

Memorandum 78-19

Subject: Study F-30.300 - Guardianship-Conservatorship Revision
(Powers and Duties of Guardian or Conservator of
the Estate)

Attached is a copy of revised Chapter 6 of Part 4 of the Draft Statute, relating to the powers and duties of the guardian or conservator of the estate. This chapter has been substantially revised in substance and completely reorganized. It makes some significant changes in existing law. We plan to go over it section by section at the meeting.

In drafting the chapter, the staff has worked with our consultant, Mr. Elmore, to reduce the need for court authorization, confirmation, or direction where possible. The protection in cases where court authorization is eliminated would be in the court review of the transactions when the guardian or conservator presents his accounts for court approval. We point out below the most significant changes proposed, but the entire draft must be carefully examined.

The following are matters that are considered to be of the greatest significance.

Priority for Hearing Petitions

We have omitted the provision requiring petitions under this chapter to be set for hearing in 30 days.

§ 2501. Duty to use ordinary prudence in management of estate

This section is important. If it is not approved, the staff requests that some language for the section be agreed upon at the meeting.

§ 2503. Instructions from or approval by court

See consultant's suggested addition in the note following the definitions at the end of the section.

§ 2513. Payment of surplus income to next of kin

See the policy issue identified in the note following the Comment to this section. In addition, a policy issue is whether this section should be retained at all in view of the addition of the comprehensive provisions (Sections 2580-2585) providing a statutory statement of the doctrine of substituted judgment.

Article 4. Acts of Management Generally

This entire article should be checked with care since, under Section 2520, the guardian or conservator can exercise the powers set forth in the article without court approval unless the particular provision otherwise provides. The article makes changes in existing law (noted in the Comments) by eliminating court approvals or authorizations now required.

§ 2544. Listed stocks, bonds, and securities; United States obligations

Section 2544 permits sale without court order of listed stocks, bonds, and securities and United States Government obligations. This is a significant change in existing law but seems justified since the market value of these assets is readily determined at the time of sale.

§ 2545. Sale or other disposition of tangible personal property

Section 2545 permits sale of a certain amount of tangible personal property each calendar year without a court order. This represents a significant change in existing law.

§ 2555. Leases permitted without court order

Section 2555 will increase the term and amount of leases permitted without a court order.

§ 2575. United States and State of California obligations; listed stocks, bonds, and other securities

Section 2575 is probably the most significant of the proposed changes.

Article 8. Doctrine of Substituted Judgment

See Memorandum 78-15 (to be sent).

Respectfully submitted,

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Executive Secretary

O U T L I N E

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CHAPTER 6. POWERS AND DUTIES OF GUARDIAN OR
CONSERVATOR OF THE ESTATE

Article 1. Definitions and General Provisions

Tentatively Approved - Sept. 1977

§ 2500. Definitions

2500. As used in this chapter:

(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 2500 is new. The definitions provided in this section avoid needless repetition in the various sections in this chapter.

368/242

Staff Draft - March 1978

§ 2501. Duty to use ordinary prudence in management of estate

2501. (a) The guardian or conservator shall use ordinary prudence in the management of the estate. Ordinary prudence shall be determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

(1) Shall exercise a power when ordinary prudence requires that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary prudence requires that the power not be exercised.

Comment. Section 2501 supplements the provision of Section 2101 that the relationship of guardian and ward and conservator and conservatee is subject to the provisions of law relating to trusts. The standard stated in subdivision (a) Section 2501 is consistent generally with trust principles but recognizes that what is ordinarily prudent may vary with the circumstances of each case. Compare Civil Code § 2259 (duty of trustee to use at least ordinary care and diligence in the execution of the trust). See W. Johnstone & G. Zillgitt, California Conservatorships § 5.2, at 152 (Cal. Cont. Ed. Bar 1968) (basic obligation of guardian or conservator to act prudently and in good faith). See also Section 2103 (nonliability of guardian or conservator who complies with court order authorizing particular action or approving a decision not to act) and Section 2503 (petition for instructions or confirmation). Section 2501 applies to all powers and duties of the guardian or conservator, whether or not court authorization or approval is required.

Subdivision (b) of Section 2501 makes clear that ordinary prudence may require that the guardian or conservator exercise a power. For example, the guardian or conservator may fail to exercise ordinary prudence under the circumstances of the particular estate if the guardian or conservator fails to secure insurance to cover the risk of loss of property of the estate. At the same time, subdivision (b) also makes clear that the extent to which a power should be exercised is limited to what is ordinarily prudent under all the circumstances. Thus, for example, in purchasing insurance covering the estate property, the guardian or conservator should not purchase an amount greatly in excess of the amount that would be purchased using ordinary prudence in the management of the estate.

Section 2501 supersedes the portion of the first sentence of former Section 1502 which required every guardian of an estate to manage it frugally and without waste.

Definitions

Conservator, § 2500

Guardian, § 2500

999/312

Tentatively Approved - Sept. 1977

§ 2502. Additional conditions in order of appointment

2502. When a guardian or conservator is appointed, the court may, with the consent of the guardian or conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care and custody of the property of the ward or conservatee. The performance of such conditions is a part of the duties of the guardian or conservator for the faithful performance of which the guardian or conservator and the sureties on the bond are responsible.

Comment. Section 2502 continues the portion of former Section 1512 which applied to a guardian of the estate of a minor and broadens its application to include a conservator of the estate. Consent of the guardian or conservator is required.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

Tentatively Approved - Sept. 1977
Technical Revision - March 1978

§ 2503. Instructions from or approval by court

2503. (a) Upon petition of the guardian, conservator, ward, conservatee, creditor, or other interested party, the court may, after hearing, authorize and instruct the guardian or conservator, or approve and confirm the acts of the guardian or conservator, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2503 is based on former Sections 1516 (instructions to guardian of estate) and 1860 (instructions to or approval of acts of conservator). The word "investment" is added in subdivision (a). Section 2503 supersedes the last portion of the first sentence of former Section 1557 which relates to investments. Section 2503 extends to guardians the former conservatorship provision of Section 1860 which authorized the court not only to instruct in advance but also to confirm actions already taken. See *Place v. Trent*, 27 Cal. App.3d 526, 103 Cal. Rptr. 841 (1972). The provision of former Section 1516 (instructions to guardian) that limited the use of the instruction procedure to cases where no other or different procedure was provided by statute has not been continued. Such a provision was unduly rigid and, moreover, is not appropriate in view of the broader scope of Section 2503 (based on former Section 1860 which permitted not only instructions and authorization in advance but also subsequent approval and confirmation). For provisions relating to notice to the Director of Mental Health or the Director of Developmental Services under certain circumstances, see Section 1461. As to the effect of court authorization, approval, or confirmation on guardian's or conservator's liability, see Section 2103. A petition under this section must be verified. See Sec1450. The clerk sets the petition for hearing. See Section 1451.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

Note. The consultant, Mr. Elmore, believes that an additional provision should be added to the text of the statute, to read in substance:

(c) The court in its discretion, may decline to instruct or approve in advance when another procedure is provided in this part.

Tentatively Approved - Sept. 1977

§ 2504. Order compelling guardian or conservator to pay support or debts

2504. (a) If the guardian or conservator fails, neglects, or refuses to furnish comfortable and suitable support, maintenance, or education for the ward or conservatee as required by this division, or to pay a debt, expense, or charge lawfully due and payable by the ward or conservatee or the estate as provided in this division, the court shall, upon petition or upon its own motion, order the guardian or conservator to do so from the estate.

(b) The petition may be filed by the ward or conservatee or by the creditor or any person interested in the estate. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2504 continues the substance of former Section 1859 with the addition of the reference to "education" (which appeared in former Section 1503) and supersedes former Section 1503. The petition must be verified. See Section 1450. The clerk sets the petition for hearing. See Section 1451.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

Tentatively Approved - Sept. 1977

§ 2505. Application of chapter to community and homestead property

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

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

Article 2. Support and Maintenance of Ward
or Conservatee and Dependents

Tentatively Approved - Sept. 1977

§ 2510. Support, maintenance, and education

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

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

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

(d) Nothing in this section requires the guardian or conservator to obtain court authorization or approval before making the payments authorized by this section, but nothing in this section dispenses with the need to obtain any court authorization or approval otherwise required for a particular transaction.

Comment. Subdivisions (a) and (b) of Section 2510 continue the substance of a portion of the first sentence of former Section 1502, but in subdivision (a) "education" is added and "those legally entitled to support" (contained in former Section 1855) is substituted for the reference in former Section 1502 to the ward's family. Subdivisions (a) and (b) supersede former Section 1855. As to subdivision (b), see Sections 2540 and 2551 (sale or encumbrance of property). Subdivision (c) continues the substance of the second sentence of former Section 1502 except that the provision is broadened by the reference to subdivision (a) to include payments for the support, maintenance, or education of persons legally entitled to support, maintenance, or education from the ward or conservatee.

