account to which objection is made and the basis for the objection.

Comment. Section 2622 is new. No comparable provision was contained in the former guardianship or conservatorship statute, but Section 2622 appears to codify existing practice. See W. Johnstone & G. Zillgitt, California Conservatorships § 6.42, at 253 (Cal. Cont. Ed. Bar 1968).

Definitions

Conservator, § 2600

Guardian, § 2600

404/342

Tentatively Approved - Oct. 1977

§ 2623. Compensation and expenses of guardian or conservator

2623. (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 2104:

(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 2623 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.

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

404/344

Tentatively Approved - Oct. 1977

§ 2624. Investment of funds

2624. 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 2624 continues former Sections 1556.3 and 1612.

Definitions

Conservator, § 2600

Guardian, § 2600

Tentatively Approved - Oct. 1977

§ 2625. Accounting and review of sales or purchases of property

2625. 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 the 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 2625 continues the substance of former Sections 1519 and 1862.

Definitions

Conservator, § 2600
Court, § 1418
Guardian, § 2600

Tentatively Approved - Oct. 1977

§ 2626. Termination of proceeding upon exhaustion of estate

2626. 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 unless the court determines that there is reason to continue the proceeding.

Comment. Section 2626 continues former Sections 1559 and 1909, except that the authority for the court to continue the proceeding is new. Thus, for example, if it appears that the guardianship or conservatorship estate will be replenished by receiving new assets from some source, this section will not require termination of the proceeding. As to the time limitations on bringing action against sureties on the bond, see Section 2334. As to termination of proceeding where all the assets of the estate are transferred out of California pursuant to a court order, see also Section 2802.

Definitions

Conservator, § 2600
Court, § 1418
Guardian, § 2600

Tentatively Approved - Sept. 1977

§ 2627. Settlement of accounts by ward; release and discharge of guardian

2627. (a) After a ward has reached majority, the ward may settle accounts with the guardian and give the guardian a release which 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 2627 continues the substance of former Section 1592. Subdivision (b) continues the substance of former Section 1593. The former guardian has the burden of showing that a release given by the ward pursuant to subdivision (a) is just and fair. *Smith v. Fidelity & Deposit Co.*, 130 Cal. App. 45, 56-57, 19 P.2d 1018, ____ (1933). Such a release does not operate to discharge the guardian, however, since the discharge must be granted by the court. See Cupp, McCarroll, & McClanahan, Guardianship of Minors, in 1 California Family Lawyer § 16.75, at 661 (Cal. Cont. Ed. Bar 1962); see Section 2641 (ward's majority does not cause court to lose jurisdiction to settle accounts).

Definitions

Court, § 1418

Guardian, § 2600

Policy Issue: Should subdivision (b) be limited to a guardian "appointed by a court"?

Article 4. Court Order Fixing Compensation for Guardian, Conservator, or Attorney

Tentatively Approved - Oct. 1977

§ 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 provided in Chapter 3 (commencing with Section 1460) of Part 1.

(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 2104, 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. In addition to the notice prescribed by subdivision (b), the court may require further or additional notice. See Section 1462. See also Section 2643 (fee for attorney rendering account for dead or incompetent guardian or conservator).

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

404/357

Tentatively Approved - Oct. 1977

§ 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 2104, 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).

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

404/363

Article 5. Accounts on Termination of Guardianship or Conservatorship

Tentatively Approved - Oct. 1977

§ 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.

Definitions

Conservator, § 2600
Court, § 1418
Guardian, § 2600

404/364

Tentatively Approved - Oct. 1977

§ 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 court and the court shall in like manner endorse thereon an allowance or rejection. If the claim is approved by the court, the claim shall be filed with the clerk within 30 days thereafter.

(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 the substance of former Sections 1560 and 1911. If the guardian or conservator pays expenses from assets of the ward or conservatee which are the subject of a specific gift by will, the gift is not thereby adeemed, and the rules of abatement set forth in Sections 750-753 apply. See Estate of Mason, 62 Cal.2d 213, 397 P.2d 1005, 42 Cal. Rptr. 13 (1965).

Definitions

Conservator, § 2600
Court, § 1418
Guardian, § 2600

Tentatively Approved - Oct. 1977

§ 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 deceased guardian or conservator.

(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 2104, 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.

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

CHAPTER 8. REMOVAL OR RESIGNATION

Article 1. Removal of Guardian or Conservator

Tentatively Approved - Oct. 1977

§ 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 under Section 1500 or 1501 (appointment by will or by signed writing), 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. The reference in former Section 1580 to an appointment by will or by deed has been broadened in subdivision (i) to refer to will or signed writing to correspond to Sections 1500 and 1501.

