

9/25/79

## Memorandum 79-55

Subject: Study M-100 - Uniform Veterans' Guardianship Act

When the new guardianship-conservatorship statute was enacted (1979 Cal. Stats. ch. 726) as recommended by the Commission, the Uniform Veterans' Guardianship Act was continued without major substantive change.

Under prior law, it was not clear that the establishment of a conservatorship under general law was a satisfactory substitute for establishment of a guardianship under the Uniform Act. This was because the Veterans Administration will pay benefits to the beneficiary unless the beneficiary has been determined to be incompetent, and the general conservatorship law did not necessarily result in a determination of incompetency. As introduced, the proposed guardianship-conservatorship law continued the former law. However, the bill was amended after introduction to provide that the establishment of a conservatorship makes the conservatee incompetent to deal with estate property unless the court otherwise orders. Taking note of this change, a representative of the Veterans Administration has informally advised the staff that the Uniform Act can now be repealed if the provisions for notice to the Veterans Administration and certain other provisions are incorporated into the new general guardianship-conservatorship law.

As a result, the staff has prepared the attached staff draft of a tentative recommendation for the repeal of the Uniform Veterans' Guardianship Act and for revisions of general law to continue useful portions of the repealed act. We have sent a copy of the tentative recommendation to the Veterans Administration for review and comment. If we receive the comments of the Veterans Administration before the October meeting, we will send them to you in a supplement to this memorandum.

Respectfully submitted,

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STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

THE UNIFORM VETERANS' GUARDIANSHIP ACT

California first enacted the Uniform Veterans' Guardianship Act in 1929.<sup>1</sup> The Uniform Act was revised and continued in the 1979 comprehensive revision of guardianship-conservatorship law.<sup>2</sup>

The Uniform Act provides special procedures for appointment of a guardian or other fiduciary to receive payments from the Veterans' Administration when one is needed as a precondition of paying benefits to a minor or incompetent person. The Uniform Act also imposes regulations on the manner of handling and disposing of the payments so received. Nevertheless, if the minor or incompetent person has estate assets derived from other sources and a guardian or conservator is needed, a guardianship or conservatorship must be established under the general law, since the Uniform Act relates only to VA benefits. For this reason

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1. 1929 Cal. Stats. ch. 663. In 1931, the Uniform Veterans' Guardianship Act was codified in the Probate Code (§§ 1650-1669). 1931 Cal. Stats. ch. 281.
  2. See 1979 Cal. Stats. ch. 726, enacting Prob. Code §§ 2900-2918 (operative January 1, 1981). The 1979 revision of guardianship-conservatorship law was enacted upon recommendation of the California Law Revision Commission. Pursuant to the Commission's recommendation, the Uniform Veterans' Guardianship Act was continued without major substantive revision. However, two obsolete sections relating to commitment, transfer, or discharge of persons of unsound mind to or from facilities operated by the Veterans' Administration or other agency of the United States government (former Sections 1663 and 1664 of the Probate Code) were not continued, since these provisions have been superseded by the Lanterman-Petris-Short Act (Welf. & Inst. Code §§ 5000-5404.1).

the general practice<sup>3</sup> has been to establish a guardianship or conservatorship under the general law and not under the Uniform Act. As a result, the Uniform Act has been little used.<sup>4</sup>

A number of other states have repealed the Uniform Veterans' Guardianship Act and leave veterans' guardianships to be governed by general law relating to the administration of estates of persons unable to manage their own property.<sup>5</sup> The Commission recommends that the Uniform Veterans' Guardianship Act be repealed as a separate statute in California and that the useful provisions of the Uniform Act be continued in general law. Since the Veterans' Administration needs to be advised of proceedings taken under general law which may affect the interest of the ward or conservatee in money or other benefits from the VA, the notice provisions of the Uniform Veterans' Guardianship Act<sup>6</sup>