Section 2510 does not require that the guardian or conservator obtain court approval to apply the income for the purposes specified in subdivision (a). See subdivision (d). However, many guardians and conservators seek court authority in advance (as authorized under Section 2503) for the expenditure of a monthly sum for the support and maintenance of the conservatee and any dependents. It has been pointed out that the guardian or conservator is more likely to have payments allowed when authority is sought in advance than when the same payments are sought to be justified after they have been incurred. See W. Johnstone & G. Zillgitt, *California Conservatorships* § 5.9, at 156 (Cal. Cont. Ed. Bar 1968); Cupp, McCarroll, & McClanahan, *Guardianships of Minors*, in 1 *California Family Lawyer* § 16.57, at 646 (Cal. Cont. Ed. Bar 1962). See also Section 2512 (order authorizing support from estate where third party liable for support). As to advances for the purpose of this section from the personal funds of the guardian or conservator, see Section 2536. For provisions relating to the sale or encumbering of property of the estate, see Sections 2540 (sales) and 2551 (borrowing money and giving security therefor).

Definitions

Conservator, § 2500

Guardian, § 2500

4650

Tentatively Approved - Sept. 1977

§ 2511. Allowance for ward or conservatee

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

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

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

Comment. Section 2511 continues the substance of former Section 1861 (conservatorship) and generalizes the provisions to apply to guardianships as well. If the court makes an order under Section 2511, the allowance paid to the ward or conservatee is subject to the sole control

of the ward or conservatee. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.18, at 166 (Cal. Cont. Ed. Bar 1968). See also Section 2601 (wages of ward or conservatee). The petition must be verified. See Section 1450. The clerk sets the petition for hearing. See Section 1451.

Definitions

Conservator, § 2500
Court, § 1418
Guardian, § 2500

968/902

Tentatively Approved - Sept. 1977

§ 2512. Order authorizing support notwithstanding third party liable

2512. Upon petition of the guardian or conservator or of any party interested in the guardianship or conservatorship, the court may for good cause order the ward or conservatee to be wholly or partially supported, maintained, or educated out of the estate notwithstanding the existence of a third party legally obligated to provide such support, maintenance, or education. Such order may be made for a limited period of time. If not so limited, it continues in effect until modified or revoked.

Comment. Section 2512 continues the substance of former Section 1857 and supersedes former Sections 1504 and 1505. To accomplish the purposes of this section, the guardian or conservator may use the income of the estate and, if necessary, may sell or encumber property of the estate. Section 2510. The petition must be verified. See Section 1450. The clerk sets the petition for hearing. See Section 1451.

Definitions

Conservator, § 2500
Court, § 1418
Guardian, § 2500

Note. The standard under Section 2512 is "good cause." Under Section 1504, the standard is: "If a minor having parents living has property, the income of which is sufficient for his or her support, maintenance, and education in a manner more expensive than his or her parents can reasonably afford, regard being had to the situation of the family and to all the circumstances of the case, the expenses of the support, maintenance and education of such minor may be defrayed out of the income of his or her own property, in whole or in part, as judged reasonable, and as directed by the court." The standard under Section 1505 is: "If a guardian has been appointed over the estate of a spouse by reason of the mental incompetency of the spouse and the other spouse

is unable to provide the support otherwise required by law, the expense of providing the support may, to the extent necessary, be charged against and defrayed out of the estate, as directed by the court or as approved by the court in settling the accounts of the guardian." In place of these two provisions, the "good cause" standard of the conservatorship statute (Section 1857) is adopted in Section 2512. Note that a prior court order is required in every case under proposed Section 2512 (which continues Section 1857) while Section 1505 (guardian of incompetent) permits the incurring of the expense subject to approval of the court when the accounts of the guardian are settled.

968/602

Tentatively Approved - Sept. 1977

§ 2513. Payment of surplus income to next of kin of conservatee

2513. (a) On petition of the conservator or of the next of kin of the conservatee, the court may by order direct the conservator to pay and distribute surplus income of the estate, or any part of such surplus income, not used for the support and maintenance of the conservatee, to the next of kin whom the conservatee would, in the judgment of the court, have aided but for the existence of the conservatorship.

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

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

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

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

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2513 continues the substance of former Sections 1558 and 1856. Unlike other powers and duties in this chapter, the provisions of Section 2513 apply only to conservatorships and not to guardianships. Under Section 2513, the court in making allowances may attach conditions if the court finds that the conservatee would have

imposed them if the conservatee had the capacity to act. See Guardianship of Hudelson, 18 Cal.2d 401, 115 P.2d 805 (1941). See also Sections 2580-2585 (doctrine of substituted judgment); Harris v. Harris, 57 Cal.2d 367, 369 P.2d 481, 19 Cal. Rptr. 793 (1962); Guardianship of Hall, 31 Cal.2d 158, 187 P.2d 396 (1947) (gifts of surplus income as donations for religious or charitable purposes). For provisions relating to notice to the Director of Mental Health or the Director of Developmental Services under certain circumstances, see Section 1461. The petition must be verified. See Section 1450. The clerk sets the petition for hearing. See Section 1451.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

Policy Issue: Should "next of kin" be changed to a term having a more precise meaning (e.g., relatives within the second degree)?

Article 3. Payment of Debts and Expenses

Tentatively Approved - Sept. 1977
Staff Revision - March 1978

§ 2515. Payment of debts and expenses generally

2515. (a) Subject to subdivisions (b) and (c), the guardian or conservator shall pay the following from any principal and income of the estate:

(1) The just and reasonable debts incurred by the ward or conservatee before creation of the guardianship or conservatorship, giving priority to the debts described in Section 2516 to the extent required by that section.

(2) The just and reasonable debts incurred by the ward or conservatee during the guardianship or conservatorship for the necessities of life. The guardian or conservator may deduct the amount of any payments for such debts from any allowance otherwise payable to the ward or conservatee.

(3) In the case of a conservatorship, any other debts incurred by the conservatee during the conservatorship only if the debts (i) appear to be such as a reasonably prudent person might incur and (ii) are not beyond the capacity of the conservatee as provided in an order made pursuant to Section 1831.

(4) The reasonable expenses incurred in the collection, care, and administration of the estate, but court authorization or approval is required for payment of compensation of the guardian or conservator or of an attorney for (i) the guardian or conservator or (ii) the ward or conservatee or (iii) the estate.

(b) The payments provided for by paragraphs (1) and (3) of subdivision (a) are not required to be made to the extent such payments would impair the ability to provide necessities of life to the ward or conservatee and the spouse and minor children of the ward or conservatee.

(c) The guardian or conservator may petition the court under Section 2503 for instructions when there is doubt whether a debt should be paid under this section.

Comment. Section 2515 is adapted from portions of former Sections 1501, 1501a, and 1858. The priorities given under paragraphs (1) and (2) of subdivision (a) to debts incurred before creation of the guardianship or conservatorship and to debts for necessities incurred after such creation are derived from former Section 1858. The requirement that such debts be "just" is derived from former Section 1501. The requirement that they be "reasonable" is new. Paragraph (3) is based on the third sentence of former Section 1858 but recognizes that the court may withdraw or restrict the conservatee's power to contract. See Section 1831; Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, ____ n.6, ____, 120 Cal. Rptr. 407, ____ n.6, ____ (1975). Paragraph (4) supersedes the last portion of the second sentence of former Section 1858. This provision is generalized to apply to guardianships as well as to conservatorships. The requirement of court approval of payment of compensation is new and is consistent with former Sections 1556 and 1556.1.

Subdivision (b) is based on the last portion of the first sentence of former Section 1858 and the last sentence of former Section 1501a.

Subdivision (c) continues the substance of a provision of former Section 1858 (conservatorship) and extends this provision to guardianships as well as conservatorships. See also Sections 2504 (order compelling payment of debts), 2510 (support, maintenance, and education of wards and dependents), 2511 (allowance for ward or conservatee).

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

Note. The staff revision adds the last clause to subdivision (a)(1).

045/210

Tentatively Approved - Sept. 1977

§ 2516. Priority for wage claims

2516. (a) The payments provided for by this section are not required to be made to the extent that the making of such payments would impair the ability of the guardian or conservator to provide necessities of life to the ward or conservatee and to the spouse and minor children of the ward or conservatee.