Definitions

Conservator of the estate, § 1412
 Conservator of the person, § 1415
 Court, § 1418
 Guardian of the estate, § 1424
 Guardian of the person, § 1427

Tentatively Approved - Oct. 1977

§ 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 may apply by petition to the court to have the guardian or conservator removed. The petition shall state facts showing cause for removal.

Comment. Sections 2651-2653 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). The petition must be verified. See Section 1450.

Definitions

Court, § 1418

Tentatively Approved - Oct. 1977

§ 2652. Notice of hearing

2652. (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 1511.

(2) In the case of a conservatorship, to the conservatee and to the persons specified in Section 1822.

(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 2652 is comparable to Section 1863 (termination of conservatorship). The time for service under subdivision (b) is increased from five to 10 days. The clerk sets the petition for hearing. See Section 1451.

Tentatively Approved - Oct. 1977

§ 2653. Hearing and judgment

2653. (a) The court shall hear and determine the matter according to the laws and procedure relating to the trial of civil actions. 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 support or oppose the petition.

(b) If the court determines that cause for removal of the guardian or conservator exists, the court 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 2653 is comparable to subdivision (a) of Section 1864 (hearing on termination of conservatorship) except that there is no longer a right to jury trial in removal proceedings. See Section 1452. Subdivision (b) is based in part on the first sentence of former Section 1581.

Definitions

Conservatorship of the estate, § 1412

Guardianship of the estate, § 1426

Tentatively Approved - Oct. 1977

§ 2654. Surrender of estate and suspension of powers pending hearing

2654. Whenever it appears that the ward or conservatee or the estate may suffer loss or injury during the time required for notice and hearing under this chapter, the court, on its own motion or on 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 to a custodian designated by the court.

Comment. Section 2654 continues the substance of former Section 1952 and supersedes former Section 1581. The petition must be verified. See Section 1450.

Article 2. Resignation of Guardian or Conservator

Tentatively Approved - Oct. 1977

§ 2660. Resignation of guardian or conservator

2660. A guardian or conservator may at any time file a petition with the court for permission to resign. 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 2107.

Definitions

Court, § 1418

CHAPTER 9. REQUESTS FOR SPECIAL NOTICE

Tentatively Approved - Oct. 1977
Staff Revision - March 1978

§ 2700. Requests 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 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) Petitions for transfer of the proceeding to another county.

(3) Accounts of the guardian or conservator.

(4) Petitions for partition of any property of the ward or conservatee.

(5) Petitions for allowances of any nature payable from the estate of the ward or conservatee.

(6) Petitions for the investment of funds of the estate.

(7) Petitions for the removal, suspension, or discharge of the guardian or conservator.

(8) Proceedings for the final termination of the guardianship or conservatorship proceedings.

(9) Petitions filed pursuant to Section 2503 or Article 8 (commencing with Section 2580) or Article 9 (commencing with Section 2590) of Chapter 6.

(10) 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. If the request is for all of the matters referred to in subdivision (a), the request may refer generally to the provisions of this section.

(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, with the addition of a provision for special notice of a petition for transfer of the proceeding to another county and for special notice of a petition for exercise of the doctrine of substituted judgment. Subdivision (a) in its first clause is based on former Section 2002, but the balance is derived from former Section 1600.

The first sentence of 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. The second sentence of subdivision (b) is new but continues existing practice. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.10, at 31 (Cal. Cont. Ed. Bar 1968).

The ward or conservatee may request special notice under Section 2700, whether or not the court has dispensed with notice to the ward or conservatee under Section 1460.

Definitions

Court, § 1418

Staff Revision: Adds reference to Substitution of Judgment Article in paragraph (9) of subdivision (a).

65196

Tentatively Approved - Oct. 1977

§ 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 filed.

(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, except that the request for special notice is deemed withdrawn three years from the date it was filed, rather than three years from the date it was served as under former law. The former guardianship statute contained no express provision comparable to Section 2701.

Tentatively Approved - Oct. 1977

§ 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.

Tentatively Approved - Oct. 1977

§ 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, and such order, when it becomes final, is conclusive upon all persons.

Comment. Section 2703 continues the substance of former Sections 1602 and 2005. For discussion of a provision similar to subdivision (b), see the Comment to Section 1464.

Tentatively Approved - Oct. 1977

§ 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 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.

Definitions

Court, § 1418

CHAPTER 10. APPEALS

Tentatively Approved - Oct. 1977

§ 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 2533.

(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.

(i) Granting or denying a petition under Article 8 (commencing with Section 2580) of Chapter 6.

(j) Transferring the assets of the guardianship or conservatorship estate to a guardian, conservator, committee, or comparable fiduciary in another jurisdiction.

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 the exception in subdivision (a) to make clear that an appeal may not be taken from an order granting or revoking letters of temporary guardianship or temporary conservatorship. Subdivisions (b), (c), and (f) through (h) are new and are adapted from Section 1240 (estates in probate). Subdivisions (i) and (j) are also new.