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3. The Commission's understanding about the general practice where veterans' benefits are concerned is based on information furnished informally by the Veterans' Administration.
  4. Prior to the enactment of the 1979 guardianship-conservatorship law, a problem existed if a conservatorship under the general conservatorship statute was used instead of a guardianship under the Uniform Act. This problem was created by the requirement that VA benefits be paid to the adult beneficiary unless the beneficiary is incompetent. It was unclear under former law whether the appointment of a conservator was an adjudication that the conservatee was incompetent for the purposes of payment of VA benefits. See Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 533 P.2d 1047, 120 Cal. Rptr. 407 (1975). The new guardianship-conservatorship statute makes clear that the appointment of a conservator deprives the conservatee of legal capacity with respect to estate assets. See Prob. Code § 1872 (enacted by 1979 Cal. Stats. ch. 726, operative January 1, 1981). Accordingly, the problem under former law will no longer exist when the new law becomes operative.
  5. See 8 Uniform Laws Annotated, Estate, Probate and Related Laws 645 (master ed. 1972); id. at 173-174 (Supp. 1979).
  6. See Prob. Code §§ 2906 (petition for appointment of guardian or conservator), 2908 (accounts), 2910 (extraordinary compensation), 2911 (investment or deposit of surplus funds), 2912 (support of third persons), 2913 (purchase of real property), 2915 (termination of proceeding). These sections were added by 1979 Cal. Stats. ch. 726, operative January 1, 1981.

should be continued and expanded<sup>7</sup> in general law. Certain other useful provisions of the Uniform Act<sup>8</sup> should also be continued in general law.

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

An act to amend Section 6107 of the Government Code, to amend Sections 1510 and 1821 of, to add Section 1461.5 to, and to repeal Part 5 (commencing with Section 2900) of Division 4 of, the Probate Code, relating to veterans.

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

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7. In addition to the matters of which the Veterans' Administration is required to be given notice under existing law (see note 6 supra), notice to the VA should be required of (1) a petition for support of the ward or conservatee out of the estate notwithstanding that a third person is liable for such support, (2) a petition relating to the sale of real or personal property of the estate, (3) a petition for authorization of a proposed action under the doctrine of substituted judgment, (4) a petition for independent exercise of powers, (5) an inventory and appraisal of the estate or a supplemental inventory and appraisal, and (6) a proceeding to authorize a transaction involving community or homestead property.
  8. Probate Code Section 2914, which requires copies of public records needed to determine eligibility for VA benefits to be furnished to the applicant free of charge, should be continued by appropriate amendments to Section 6107 of the Government Code. And the provisions of Probate Code Section 2903(b), which require a petition for appointment of a guardian to contain certain descriptive information about the proposed ward and to set forth the amount of VA benefits then due and the amount of probable future payments, should be continued in substance by appropriate amendments to Sections 1510 (guardianship) and 1821 (conservatorship) of the Probate Code. Probate Code Sections 2914, 2903, 1510, and 1821 were added by 1979 Cal. Stats. ch. 726 (operative January 1, 1981).

Government Code § 6107 (amended). Veterans' exemption from fees

SECTION 1. Section 6107 of the Government Code, as amended by 1979 Cal. Stats. ch. \_\_\_, is amended to read:

6107. ~~Neither the state nor any county, or city, nor any public officer or body acting in his official capacity on behalf of the state, any county, or city,~~ (a) No public entity, including the state, a county, city, or other political subdivision, nor any officer or employee thereof, including notaries public, shall demand or receive any fee or compensation for doing any of the following :

~~(a)~~ (1) Recording or , indexing , or issuing certified copies of any discharge, certificate of service, certificate of satisfactory service, notice of separation or report of separation of any member of the armed forces of the United States.

~~(b) Issuing certified copies of such discharges, certificates of service, certificates of satisfactory service, reports of separation or notices of separation.~~

~~(c) Any service whatever rendered in the matter of a pension claim, application, affidavit, voucher, or any claim to be presented to the Administrator of Veterans' Affairs under the World War Veterans' Act, 1924.~~

~~(d)~~ (2) Furnishing a certified copy of , or searching for, any public record , or making the search for it, when it which is to be used in a an application or claim for a pension, or a claim for allotment, allowance, compensation, insurance , (including automatic insurance ) , or otherwise under the World War Veterans' Act, 1924, or any other benefits under any other act of Congress for service in the armed forces of the United States , or a claim for veterans' benefits under any law of this state relating to veterans' benefits .