(b) The guardian or conservator shall promptly pay wage claims for work done or services rendered for the ward or conservatee within 30 days prior to the date the petition for appointment or confirmation of the guardian or conservator was filed. The payments made pursuant to this subdivision shall not exceed six hundred dollars (\$600) to each

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

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

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

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

Comment. Section 2516 is based on former Section 1501a. The section is restated to clarify the provisions concerning priority and proration of payments. The "necessaries of life" standard used in subdivision (a) is drawn from the first sentence of former Section 1858 and replaces the "reasonable current needs" standard of former Section 1501a. See also Section 2515 (payment of debts generally) also using the necessaries of life standard. The balance of the wage claim not given priority under Section 2516 would be payable under subdivision (a)(1) of Section 2515. Nothing in Section 2516 requires the guardian or conservator to obtain court authorization or approval before making the payments required by this section. As to instructions from the court, see Section 2503. See also Section 2504 (order compelling payment of debts).

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

Article 4. Acts of Management Generally

Staff Draft - March 1978

§ 2520. Extent of court supervision

2520. (a) Unless a specific provision of this article provides for a proceeding to obtain court approval or requires court approval, the powers and duties set forth in this article may be exercised or performed by the guardian or conservator without court approval, instruction, or confirmation; but the acts of the guardian or conservator shall be subject to review by the court upon the settlement of accounts.

(b) Upon petition of the ward or conservatee, a creditor, or any person interested in the estate, or upon the court's own motion, the court may limit the authority of the guardian or conservator under subdivision (a) as to a particular power or duty or as to particular powers or duties.

(c) Nothing in this section precludes the guardian or conservator from seeking court approval, instructions, or confirmation pursuant to Section 2503.

Comment. Section 2520 is new. Under prior law, it was not always clear whether the guardian or conservator could act without court approval when the particular provision was silent on the matter. Section 2520 makes clear that, unless the particular provision requires court approval, or the court requires such approval with respect to the particular power or duty under subdivision (b), the powers and duties specified in this article do not require court approval. However, the exercise of all the powers in this article and the performance of all the duties in this article remain subject to the duty of the guardian or conservator to exercise ordinary prudence in the management of the estate. See Section 2501 and Comment thereto. See also Section 2503 permitting the guardian or conservator to seek court approval, instructions, or confirmation for particular transactions. Compare Prob. Code § 591.2. Subdivision (b) also permits the court to impose other restrictions and conditions on the exercise of the powers and duties under this article.

The court may add to the list of powers exercisable by the guardian or conservator without court approval. See Article 9 (commencing with Section 2590).

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

§ 2521. Collection of debts and benefits

2521. The guardian or conservator shall collect all debts and benefits due to the ward or conservatee and the estate.

Comment. Section 2521 continues the substance of the first portion of the second sentence of former Section 1501. The word "benefits" is added to make clear that the provision includes collection of benefits under such laws as the Federal Social Security Act or public assistance laws. The power granted by Section 2521 may be exercised without prior court approval. See Section 2520. As to when the power should or should not be exercised, see Section 2501(b) and Comment thereto. See also Sections 2531 (representation in actions and proceedings), 2533 (compromise of claims and actions and extension or renewal of obligations), 2534 (acceptance of deed in lieu of foreclosure), 2535 (abandonment of valueless property or claims that cannot be economically pursued).

Definitions

Conservator, § 2500

Guardian, § 2500

Policy Issue: Should "may" be substituted for "shall"?

§ 2522. Checks, warrants, and drafts

2522. The guardian or conservator may:

(a) Endorse and cash or deposit any checks, warrants, or drafts payable to the ward or conservatee which constitute property of the estate.

(b) Draw checks for an authorized purpose on any account of the ward or conservatee which constitutes property of the estate.

Comment. Section 2522 is new and provides statutory recognition of the authority of the guardian or conservator with respect to checks, warrants, and drafts. See *Southern Trust & Commerce Bank v. San Diego Sav. Bank*, 45 Cal. App. 294, 187 P. 435 (1919) (court assumed that guardian of incompetent adult is authorized to draw check on account of ward). In some instances, the check may not be property of the estate and hence is not covered by the power granted by this section. See, e.g., Sections 2511 (allowance for ward or conservatee), 2601 (wages of ward or conservatee). The power granted by Section 2522 may be exercised without prior court approval unless the court has limited the exercise of the power, for example, by requiring a court order for withdrawal.

Definitions

Conservator, § 2500

Guardian, § 2500

Tentatively approved - Sept. 1977
Staff Revision - March 1978

§ 2523. Deposit or investment of money

2523. The guardian or conservator may deposit any money belonging to the estate in any bank within this state or may invest any such money in an account in an insured savings and loan association or in shares of an insured credit union. No amount may be deposited or invested under this section that is not fully covered by insurance of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or by insurance required by Section 14805.6 of the Financial Code. Upon such deposit or investment, the guardian or conservator is discharged from further care or responsibility for the money until the money is withdrawn. The money may be withdrawn without order of court.

Comment. Section 2523 provides an independent authorization for the deposit or investment of money without court approval where the deposit or investment will be fully covered by insurance. See Section 2520 (prior court approval not required). Compare Section 2328 (deposit or investment subject to court control in determining amount of bond) and sections referred to in Comment to Section 2328. Section 2523 continues the substance of former Section 1513, but the section has been revised to make clear that it provides independent authority without court approval to make insured deposits or investments. The references to other provisions authorizing deposits and investments that were found in former Section 1513 have been omitted as unnecessary. If the guardian or conservator desires to make a deposit or investment in an amount in excess of the amount fully covered by insurance, the deposit or investment can be made only with court authorization.

Definitions

Account in an insured savings and loan association, § 1406
Conservator, § 2500
Guardian, § 2500
Shares of an insured credit union, § 1433
Trust company, § 1439

Tentatively Approved - Sept. 1977
Technical Revision - March 1978

§ 2524. Deposit of personal assets with trust company

2524. The guardian or conservator may deposit personal assets of the estate with a trust company as provided in Section 2328 or as

provided by the Banking Law, Division 1 (commencing with Section 99) of the Financial Code.

Comment. Section 2524 is the same in substance as former Section 1514 except that a reference to Section 2328 (deposit subject to court control) has been added. The procedure to be followed by the guardian or conservator in exercising the power under 2524 is provided in the statutory provisions to which reference is made in the section.

Definitions

Conservator, § 2500

Guardian, § 2500

Trust company, § 1439

999/341

Tentatively Approved - Sept. 1977

§ 2525. Deposit of securities in securities depository

2525. (a) Securities which constitute all or part of the estate may be deposited in a securities depository as defined in Section 30004 of the Financial Code which is either licensed under Section 30200 of the Financial Code or exempted from such licensing by Section 30005 or 30006 of the Financial Code.

(b) If the securities have been deposited with a trust company pursuant to Section 2328 or Section 2524, the trust company may deposit the securities in a securities depository as provided in subdivision (a).

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

Comment. Section 2525 continues the substance of former Sections 1514.5 and 1520. The power granted by Section 2525 may be exercised without prior court approval. See Section 2520.

045/051

Staff Draft - March 1978

§ 2526. Maintaining home of ward or conservatee and dependents

2526. The guardian or conservator may maintain in good condition and repair the home or other dwelling of either or both of the following:

(a) The ward or conservatee.

(b) The persons legally entitled to support from the ward or conservatee.

Comment. Section 2526 is new and makes specific a power implied in the duties of the guardian or conservator to provide for the support and maintenance of the ward or conservatee and dependents. The power may be exercised without prior court approval. See Section 2520. The power to make extraordinary repairs and improvements is not included under this section. If there is doubt as to whether the particular project is permitted under this section, the guardian or conservator should seek prior court approval under Section 2503. As to when the power under Section 2526 should or should not be exercised, see Section 2501(b) and Comment thereto. See also Section 2504 (order compelling guardian or conservator to furnish support and maintenance), 2510 (support and maintenance generally).

Definitions

Conservator, § 2500

Guardian, § 2500

999/339

Tentatively Approved - Sept. 1977

§ 2527. Voting rights with respect to corporate shares or memberships or property

2527. With respect to any shares of stock of a domestic or foreign corporation held in the estate, any membership in a nonprofit corporation held by the estate, or any property held in the estate, a guardian or conservator may do any or all of the following:

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

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

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

Comment. Section 2527 continues the substance of former Section 1517 except that the section is broadened to authorize action with respect to memberships in nonprofit corporations. See also Corp. Code §§ 702(a) (guardian or conservator may vote shares), 705(a) (person entitled to vote shares may give proxy).

Definitions

Conservator, § 2500

Guardian, § 2500

§ 2528. Life insurance and medical, retirement, and other benefits

2528. (a) The guardian or conservator may obtain, continue, renew, modify, terminate, or otherwise deal with any of the following in which the ward or conservatee, or a person legally entitled to support from the ward or conservatee has, or will have, an interest:

- (1) Life insurance policies, plans, or benefits.
- (2) Disability policies, plans, or benefits.
- (3) Annuity policies, plans, or benefits.
- (4) Medical, hospital, and other health care policies, plans, or benefits.
- (5) Retirement, profit sharing, and employee welfare plans or benefits.

