

F-30.300

7/25/78

Memorandum 78-44

Subject: Study F-30.300 - Guardianship-Conservatorship Revision
(Review of Part 6--Community and Homestead Property)

Attached is the draft of an additional section to be added to the proposed legislation relating to community and homestead property in the guardianship-conservatorship revision. This legislation is contained in the Supplemental Material (June 1978) (sent 6/23/78).

Respectfully submitted,

John H. DeMouilly
Executive Secretary

§ 3055. Effect on consent of death or subsequent lack of legal capacity

3055. (a) If consent is given under this article that separate property subject to a homestead or community property be included in the conservatorship estate of a spouse, the death of either spouse terminates the consent.

(b) If a spouse having legal capacity and no conservator consents under this article that separate property subject to a homestead or community property be included in the conservatorship estate of the other spouse:

(1) Subject to paragraph (2), the subsequent lack of legal capacity of the spouse giving the consent has no effect on the inclusion of the property in the conservatorship estate of the other spouse.

(2) The appointment of a conservator for the spouse giving the consent terminates the consent.

Comment. Section 3055 is new. If a conservator is appointed for a spouse that has given consent to inclusion of community or homestead property in the guardianship estate of the other spouse, the appointment terminates the consent but the two conservators may, with approval of the court, consent that the property continue to be included in the same guardianship estate or may work out some other arrangement for the administration of the property as a part of a plan for the administration of the community and homestead property of the two spouses. See Sections 3050(c), (d) and 3052(d), (e). As to the revocation of consent or termination of inclusion of property in a conservatorship estate, see Section 3053(b).