(3) Furnishing a certified copy of, or searching for, any public record which is required by the Veterans' Administration to be used in determining the eligibility of any person to participate in benefits made available by the Veterans' Administration.

(4) Rendering any other service in connection with an application or claim referred to in paragraph (2) or (3).

(b) The services specified in this section referred to in subdivision (a) shall be rendered on ~~the~~ request of a United States official, ~~a~~ the claimant or applicant , or ~~his~~ the guardian of , conservator , or attorney of the claimant or applicant, or any other person acting on behalf of the claimant or applicant . ~~As~~ A public officer or employee is liable on his or her official bond for ~~every~~ failure or refusal to render the services.

Comment. Section 6107 is amended to continue the substance of former Probate Code Section 2914 in paragraph (3) of subdivision (a) of Section 6107. The scope of Section 6107 has been broadened to apply to all public entities in California; former Probate Code Section 2914 had this broad scope, but formerly Section 6107 was limited to the state, cities, and counties. Other revisions have been made in Section 6107 for clarity. The former references to the World War Veterans' Act, 1924, have been deleted since that act has been substantially repealed. See Pub. L. No. 85-857, § 14(51), 72 Stat. 1271 (1958).

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Probate Code § 1461.5 (added). Notice to Veterans' Administration

SEC. 2. Section 1461.5 is added to the Probate Code, to read:

1461.5. Except for a petition filed by the Veterans' Administration, notice of the time and place of hearing on a petition, report, or account, and a notice of the filing of an inventory, together with a copy of the petition, report, inventory, or account, shall be mailed to the office of the Veterans' Administration having jurisdiction over the area in which the court is located at least 15 days before the hearing if both of the following conditions exist:

(a) The guardianship or conservatorship estate consists or will consist wholly or in part of any of the following:

- (1) Money received from the Veterans' Administration.
- (2) Revenue or profit from such money or from property acquired wholly or in part from such money.
- (3) Property acquired wholly or in part with such money or from such property.

(b) The petition, report, inventory, or account is filed under any one or more of the following provisions: Section 1510, 1601, 1820, 1861, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2570, 2571, 2580, 2592, 2610, 2613, or 2620; Chapter 8 (commencing with Section 2640) of Part 4; or Chapter 3 (commencing with Section 3100) of Part 6.

(b) The services ~~specified in this section~~ referred to in subdivision (a) shall be rendered on ~~the~~ request of a United States official, ~~a~~ the claimant or applicant, or ~~his~~ the guardian ~~or~~, conservator, or attorney of the claimant or applicant, or any other person acting on behalf of the claimant or applicant. ~~As~~ A public officer or employee is liable on his or her official bond for ~~every~~ failure or refusal to render the services.

Comment. Section 6107 is amended to continue the substance of former Probate Code Section 2914 in paragraph (3) of subdivision (a) of Section 6107. The scope of Section 6107 has been broadened to apply to all public entities in California; former Probate Code Section 2914 had this broad scope, but formerly Section 6107 was limited to the state, cities, and counties. Other revisions have been made in Section 6107 for clarity. The former references to the World War Veterans' Act, 1924, have been deleted since that act has been substantially repealed. See Pub. L. No. 85-857, § 14(51), 72 Stat. 1271 (1958).

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(a) The guardianship or conservatorship estate consists or will consist wholly or in part of any of the following:

(1) Money received from the Veterans' Administration.

(2) Revenue or profit from such money or from property acquired wholly or in part from such money.

(3) Property acquired wholly or in part with such money or from such property.