(b) The right of a conservatee to elect options and change beneficiaries, or to receive cash value in return for a surrender of rights, under any of the policies, plans, or benefits described in subdivision (a) may be exercised by the conservator only with the approval of the court under Article 8 (commencing with Section 2580).

Comment. Section 2528 gives the guardian or conservator specific authority to deal with the matters covered by the section. Generally, prior court authorization is not required. See Section 2520. However, the authority under this section can be limited by specific court orders (Section 2520), and subdivision (b) requires advance court approval for the exercise of options, changes in beneficiary, and surrenders for cash value under the provisions relating to the doctrine of substituted judgment. As to instructions from the court, see Section 2503.

There was no express provision in former law on this subject, except a limited reference in former Section 1518 to the power of the guardian of a minor, with court approval, to apply funds to obtain or continue in force a life, disability, or annuity policy in which the ward had, or would have, an interest, and a reference to necessary insurance for the proper protection of the estate in the additional powers which might be granted by the court under former Section 1853 (conservators).

Definitions

Conservator, § 2500

Guardian, § 2500

§ 2529. Liability and casualty insurance

2529. The guardian or conservator may insure:

(a) Property of the estate against loss or damage.

(b) The ward or conservatee, the guardian or conservator, and the estate, or any of thereof, against liability to third persons.

Comment. Section 2529 expressly states the power of the guardian or conservator to secure liability and casualty insurance without first obtaining the approval of the court. See Section 2520 (approval of court not required). Former law referred to this subject only in connection with the listing of "additional powers" which might be granted by the court under former Section 1853. In practice, however, the responsibility to obtain adequate insurance was recognized. See W. Johnstone & G. Zillgitt, California Conservatorships § 4.3, at 110, § 4.7, at 111, § 5.22, at 171 (Cal. Cont. Ed. Bar 1968). As to when the power granted by Section 2529 should or should not be exercised, see Section 2501(b) and Comment thereto.

Definitions

Conservator, § 2500

Guardian, § 2500

§ 2530. Taxes and tax returns

2530. The guardian or conservator may:

(a) Pay, contest, and compromise taxes and assessments upon the property of the estate and income and other taxes payable or claimed to be payable by the ward or conservatee or the estate.

(b) Make tax returns for the ward or conservatee and the estate.

Comment. Section 2530 is new. There was no express provision in former law on this subject, although an "additional power" that could be granted by the court under former Section 1853 included the power to pay or compromise claims for taxes. Court authorization or approval is not required to exercise the powers under Section 2530. See Section 2520. As to instructions from the court, see Section 2503.

Definitions

Conservator, § 2500

Guardian, § 2500

Tentatively Approved in Substance - Sept. 1977

§ 2531. Representation in actions and proceedings

2531. Subject to Section 2532, unless another person is appointed for that purpose, the guardian or conservator shall:

(a) Institute and maintain all actions and proceedings for the benefit of the ward or conservatee or the estate.

(b) Defend all actions and proceedings against the ward or conservatee or the estate.

Comment. Section 2531 continues the substance of the last sentence of former Section 1501 but is phrased in language drawn from former Section 1853. The reference to Section 2532 has been added for clarity since Section 2532 requires court approval before an action for partition is commenced. Court approval is not required to exercise the powers under Section 2531. See Section 2520.

Section 2531 states the general principle that the conservator is authorized to bring or defend actions on behalf of the conservatee; the section does not deal with the question of when the conservatee may himself bring or defend an action or proceeding. Cf. Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 533 P.2d 1047, 120 Cal. Rptr. 407 (1975). As to instructions from the court, see Section 2503. As to when a power should or should not be exercised, see Section 2501. See also Sections 2532 (partition actions), 2533 (compromise of claims and actions), 2534 (acceptance of deed in lieu of foreclosure), 2535 (abandonment of valueless property or property that cannot reasonably be recovered), 2536 (advances by guardian or conservator), ____ (contract for attorney fees).

Definitions

Conservator, § 2500

Guardian, § 2500

Policy Issue: Should "may" be substituted for "shall"?

406/460

Tentatively Approved - Sept. 1977

§ 2532. Partition actions

2532. (a) The guardian or conservator may commence and prosecute an action for partition real or personal property, or both, if the court has first made an order authorizing the guardian or conservator to do so. The court may make such an order ex parte on a petition filed by the guardian or conservator.

(b) The guardian or conservator may consent and agree, without an action, to a partition of the property and to the part to be set off to the estate, and may execute deeds or conveyances to the owners of the remaining interests of the parts to which they may be respectively entitled if the court has made an order under Section 2533 authorizing the guardian or conservator to do so.

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

Comment. Section 2532 continues the substance of former Sections 1506, 1507, and 1508 except that a reference to Section 2533 has been inserted for the notice provision of former Section 1507. As to instructions from the court, see Section 2503. The petition must be verified. See Section 1450.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

4465

Tentatively Approved - Sept. 1977
Staff Revision - March 1978

§ 2533. Compromise of claims and actions; extension, renewal, or modification of obligations

2533. (a) The guardian or conservator may do any of the following:

(1) Compromise or settle any claim, action, or proceeding by or for the benefit of or against the ward or conservatee, the guardian or conservator as such, or the estate.

(2) Extend, renew, or in any manner modify the terms of any obligation owing to or running in favor of the ward or conservatee or the estate.

(b) Approval of the court is required for any action by the guardian or conservator under subdivision (a) in any of the following cases:

(1) Where real property is involved.

(2) Where the claim or action is one of the ward or conservatee for wrongful death.

(3) Where the claim or action is for personal injury to the ward or conservatee.

(4) Where the claim, action, or proceeding is against the guardian or conservator.

(5) Where approval is otherwise required by a statute specifically applicable to the particular case.

(c) Where approval of the court is required, the guardian or conservator shall file a petition showing the advantage of the compromise, settlement, extension, renewal, or modification. 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. This subdivision does not apply where another statute is specifically applicable to the particular case and provides for approval of the court.

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

Comment. Section 2533 is based on former Section 1530a and a portion of former Section 1501. Former Section 1530a required approval of the court for all compromises and extensions, renewals, or modifications of obligations; Section 2533 requires the approval of the court only in the cases listed in subdivision (b) of the section. The provision of former Section 1530a that the compromise could be accomplished "by the transfer of specific assets of the estate, or otherwise" has been omitted as unnecessary.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

968/916

Tentatively Approved - Sept. 1977

Technical Revision - Feb. 1978

§ 2534. Acceptance of deed in lieu of foreclosure

2534. (a) If it is to the advantage of the estate to accept a deed to property which is subject to a mortgage or deed of trust in lieu of

foreclosure of the mortgage or sale under the deed of trust, the guardian or conservator may, with the approval of the court and upon such terms and conditions as may be imposed by the court, accept a deed conveying the property to the ward.

(b) To obtain the approval of the court, the guardian or conservator shall file a petition showing the advantage to the estate of accepting the deed. 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.

Comment. Section 2534 continues the substance of former Section 1515.5. The petition must be verified. See Section 1450. The clerk sets the petition for hearing. See Section 1451.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

100/914

Staff Draft - Feb. 1978

§ 2535. Abandonment of valueless property

2535. The guardian or conservator may:

(a) Dispose of valueless property.

(b) Abandon property which cannot be economically recovered.

Comment. Section 2535 is based on a portion of former Section 1853 which authorized the court to give a conservator the power to dispose of valueless property. The powers under Section 2535 may be exercised without approval of the court. See Section 2520 and Comment thereto. However, the guardian or conservator may seek instructions from the court concerning the power granted by this section. See Section 2503. As to when the power granted by this section should or should not be exercised, see Section 2501. As to instructions from the court, see Section 2503.

Definitions

Conservator, § 2500

Guardian, § 2500

Tentatively Approved - Sept. 1977

§ 2536. Advances by guardian or conservator

2536. The guardian or conservator may advance personal funds for the benefit of the ward or conservatee or the estate and may reimburse such advances out of the income and principal of the estate first available.

Comment. Section 2536 continues the substance of the last sentence of former Section 1858 which applied to conservators and extends its provisions to guardians. The addition of "personal" funds of the guardian or conservator is clarifying. As to instructions from the court, see Section 2503.

Definitions

Conservator, § 2500

Guardian, § 2500

Tentatively Approved - Sept. 1977

§ 2537. Care of estate pending delivery to personal representative

2537. The guardian or conservator shall continue to have the duty of custody and conservation of the estate after the death of the ward or conservatee pending the delivery thereof to the personal representative of the ward's or conservatee's estate or other disposition according to law.

Comment. Section 2537 is based on a portion of the first sentence of former Section 1755 (conservator) which is made generally applicable to both guardians and conservators. The phrase "or other disposition according to law" has been added.