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).

Tentatively Approved in Substance - Oct. 1977

§ 2751. Stay

2751. (a) Except as provided in subdivisions (b) and (c), 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 of the estate or temporary conservator of the person or estate, or both, 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 made under this subdivision are valid, irrespective of the result of the appeal.

(c) In proceedings for guardianship of the person, the provisions of Section 917.7 of the Code of Civil Procedure apply.

Comment. Subdivisions (a) and (b) of Section 2751 continue the substance of former Sections 1631 (guardianship) and 2102 (conservatorship) and broaden 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).

Subdivision (c) recognizes the effect of Section 917.7 of the Code of Civil Procedure, which applies to proceedings that affect the custody of a minor child, including guardianship proceedings. See 6 B. Witkin, *California Procedure Appeal* § 151, at 4145 (2d ed. 1971). Section 917.7 provides that, with certain exceptions, the perfecting of an appeal does not stay proceedings in the trial court that affect the custody of the minor.

Tentatively Approved - Oct. 1977

§ 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 ASSETS OUT OF STATE

Staff Draft - March 1978

§ 2800. "Foreign guardian or conservator" defined

2800. As used in this chapter, "foreign guardian or conservator" means the guardian, conservator, committee, or comparable fiduciary in the other jurisdiction to whom the assets are to be transferred pursuant to an order obtained under this chapter.

Comment. Section 2800 is a new provision which contains a definition needed to avoid needless repetition in this chapter.

101/171

Substance Approved - Jan. 1978

§ 2801. Order for transfer of assets out of state

2801. Subject to the limitations and requirements of this chapter, the court in which the guardianship of the estate or conservatorship of the estate is pending may order the transfer of some or all of the assets of the estate to a guardian, conservator, committee, or comparable fiduciary in another jurisdiction outside of California where the ward or conservatee resides at the time the petition for the order authorizing the transfer is filed.

Comment. Section 2801 is based on portions of former Sections 1603 (guardianship) and 2051 and 2052 (conservatorship), but Section 2801 is confined to the transfer of some or all of the assets of the estate while the former provisions provided for the "transfer of the proceeding." Section 2301 permits transfer of assets to "another jurisdiction outside of California where the ward or conservatee resides at the time the petition is filed" whereas former Section 2052 permitted transfer to "any other state in which the [ward or] conservatee resides at the time of the application for transfer." Section 2801 thus permits transfer of assets to a foreign jurisdiction that is not another state. In this respect, Section 2801 is consistent with the statute relating to the transfer of some or all of the assets of a trust to another jurisdiction outside of California. See Probate Code §§ 1139-1139.7. For the procedure for removal of assets to another jurisdiction by a nonresident guardian or conservator or similar fiduciary where there is no California guardian or conservator, see Sections 3600-3603.

Definitions

Conservatorship of the estate, § 1412
Guardianship of the estate, § 1414

Substance Approved - Jan. 1978

§ 2802. Who may petition for transfer

2802. A petition for an order authorizing a transfer may be filed by any of the following:

- (a) The guardian of the estate or the conservator of the estate.
- (b) The ward or conservatee.
- (c) Any relative or friend of the ward or conservatee.
- (d) Any person interested in the estate.
- (e) The foreign guardian or conservator.

Comment. Section 2802 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 persons listed in subdivisions (b), (c), and (d). See also former Section 1603 (guardianship).

Definitions

Conservator of the estate, § 1412

Foreign guardian or conservator, § 2800

Guardian of the estate, § 1424

Policy Issue: Should the list of persons who may file a petition be expanded to include the persons listed in subdivision (b), (c), or (d)?

Staff Draft - March 1978

§ 2803. Contents of petition

2803. The petition shall set forth all of the following:

- (a) The name and residence address of:
 - (1) The foreign guardian or conservator, who may but need not be the guardian or conservator appointed in this state.
 - (2) The ward or conservatee.
 - (3) The guardian or conservator, so far as known to the petitioner.
- (b) The names, ages, 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.
- (c) A brief description of the character, condition, value, and location of the property comprising the assets sought to be transferred.

(d) A statement whether the foreign guardian or conservator has agreed to accept the transfer of the assets. If the foreign guardian or conservator has, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(e) A statement of the manner and by whom the foreign guardian or conservator was appointed; a general statement of the qualifications of the foreign guardian or conservator; the amount of bond, if any; a general statement of the nature and value of the assets of the ward or conservatee already under the management and control of the foreign guardian or conservator in the other jurisdiction; and the name of the court having jurisdiction of such foreign guardian or conservator or of his accounts or in which a proceeding may be had with respect to the guardianship or conservatorship if the assets are transferred.