(b) The petition, report, inventory, or account is filed under any one or more of the following provisions: Section 1510, 1601, 1820, 1861, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2570, 2571, 2580, 2592, 2610, 2613, or 2620; Chapter 8 (commencing with Section 2640) of Part 4; or Chapter 3 (commencing with Section 3100) of Part 6.

Comment. Section 1461.5 continues the provisions of the former Uniform Veterans' Guardianship Act which required notice to the Veterans' Administration of certain procedures when veterans' benefits were involved. See former Sections 2906 (petition for appointment of guardian or conservator), 2908 (accounts), 2910 (extraordinary compensation), 2911 (investment or deposit of surplus funds), 2912 (support of third persons), 2913 (purchase of real property), 2915 (termination of proceeding). The requirement in Section 1461.5 that notice be given when the petition, report, inventory, or account is filed under Section 2422 (support of ward or conservatee notwithstanding third party liable); Article 7 (commencing with Section 2540) of Chapter 6 of Part 4 (sales); Sections 2580 (substituted judgment), 2592 (independent exercise of powers), 2610 (inventory and appraisal), and 2613 (supplemental inventory and appraisal); and Chapter 3 (commencing with Section 3100) of Part 6 (transaction involving community or homestead property) is new.

The requirement of former Sections 2906 and 2913 that the copy of the petition be a signed duplicate or be certified is not continued.

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Probate Code § 1510 (amended). Petition for appointment of guardian

SEC. 3. Section 1510 of the Probate Code is amended to read:

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

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

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

- (1) The parents of the proposed ward.
- (2) The person having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward.
- (3) The relatives of the proposed ward within the second degree.
- (4) In the case of a guardianship of the estate, the spouse of the proposed ward.
- (5) Any person nominated as guardian for the proposed ward under Section 1500 or 1501.



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

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed ward is receiving or is entitled to receive benefits ~~from the Veterans Administration~~ payable by the United States through the Veterans' Administration and the estimated amount of the monthly benefit payable by the Veterans' Administration for the proposed ward .

(f) If the petitioner has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition shall disclose such pending proceeding.

Comment. Section 1510 is amended to generalize and continue the substance of the portion of subdivision (b) of former Section 2903 that required a petition under the Uniform Veterans' Guardianship Act to set forth the name and age of the proposed ward, the amount of money then due to the proposed ward from the Veterans' Administration, and the amount of probable future payments. The requirement of former Section 2903 that the petition show the place of residence of the proposed ward is superseded by subdivision (c) of Section 1510 which requires the petition to show the addresses of the proposed ward's parents, the person having legal custody of the proposed ward, and the person having the care of the proposed ward.

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Probate Code § 1821 (amended). Contents of petition for conservatorship

SEC. 4. Section 1821 of the Probate Code is amended to read:

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name and address of the proposed conservator and the name and address of the proposed conservatee , and shall state the reasons why the appointment is required.

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

(c) If the petition is filed by one other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor of the proposed conservatee.

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

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits ~~from the Veterans Administration~~ payable by the United States through the Veterans' Administration and the estimated amount of the monthly benefit payable by the Veterans' Administration for the proposed conservatee .

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

Comment. Section 1821 is amended to generalize and continue the substance of the portion of subdivision (b) of former Section 2903 that required a petition under the Uniform Veterans' Guardianship Act to set forth the name and place of residence of the proposed conservatee, and the amount of money then due to the proposed conservatee from the Veterans' Administration and the amount of probable future payments.

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Probate Code §§ 2900-2918 (repealed). Uniform Veterans' Guardianship Act

SEC. 5. Part 5 (commencing with Section 2900) of Division 4 of the Probate Code is repealed.

Comment. The Uniform Veterans' Guardianship Act (Prob. Code §§ 2900-2918) is repealed as a separate statute. Pertinent portions of the Uniform Veterans' Guardianship Act are continued elsewhere in Division 4 of the Probate Code and in the Government Code. The portions that are not continued are either obsolete or are superseded by existing provisions of general guardianship-conservatorship law. The disposition of each repealed section of the Uniform Veterans' Guardianship Act is indicated in the Comment to the repealed section set out below.