Definitions

Conservator, § 2500

Guardian, § 2500

Article 5. Sales

Tentatively Approved - Sept. 1977

§ 2540. Purposes for which sale may be made

2540. The guardian or conservator may sell any real or personal property of the estate in any of the following cases:

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

(b) The personal property of the estate and the income from real property of the estate is insufficient to pay the debts referred to in Sections 2515 and 2516.

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

Comment. Section 2540 continues the substance of former Section 1530 insofar as that section related to the cases where sale of real or personal property was authorized with the following revisions:

(1) A reference to the education of the ward or conservatee has been added.

(2) A reference to those legally entitled to support has been substituted for the former reference to family members the ward is legally obligated to support.

(3) A reference to the ward or conservatee being a patient in a state hospital under the jurisdiction of the State Department of Health or State Department of Developmental Services has been substituted for the former reference to the ward being "confined in a state hospital for the insane."

(4) A reference has been added to Sections 2515 and 2516 in subdivision (b).

For related provisions, see Section 2510(b) (sale or encumbrance when income insufficient for support, maintenance, and education), 2551 (encumbrance for purposes of this section).

Definitions

Conservator, § 2500

Guardian, § 2500

§ 2541. Extent of court supervision

2541. Except as otherwise provided in Sections 2544 and 2545, sales of real or personal property of the estate under this article are subject to authorization, confirmation, or direction of the court, as provided in this article.

Comment. Section 2541 continues the substance of a portion of the last clause of former Section 1530.

Definitions

Court, § 1418

404/383

Tentatively Approved - Sept. 1977

§ 2542. Terms of sales

2542. (a) All sales shall be for cash or for part cash and part deferred payments. In no case shall credit exceed 20 years from the date of sale. Except as otherwise provided in Sections 2544 and 2545, the terms of sale are subject to the approval of the court.

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

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

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

(c) If real or personal property of the estate sold for part deferred payments consists of an undivided interest, a joint tenancy interest, or any other interest less than the entire ownership, and the owner or owners of the remaining interests in the property join in the sale, the note and deed of trust or mortgage may be made to the ward or conservatee and the other owner or owners. The interest of the ward or conservatee in the note and deed of trust or mortgage shall be in the same tenancy and in the same proportion as the interest of the ward or conservatee in the property prior to the sale.

Comment. Section 2542 continues the substance of former Section 1532 (as amended by 1977 Cal. Stats., Ch. 243) with the addition of the reference to Sections 2544 and 2545.

Definitions

Conservator, § 2500
Court, § 1418
Guardian, § 2500

404/384

Tentatively Approved - Sept. 1977

§ 2543. Manner of sale

2543. (a) Sales may be at public auction or private sale, as the guardian or conservator deems best.

(b) Subject to subdivision (b) of Section 1463, unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or conservators, giving notice of sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by administrators, other than the Independent Administration of Estates Act, Article 2 (commencing with Section 591) of Chapter 8 of Division 3.

Comment. Section 2543 continues the substance of former Section 1534 except for the exclusion of the Independent Administration of Estates Act and addition of the reference to Section 1463. The provisions of the Independent Administration of Estates Act, which became operative on July 1, 1975, are not appropriate for incorporation by reference. Subdivision (b) does not apply to sales under Section 2544 (listed stocks, bonds, and other securities and U.S. obligations), 2545 (certain tangible personal property). As to the requirement of an additional bond before a sale of real property is confirmed, see Section 2331. For provisions relating to notice to the Director of Mental Health or the Director of Developmental Services under certain circumstances, see Section 1461. Probate Code Section 1201 (additional notice in case of sale of mining property or petition to borrow money or give security or execute lease or sublease) does not apply to sales under this division. See Section 1463(b).

Definitions

Conservator, § 2500
Guardian, § 2500

§ 2544. Listed stocks, bonds, and securities; United States obligations

2544. (a) Except as specifically limited by order of the court, the guardian or conservator may sell any of the following without authorization, confirmation, or direction of the court:

(1) Direct obligations of the United States.

(2) Stocks, bonds, and other securities which are listed and subject to purchase and sale on an established stock or bond exchange in the United States.

(b) Sales under paragraph (2) of subdivision (a) shall be made on the established stock or bond exchange.

(c) Section 2543 does not apply to sales under this section.

Comment. Section 2544 is new and permits sales of United States government obligations and listed stocks, bonds, and other securities without court authorization, confirmation, or direction. As to when and when not the power should be exercised, see Section 2501. See also Section 2575 (investment and reinvestment of funds in government obligations and listed stocks, bonds, and other securities).

Definitions

Conservator, § 2500

Court, § 2500

Guardian, § 2500

§ 2545. Sale or other disposition of tangible personal property

2545. (a) Subject to subdivisions (b) and (c), the guardian or conservator may sell or exchange tangible personal property of the estate without authorization, confirmation, or direction of the court.

(b) The aggregate of the sales or exchanges made during any calendar year under this section may not exceed \$1,000, or five percent of the then gross value of the tangible and intangible personal property of the estate, whichever is the greater.

(c) A sale or exchange of personal effects or of furniture or furnishings used for personal, family, or household purposes may be made under this section only if:

(1) In the case of a guardianship, the ward is under the age of 14 or, if 14 or over, consents to the sale or exchange.

(2) In the case of a conservatorship, the conservatee either (i) consents to the sale or exchange or (ii) the conservatee does not have capacity to give such consent because such consent is beyond the capacity of the conservatee as provided in an order made pursuant to Section 1831.

(d) Subdivision (b) of Section 2543 does not apply to sales under this section. Failure of the guardian or conservator to observe the limitations of subdivision (b) or (c) does not invalidate the title of, or impose any liability upon, a third person who acts in good faith and without actual notice of the lack of authority of the guardian or conservator.

Comment. Section 2545 is new. There was no comparable provision of this type under former law. Section 2545 gives the guardian or conservator broader authority than exists in the case of a probate estate; Section 2545 applies whether or not the property is perishable or is property which may be disposed of without court order in a probate estate (see Prob. Code §770). The reference in subdivision (c) to furniture and furnishings does not include property in commercial use. Hence, consent is not required to sell furniture or furnishings in commercial use. The first sentence of subdivision (d) permits sale in such manner as the guardian or conservator considers best under the circumstances and the second sentence protects innocent third persons if the guardian or conservator acts in excess of the authority granted by the section. Sales of tangible personal property that do not fall within Section 2545 are made under the general provisions of this article (Sections 2541-2543).

Definitions

Conservator, § 2500

Guardian, § 2500

404/393

Tentatively Approved - Sept. 1977

§ 2546. Mines and mining claims

2546. Agreements for the sale of, or for giving options to purchase, mining claims or real property worked as mines may be executed by the guardian or conservator only upon obtaining an order of court authorizing the same. The proceedings to obtain such an order and, except as provided in subdivision (b) of Section 1463, the proceedings thereunder shall conform, as nearly as may be, to the provisions of this code concerning similar proceedings by administrators.

Comment. Section 2546 is the same in substance as a portion of former Section 1538 except for the addition of the reference to Section 1463.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 1500

404/388

Tentatively Approved - Sept. 1977

§ 2547. Disposition of proceeds of sale

2547. The guardian or conservator shall apply the proceeds of the sale to the purposes for which it was made, as far as necessary, and the residue, if any, shall be managed as the other assets of the estate.

Comment. Section 2547 supersedes former Section 1536.

Definitions

Conservator, § 2500

Guardian, § 2500

404/655

Tentatively Approved - Sept. 1977

§ 2548. Limitation of action to recover property sold

2548. No action for the recovery of any property sold by a guardian or conservator may be maintained by the ward or conservatee or by any person claiming under the ward or conservatee unless commenced within whichever of the following is the later time:

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

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

Comment. Section 2548 continues the substance of former Section 1539.

Article 6. Notes, Mortgages, Leases,
Conveyances, and Exchanges

Staff Draft - March 1978

§ 2550. Court supervision

2550. Except as otherwise provided in this article, the authority of a guardian or conservator to borrow money, give security, lease, convey, or exchange property of the estate or to engage in other transactions under this article is subject to authorization, confirmation, or direction of the court. Such authorization, confirmation, or direction may be obtained in the manner provided in this article.

Comment. Section 2550 continues the substance of a portion of the last clause of former Section 1530. The necessary authorization, confirmation, or direction of the court may be obtained under this article or under some other applicable provision such as, for example, Section 1503 (instructions from or approval by court). For a provision authorizing exchanges of certain tangible personal property without authorization, confirmation, or direction of the court, see Section 2545.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

968/918

Tentatively Approved - Sept. 1977

§ 2551. Borrowing money and giving security therefor

2551. (a) In any case described in Section 2540 or Section 2552, the guardian or conservator, after authorization by order of the court, may borrow money upon a note or notes, either unsecured, or to be secured by a security interest or other lien on the personal property of the estate, or any part thereof, or to be secured by a mortgage or deed of trust on the real property of the estate, or any part thereof. Subject to subdivision (b) of Section 1463, the proceedings to obtain such an order shall conform, as nearly as may be, to the provisions of this code concerning similar proceedings by administrators.