(f) Whether there is any pending civil action in this state against the guardian or conservator, the ward or conservatee, or the estate.

(g) A statement of the reasons for the transfer.

Comment. Section 2803 is drawn primarily from Section 1139.2 (transfer of trust assets out of state) and in part from former Section 2052 (transfer of conservatorship proceeding out of state). See also former Section 1603 (guardianship). The information required to be included in the petition is needed so that the court can decide whether the requirements of Section 2806 are satisfied. A petition under this chapter must be verified. See Section 1450.

Definitions

Foreign guardian or conservator, § 2800

101/181

Tentatively Approved - Oct. 1977
Staff Revision - March 1978

§ 2804. Notice of hearing

2804. Notice of the hearing shall be given as provided in Chapter 3 (commencing with Section 1460) of Part 1. In addition, the petitioner, at least 30 days before the date set for the hearing, shall cause to be mailed to each of the persons listed in the petition, at their respective places of residence therein stated, a written notice of hearing and a copy of the petition.

Comment. Section 2804 continues the substance of the first two sentences of former Section 2053 (conservatorship) except that the provision requiring the clerk to set the petition for hearing is continued in Section 1451 and the time for mailing notice is increased from 10 to 30 days to conform to the time provided in Section 1139.3 (transfer of trust assets out of state). See also former Section 1603 (guardianship).

Policy Issue: The staff has increased the notice period from 15 (in former approved draft) to 30 days to conform to Section 1139.3 and in recognition that the matter set for hearing involves a multi-state transaction. Is this change acceptable?

101/182

Approved in substance - Jan. 1978

§ 2805. Opposition to petition

2805. Any of the following may appear and file written objections to the petition:

- (a) Any person required to be listed in the petition.
- (b) Any creditor of the ward or conservatee or of the estate.

Comment. Section 2805 continues the substance of the third sentence of former Section 2053 (conservatorship). See also former Section 1603 (guardianship).

101/183

Staff Draft - March 1978

§ 2806. Order for transfer

2806. (a) The court may, in its discretion, grant the petition and order the guardian or conservator to transfer the assets to the foreign guardian or conservator in the other jurisdiction if, after hearing, it appears to the court that all of the following requirements are satisfied:

- (1) The transfer would promote the best interests of the ward or conservatee and the estate.
- (2) The substantial rights of creditors or claimants in this state will not be materially impaired by the transfer.
- (3) The foreign guardian or conservator is qualified, willing, and able to administer the assets to be transferred.
- (4) The removal of the assets to the other jurisdiction would not conflict with any restriction or limitation on the assets.

Comment. Section 2806 is drawn from Section 1139.4 (transfer of trust assets out of state) and Section 1572 (removal of ward's property from state) and supersedes the fourth sentence of former Section 2053 (conservatorship). See also former Section 1603 (guardianship). Important elements in determining whether "the transfer would promote the best interests of the ward or conservatee and the estate" are whether the transfer will facilitate the economical and convenient administration of the estate and whether the guardianship or conservatorship estate will be administered by a competent fiduciary in the other jurisdiction.

Definitions

Foreign guardian or conservator, § 2800

101/184

Staff Draft - March 1978

§ 2807. Manner of transfer; conditions

2807. If a transfer is ordered, the court may direct the manner of transfer and impose such terms and conditions as may be just, including but not by limitation, a requirement for the substitution of the successor foreign guardian or conservator in any pending litigation in this state.

Comment. Section 2807 is drawn from the first sentence of Section 1139.5 (transfer of trust assets out of state). It supersedes the last two sentences of former Section 2053 (conservatorship). See also former Section 1603 (guardianship).

Definitions

Foreign guardian or conservator, § 2800

101/185

Staff Draft - March 1978

§ 2808. Termination of guardianship or conservatorship

2808. (a) If the court's order provides for the transfer of all of the assets of the estate to the foreign guardian or conservator, the court, upon settlement of the final account, shall order the guardianship of the estate or the conservatorship of the estate terminated upon the filing with the clerk of the court of a receipt for such assets executed by the foreign guardian or conservator.

(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, including the foreign guardian or conservator.

Comment. Section 2808 is based on former Section 2055 (conservatorship). See also former Section 1603 (guardianship). As to the termination of the proceeding and discharge of the guardian or conservator when the estate is exhausted, see also Section 2626. If there is California real property being administered in the California proceeding, it may be necessary to continue the California proceeding for the purpose of administering such property. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.28, at 45 (Cal. Cont. Ed. Bar 1968). As to the procedure for termination of a guardianship or conservatorship of the person, see Sections 1601 (guardianship), 1860-1864 (conservatorships).

Definitions

Conservatorship of the estate, § 1412
Foreign guardian or conservator, § 2800
Guardianship of the estate, § 1424