(b) Upon any foreclosure or sale under any such security interest, lien, mortgage, or deed of trust, if the proceeds of the sale of the

encumbered property are insufficient to pay the note or notes, the security interest, lien, mortgage, or deed of trust, and the costs or expenses of sale, no judgment or claim for any deficiency shall be had or allowed against the ward or conservatee or the estate.

Comment. The first sentence of subdivision (a) of Section 2551 continues the substance of the first portion of former Section 1533, but a reference to Sections 2540 and 2552 has been substituted for "will benefit his ward" which appeared in former Section 1533 and the types of security that may be given have been made more specific. The second sentence of subdivision (a) continues the substance of a portion of former Section 1538 with the addition of the reference to Section 1463(b). Subdivision (b) continues the last sentence of former Section 1533.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, §2500

10038

Tentatively Approved - Sept. 1977

§ 2552. Refinancing or improving or repairing property

2552. (a) The guardian or conservator may give a security interest or other lien upon the personal property of the estate, or any part thereof, or a mortgage or deed of trust upon the real property of the estate, or any part thereof, after authorization by order of the court as provided in Section 2551, for any of the following purposes:

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

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

(b) If property of the estate consists of an undivided interest in real or personal property, or any other interest therein less than the entire ownership, and it appears to be to the advantage of the estate to borrow money to improve, utilize, operate, or preserve the property jointly with the owner or owners of the other interests therein, or to pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on all of the property, the guardian or

conservator, after authorization by order of the court as provided in Section 2551, may join with the owner or owners of such other interests in the borrowing of money and the execution of a joint and several note or notes and such security interest, lien, mortgage, or deed of trust as may be required to secure the payment of the note or notes. The note or notes may be for such sum as is required for the purpose.

Comment. Section 2552 continues a portion of the substance of former Section 1533. As to instructions from the court, see Section 2503.

Definitions

Conservator, § 2500
Court, § 1418
Guardian, § 2500

405/474

Tentatively Approved - Sept. 1977

§ 2553. Order authorizing lease required

2553. Except as provided in Section 2555, leases may be executed by the guardian or conservator with respect to the property of the estate only upon obtaining an order of court authorizing the lease. Subject to subdivision (b) of Section 1463, the proceedings to obtain such an order shall conform, as nearly as may be, to the provisions of this code concerning similar proceedings by administrators.

Comment. Section 2553 continues the substance of a portion of former Section 1538 with the addition of the reference to Section 1463.

Definitions:

Conservator, § 2500
Court, § 1418
Guardian, § 2500

405/441

Tentatively Approved - Sept. 1977

§ 2554. Leases generally

2554. (a) An order authorizing the execution of a lease shall set forth the minimum rental or royalty and the period of the lease, which shall be for such time as the court may authorize.

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

(1) A provision for the payment of rental and royalty to a deposi-
tary.

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

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

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

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

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

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

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

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

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

Comment. Section 2554 continues the substance of former Section
1538.5.

Definitions

Court, § 1418

§ 2555. Leases permitted without court order

2555. The guardian or conservator may lease real property without an order of court when the rental does not exceed seven hundred fifty dollars (\$750) a month and the term does not exceed two years or, regardless of the amount of the rental, when the lease is from month to month.

Comment. Section 2555 continues the substance of former Section 1538.6 except that the term has been increased from one year to two years and the amount from \$250 to \$750 a month.

Definitions

Conservator, § 2500

Guardian, § 2500

§ 2556. Conveyance to complete contract

2556. If an adult conservatee is bound by a contract in writing to convey any real property, executed by the conservatee while competent or executed by the conservatee's predecessor in interest, or if a ward has succeeded to the interest of a person bound by a contract in writing to convey any real property, the court may by order authorize and direct the guardian or conservator to convey the property to the person entitled thereto. The proceedings to obtain such an order shall conform, as nearly as may be, to the provisions of this code concerning conveyances by administrators of property contracted to be sold by their decedents.

Comment. Section 2556 continues the substance of former Section 1537.

Definitions

Conservatee, § 2500

Court, § 1418

Guardian, § 2500

§ 2557. Dedication or conveyance of real property or easement with
or without consideration

2557. (a) If it is for the advantage, benefit, and best interests of the estate and those interested therein, the guardian or conservator, with the approval of the court, may do any of the following either with or without consideration:

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

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

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

(b) To obtain the approval of the court, the guardian or conservator or any person interested in the estate shall file a petition with the court. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2557 continues the substance of former Section 1515. The petition must be verified. See Section 1450. The clerk sets the petition for hearing. See Section 1451.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

§ 2558. Conveyance of property claimed by another

2558. (a) If the ward or conservatee is in possession of, or holding title to, real or personal property and the property or some interest therein is claimed to belong to another, the court may authorize and direct the guardian or conservator to convey the property or the interest to the person entitled thereto.

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

Comment. Section 2558 continues the substance of former Section 1537.5.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

§ 2559. Exchange of property

2559. If property may be exchanged to the advantage and best interests of the ward or conservatee and those entitled to support, maintenance, and education from the ward or conservatee, the guardian or conservator may, after authorization by order of the court, execute a conveyance to the person with whom the exchange is made to effectuate the exchange. The provisions of this code governing exchanges of property by administrators apply to and govern exchanges of property by guardians or conservators so far as applicable.

Comment. Section 2559 continues the substance of former Section 1540 except that the reference to those entitled to support, maintenance, and education from the ward or conservatee is substituted for the former reference to members of the ward's family the ward is legally bound to support and maintain. For a provision relating to the exchange of tangible personal property, see Section 2545.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

Article 7. Investments and Purchase of Property

Tentatively Approved - Sept. 1977
 Staff Revision - March 1978

§ 2570. Authority to invest generally

2570. When authorized by order of the court, the guardian or conservator may invest the proceeds of sales, and any other money of the estate, in real property or in any other manner that is for the advantage, benefit, and best interest of the estate.

Comment. Section 2570 provides general authority for the investment of surplus funds of the estate. The section supersedes the portion of former Section 1557 which authorized investments in real property or in any other manner most to the interest of the ward. An investment made under Section 2570 requires court authorization under Section 2572. Other provisions permit specific types of investments without the need for a court order. For example, see Sections 2523 (deposit or investment of money in a bank, savings and loan association, or insured credit union) and 2575 (United States and State of California obligations and listed stocks, bonds, and other securities).

Definitions

Conservator, § 2500
 Court, § 1418
 Guardian, § 2500

Tentatively Approved - Sept. 1977
 Staff Revision - March 1978

§ 2571. Purchase of home for ward or conservatee or dependents

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

Comment. Section 2571 continues what appears to be the intended purpose of the authority granted by former Section 1557.1 insofar as that section authorized purchase of real property other than for investment purposes. A purchase under this section requires court authorization under Section 2572. See also Section 2573 (order authorizing

purchase of real property). For somewhat similar authority, see Section 2913 (Uniform Veterans' Guardianship Act).

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

404/664

Tentatively Approved - Sept. 1977

§ 2572. Petition; hearing; order

2572. (a) To obtain an order of the court authorizing a transaction under this article, the guardian or conservator, the ward or conservatee, or any person interested in the estate, may file a petition with the court.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. The court may order the notice to be given for a shorter period or dispensed with.

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

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

Comment. Section 2572 is new. Subdivision (a) is drawn from the first portion of former Section 1557 and expands the persons who were authorized to file a petition under former Section 1557. The petition must be verified. See Section 1450. Subdivision (b) supersedes a portion of former Sections 1557 and 1557.1 and has the effect of requiring 10 rather than five days' notice of the hearing unless the court shortens the time of notice or dispenses with the notice. The clerk sets the petition for hearing. See Section 1451. Subdivision (c) is drawn from former Section 1557.1 and is made generally applicable. Subdivision (d) is drawn from the last sentence of former Section 1557.1 and is made generally applicable.

Definitions

Conservator, § 2500

Court, § 1418

Guardian, § 2500

Tentatively Approved - Sept. 1977

§ 2573. Order authorizing purchase of real property

2573. An order authorizing the guardian or conservator to purchase real property may authorize the guardian or conservator to join with the spouse of the ward or conservatee or with any other person or persons in the purchase of the real property, or an interest, equity, or estate therein, in severalty, in common, in community, or in joint tenancy, for cash or upon a credit or for part cash and part credit. When the court authorizes the purchase of real property, the court may order the guardian or conservator to execute all necessary instruments and commitments to complete the transaction.

Comment. Section 2573 continues the substance of a portion of former Section 1557.1.

Definitions

Conservator, § 2500

Guardian, § 2500

Tentatively Approved - Sept. 1977

§ 2574. Order authorizing investment in governmental bonds

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

Comment. Section 2574 continues the substance of a portion of former Section 1557.

Definitions

Conservator, § 2500

Guardian, § 2500

§ 2575. United States and State of California obligations; listed
stocks, bonds, and other securities

2575. (a) Subject to subdivision (c), the guardian or conservator may invest and reinvest funds of the estate in:

(1) Direct obligations of the United States, or of this state, having a maturity at the time of acquisition of not more than five years.

(2) Stocks, bonds, and other securities which are listed and subject to purchase and sale on an established stock or bond exchange in the United States.

(b) Except as specifically limited by order of the court, no authorization, confirmation, or direction of the court need be obtained for the purchase or sale of:

(1) The obligations described in paragraph (1) of subdivision (a).

(2) The stocks, bonds, or other securities described in paragraph (2) of subdivision (a) when purchased or sold on the established stock or bond exchange.

(c) In making investments and reinvestments under this section, the guardian or conservator shall conform to the "prudent man" investment rule or continue an investment policy of a prudent nature being followed with respect to the estate of the ward or conservatee at the time of the appointment of the guardian or conservator and shall take into consideration the circumstances of the estate, indicated cash needs, and, if reasonably ascertainable, the date of the prospective termination of the guardianship or conservatorship.

Comment. Section 2575 is new. There were no comparable provisions under former law. Subdivisions (a) and (b) eliminate the need for applying in advance for a court order in case of the investments or reinvestments described. Subdivision (c) refers to the "prudent man" investment rule but qualifies it by requiring consideration of the circumstances of the estate which may vary according to the circumstances of the particular guardianship or conservatorship involved and consideration of the time when the protective proceedings will or will be likely to terminate and by permitting a continuation of an investment policy of a prudent nature previously followed. In permitting investments and reinvestments (including sales) without a court order (except as specifically provided in a particular case), Section 2575 is consistent with Section 2544 which permits sale of United States government obligations and

listed stocks, bonds, and other securities without authorization, confirmation, or direction of the court but departs from comparable provisions relating to probate estates which require a court order for the sale of securities (Prob. Code § 771). An investment in a government obligation, stock, bond, or security that is not one described in Section 2575 may be made only if court authorization is obtained under Sections 2570 and 2572.

Article 8. Doctrine of Substituted Judgment

Tentatively Approved - Feb. 1978

§ 2580. Petition for approval of proposed action

2580. (a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(1) Benefiting the conservatee or the estate.

(2) Minimizing current or prospective state or federal income, estate, or inheritance taxes or expenses of administration.

(3) Providing gifts for such purposes, and to such charities, relatives, friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

(1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life.

(6) Exercising options of the conservatee to purchase or exchange securities or other property.

(7) Exercising the rights of the conservatee to elect options and change beneficiaries under insurance and annuity policies or to surrender the policies for their cash value.

(8) Exercising the right of the conservatee to elect to take under or against a will.

(9) Exercising the right of the conservatee to renounce or disclaim any interest acquired by testate or intestate succession or by inter vivos transfer, including exercising the right of the conservatee to surrender the right to revoke a revocable trust.

(10) Exercising the right of the conservatee to revoke a revocable trust.

Comment. This article (commencing with Section 2580) is new and codifies the court-recognized doctrine of substituted judgment. See *Estate of Christiansen*, 248 Cal. App.2d 398, 56 Cal. Rptr. 505 (1967); *Conservatorship of Wemyss*, 20 Cal. App.3d 877, 98 Cal. Rptr. 85 (1971). Section 2580 is drawn from a portion of Mass. Ann. Laws, Ch. 201, § 38, as amended by 1976 Statutes, Ch. 515, effective July 1, 1978. See also 20 Pa. Cons. Stat. Ann. § 4436(b) (Purdon 1976); Uniform Probate Code § 5-408(3).

Subdivision (a) of Section 2580 indicates the three general types of situations where the doctrine of substituted judgment may be exercised:

(1) Where the action proposed to be taken by the conservator is for the benefit of the conservatee or the estate.

(2) Where the proposed action is designed to minimize taxes or expenses of administration.

(3) Where there is a person to whom the conservatee probably would have made gifts or provided support from excess funds or assets or where there are charities or other objects which the conservatee had shown an inclination to support.

The nonexclusive listing in subdivision (b) of the types of actions which may be proposed in the petition is drawn from the Massachusetts and Pennsylvania statutes and from the Uniform Probate Code provision, supra. Under former law, the extent to which these types of actions could be authorized or required to be taken by the conservator, whether court approval was required, and the relevant considerations in determining whether the action should be taken, were matters that were not covered by statute and the law was uncertain.

In the case of gifts of income from the conservatorship estate, this article supplements Section 2513 which authorizes payments of surplus income to the "next of kin" of the conservatee under certain circumstances. Gifts of surplus income under this article are not limited to next of kin.

A petition under this article must be verified. See Section 1450.

Definitions:

Conservator, § 2500

Court, § 1418

043/147

Tentatively Approved - Feb. 1978

§ 2581. Notice of hearing of petition

2581. Notice of the hearing of the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 to all of the following:

(a) The persons required to be given notice under Chapter 3 (commencing with Section 1460) of Part 1.

(b) The persons required to be named in a petition for the appointment of a conservator.

(c) So far as is known to the petitioner, any beneficiaries under the conservatee's will.

(d) Such other persons as the court may order.

Comment. Section 2581 is new. The clerk sets the petition for hearing. See Section 1451.

043/149

Tentatively Approved - Feb. 1978

§ 2582. Adequate provision for conservatee and dependents required

2582. The court may make an order authorizing or requiring the proposed action under this article only if the court is satisfied that the proposed action will have no adverse effect on the estate or that the estate remaining after the proposed action is taken will be adequate to provide for the needs of the conservatee and for the support of those legally entitled to support from the conservatee, taking into account the age, physical condition, standards of living, and all other relevant circumstances of the conservatee and those legally entitled to support from the conservatee.

Comment. Section 2582 recognizes that the conservatee and those legally entitled to support from the conservatee have first claim on the income and assets of the estate.

Definitions:

Court, § 1418

043/151

Tentatively Approved - Feb. 1978

§ 2583. Circumstances considered in determining whether to approve proposed action

2583. In determining whether to authorize or require a proposed action under this article, the court shall take into consideration all the relevant circumstances, including but not limited to:

(a) The probability of the conservatee's recovery of sufficient capacity to make a disposition of the estate.

(b) The past donative declarations, practices, and conduct of the conservatee.

(c) The traits of the conservatee.

(d) The relationship and intimacy of the prospective donees with the conservatee, their standards of living, and the extent to which they would be natural objects of the conservatee's bounty by any objective test based on such relationship, intimacy, and standards of living.

(e) The wishes of the conservatee.

(f) Any known estate plan of the conservatee, including the conservatee's will, any revocable trust of which the conservatee is the settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated.

(g) The manner in which the estate would devolve upon the conservatee's death, giving consideration to the age and the mental and physical condition of the conservatee, the prospective legatees, devisees, or heirs apparent of the conservatee, and the prospective donees.

(h) The value, liquidity, and productiveness of the estate.

(i) The minimization of current or prospective income, estate, or inheritance taxes, or expenses of administration.

(j) The likelihood from all the circumstances that the conservatee as a reasonably prudent person might take the proposed action if the conservatee had the capacity to do so.

Comment. Section 2583 gives the court discretion and flexibility in applying the doctrine of substituted judgment under the circumstances of the particular case. The listing in Section 2583 is not exclusive, and the weight to be given to any particular matter listed will depend upon the circumstances of the particular case. Subdivision (j) lists a relevant consideration absent a showing of contrary intent. See *Estate of Christiansen*, 248 Cal. App.2d 398, 414, 424, 56 Cal. Rptr. 505, ___, ___ (1967) (court will not assume that the conservatee is abnormally selfish unless that trait is established). A matter not listed may be significant in a particular case. For example, the conservatee may have received property from a parent with the understanding that the conservatee would leave the property to the descendants of that parent. Such an understanding would be a circumstance the court should take into account together with all other relevant circumstances.

043/155

Tentatively Approved - Feb. 1978

§ 2584. Determination and order

2584. After hearing, the court, in its discretion, may approve, modify and approve, or disapprove the proposed action and may authorize

or direct the conservator to transfer or dispose of assets or take other action as provided in the court's order.

Comment. Section 2584 is new.

043/165

Tentatively Approved - Feb. 1978

§ 2585. No duty to propose action

2585. Nothing in this article imposes any duty on the conservator to propose any action under this article, and the conservator is not liable for failure to propose any action under this article.

Comment. Section 2585 is included to make clear that a conservator is not liable for the failure to propose an estate plan or other action under this article even though the conservatee, if competent and acting as a reasonably prudent person, would have developed an estate plan or have taken other action in order to minimize taxes and expenses of administration. The remedy for a person who believes that some action should be taken by the conservator under this article is to petition under Section 2580 for an order requiring the conservator to take such action with respect to estate planning or gift giving as is set out in the petition.

Article 9. Independent Exercise of Powers

Comment. Article 9 (commencing with Section 2590) supersedes former Sections 1853 and 1854. Unlike the former sections which applied only to conservators, Article 7 applies both to guardians and conservators. The purpose of the article is to permit the court to authorize an experienced and qualified guardian or conservator to exercise one or more of the powers to which the article applies without continually petitioning the court for authority or approval. In appropriate cases, use of the authority under this article will save time and expense in the management of the estate while preserving adequate safeguards through the requirement of accounting. These provisions, which formerly were limited to conservators, are extended to guardians because the considerations that justify the granting of one of the specified powers to a conservator may justify granting the same power to a guardian in an appropriate case.

18322

Tentatively Approved in Substance - Sept. 1977

§ 2590. Order granting authority for exercise of additional powers

2590. The court may, in its discretion, make an order granting the guardian or conservator any one or more or all of the powers specified in Section 2591 if the court determines that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. Subject only to such requirements, conditions, or limitations as are specifically and expressly provided, either directly or by reference, in the order granting the power or powers, the guardian or conservator may exercise the granted power or powers without notice, hearing, or court approval, confirmation, or instructions in the same manner as the ward or conservatee could do if possessed of legal capacity.

Comment. Section 2590 is based on a portion of the first paragraph of, and on the second sentence of the third paragraph of, former Section 1853. The standard--that the court determine that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to grant the power or powers--has been added to indicate that the court is to consider the circumstances of the particular case, the need for the grant of the power or powers, the qualifications of the guardian or conservator, and the expense of requiring prior court approval in making a determination whether to make an order under this article. The former provision that the additional powers may be exercised without regard to whether other requirements of this code have been complied with has been revised to allow such powers to be exercised in the same manner as the

ward or conservatee could do if possessed of legal capacity. Thus, if sale of real property is authorized, it is not necessary to comply with Article 5 of this chapter since the ward or conservatee would not be required to do so if competent. However, the guardian or conservator remains subject to the general duty to use ordinary prudence in the management of the estate (Section 2501).

The court may withdraw or limit a power previously granted under this article. See Section 2593. Although, if so ordered, powers may be exercised under this article without notice, hearings, confirmation, or approval, any sale or purchase of estate property not previously approved by the court is expressly made subject to review by the court on the next accounting of the guardian or conservator. See Section 2625.

18323

Tentatively Approved in Substance - Sept. 1977

§ 2591. Powers that may be granted

2591. The powers referred to in Section 2590 are:

(a) The power to contract for the guardianship or conservatorship and to perform outstanding contracts and thereby bind the estate.

(b) The power to operate at the risk of the estate any business, farm, or enterprise constituting an asset of the estate.

(c) The power to grant and take options.

(d) The power to sell at public or private sale any real or personal property of the estate.

(e) The power to create by grant or otherwise easements and servitudes.

(f) The power to borrow money and give security for the repayment thereof.

(g) The power to purchase real or personal property.

(h) The power to alter, improve, and repair or raze, replace, and rebuild property of the estate.

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

(j) The power to lend money on adequate security.

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

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

(m) The power to commence and maintain an action for partition.

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

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

(p) The power to pay, collect, compromise, arbitrate, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship.

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

Comment. Section 2591 is based on the second paragraph of former Section 1853 (additional powers). Under former Section 1853, the court could authorize a conservator to exercise certain powers without the necessity of obtaining specific prior court approval in each case. Under Section 2590, this authority is broadened to include guardians as well as conservators.

Some of the additional powers listed in former Section 1853 have been recodified as powers exercisable without court approval unless the power is restricted by the court. See Sections 2527 (power to vote shares and securities in person or by proxy), 2528 and 2529 (power to continue or obtain insurance), 2534 (power to pay or compromise taxes), 2531 (power to maintain actions and proceedings other than partition, and to defend actions and proceedings), 2535 (power to hold and abandon property). The remaining powers from former Section 1853 are recodified in Section 2591. The power to commence and maintain an action for partition is retained in Section 2591 (formerly included in the power to institute and maintain all actions) since court approval is otherwise required. Section 2532.

The listing of a power in this section does not require the guardian or conservator to obtain an order under this article in order to exercise the power. See Section 2595(b). In some instances, a power listed in this section may be exercised by the guardian or conservator without prior court approval under another provision of this division. See, e.g., Section 2555 (certain leases permitted without court order). However, the power is listed in this section because, in other instances, exercise of the same power requires court approval, and an order under this article may permit exercise of the power without such prior court approval. See Section 2553 (leases generally). See also Sections 2526 (ordinary repair and maintenance of home of ward or conservatee and dependents), 2533 (compromise of claims and actions).

404/668

Tentatively Approved - Sept. 1977

§ 2592. Petition

2592. (a) The guardian or conservator may apply by petition for an order under Section 2590.

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

(c) If the application for the order is made by petition filed after the filing of the petition for the appointment or confirmation of the guardian or conservator, notice of the hearing on the petition shall be given for the period and in the manner prescribed in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2592 continues the substance of the third sentence of the third paragraph of former Section 1853 but adds the requirement of the second sentence of subdivision (b). Also, former Section 1853 required notice to be given to the conservatee; under Section 1460, notice must be given to the ward if over 12 or to the conservatee, but the court may for good cause dispense with such notice. For provisions relating to notice to the Director of Mental health or the Director of Developmental Services under certain circumstances, see Section 1461. The petition must be verified. See Section 1450. The clerk sets it for hearing. See Section 1451.

404/669

Tentatively Approved - Sept. 1977

§ 2593. Withdrawal or subsequent limitation of powers

2593. (a) The court, on its own motion or on petition, when it appears to be for the best interests of the ward or conservatee or the estate, may withdraw any or all of the powers previously granted pursuant to this article or may impose restrictions, conditions, and limitations on the exercise of such powers by the guardian or conservator.

(b) Notice of the hearing on a petition under this section shall be given for the period and in the manner prescribed in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Subdivision (a) of Section 2593 continues the substance of a portion of former Section 1854 except that subdivision (a) permits the court to continue the grant of the powers subject to such restrictions, conditions, and limitations as the court may order. A petition filed under this section must be verified. Section 1450. Subdivision (b) is new.

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§ 2594. Contents of letters; when new letters required

2594. (a) When a power or powers are granted pursuant to this article, the letters of guardianship or conservatorship shall state the power or powers so granted and the restrictions, conditions, or limitations, if any, prescribed in the order and shall refer to this article.

(b) When a power or powers are granted by a subsequent order, new letters shall be issued in the form described in subdivision (a).

(c) If the powers are withdrawn, or if the powers are restricted, conditioned, or limited by a subsequent order after they are granted, new letters shall be issued accordingly.

Comment. Subdivisions (a) and (b) of Section 2594 continue the substance of the fourth and fifth sentences of the third paragraph of former Section 1853 except that the requirement that the letters state any restrictions, conditions, or limitations is new. Subdivision (c) continues the substance of a portion of former Section 1854 except that it is conformed to Section 2593. See the Comment to that section.

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§ 2595. Effect of article

2595. (a) The grant of a power or powers pursuant to this article does not affect the right of the guardian or conservator to petition the court as provided in Section 2503 or to petition the court under other provisions of this code, as to a particular transaction or matter, in the same manner as if the power or powers had not been granted pursuant to this article.

(b) Where authority exists under other provisions of law, either general or specific, for the guardian or conservator to do any act or to enter into any transaction described in Section 2591, the guardian or conservator may proceed under such other provisions of law and is not required to obtain authority under this article.

Comment. Section 2595 is new. Subdivision (a) continues the substance of the last sentence of former Section 1853 and makes clear that the guardian or conservator may submit any transaction or matter to the court in the same manner as if the power or powers had not been granted. See Section 2503 (instructions and confirmation). Subdivision

(b) is added to make clear that this article does not preclude the exercise of powers that may exist under other provisions of law. See the last paragraph of the Comment to Section 2591. This was not clear under prior law. Compare Place v. Trent, 27 Cal. App.3d 526, 530, 103 Cal. Rptr. 841, ____ (1972), with Olson v. United States, 437 F.2d 981, 985 (Ct. Cl. 1971).