§ 2900 (repealed). Short title

Comment. Former Section 2900 is not continued.

§ 2901 (repealed). Definitions

Comment. The terms in which "income" and "estate" were defined in former Section 2901 are continued in the substantive provisions of Section 1461.5 (notice to Veterans' Administration). The terms in which "benefits" was defined in former Section 2901 are continued in the substantive provisions of Sections 1510 and 1821 (contents of petition). The terms in which "administrator" was defined in former Section 2901 are continued in the substantive provisions of Section 1457. The remaining definitions of former Section 2901 are not continued.

§ 2902 (repealed). Necessity and manner of appointment of guardian; fiduciary for adult called "conservator"

Comment. Subdivision (a) of former Section 2902 is superseded by the requirement in Section 1514 that the court may appoint a guardian if it appears "necessary or convenient," and by the requirement in Section 1800 that the court may appoint a conservator if satisfied of the "need therefor." Subdivision (b) of former Section 2902 is superseded by the provision of Section 1510 that a guardian may be appointed only for a minor. An adult in need of protective supervision may have a conservator appointed. See Section 1800.

§ 2903 (repealed). Petition; filing; authorized petitioners; contents

Comment. Subdivision (a) of former Section 2903 is superseded by Sections 1510 (guardianship), 1820 (conservatorship), and 2201 (venue). Subdivision (b) is superseded by Sections 1510 (guardianship) and 1821 (conservatorship). The requirement that the petition set forth the age of the proposed ward or conservatee is continued with respect to minor wards in Section 1510, but is not continued with respect to conservatees (see Section 1821). The substance of the requirement of subdivision (b) of allegations concerning Veterans' Administration benefits is continued in Sections 1510 and 1821.

The first sentence of subdivision (c) is superseded with respect to minors by Section 1510; the requirement that the petition show the age, relationship, if any, and occupation of the proposed guardian is not continued. With respect to adults, the first sentence of subdivision (c) is not continued. The second sentence of subdivision (c) is superseded by Sections 1514 (guardianship) and 1810-1813 (conservatorship). Subdivision (d) is not continued.

§ 2904 (repealed). Evidence of necessity for guardian of minor

Comment. Former Section 2904 is not continued.

§ 2905 (repealed). Evidence of necessity for guardian for incompetent

Comment. Former Section 2905 is not continued.

§ 2906 (repealed). Notice

Comment. Former Section 2906 is continued in Section 1461.5, except that the former requirement that the copy of the petition be a signed duplicate or be certified is not continued.

§ 2907 (repealed). Fitness of appointee; bond

Comment. Subdivision (a) of former Section 2907 is superseded by Sections 1514 (guardianship) and 1810-1813 (conservatorship). Subdivision (b) is superseded by Sections 2300 and 2320-2336.

§ 2908 (repealed). Accounting by guardian

Comment. Former Section 2908 is superseded by Sections 2620-2633. The requirement of notice to the Veterans' Administration is continued in Section 1461.5.

§ 2909 (repealed). Penalty for failure to account

Comment. Former Section 2909 is superseded by Sections 2602 and 2650.

§ 2910 (repealed). Compensation of guardians; allowance of bond premiums

Comment. Former Section 2910 is superseded by Sections 2640 and 2643. The limitation on compensation contained in former Section 2910 is not continued; under Section 2640, the compensation must be "just and reasonable." The requirement of notice to the Veterans' Administration is continued in Section 1461.5.

§ 2911 (repealed). Investments; deposits

Comment. Former Section 2911 is superseded by Sections 2401 (duty to use ordinary care and diligence in management of estate), 2453 (deposit in bank or other financial institution), 2570-2574 (investments and purchase of property), and 2590-2595 (independent exercise of powers). The requirement of notice to the Veterans' Administration is continued in Section 1461.5.

§ 2912 (repealed). Maintenance and support of person other than ward

Comment. Former Section 2912 is superseded by Section 2423. The requirement of notice to the Veterans' Administration is continued in Section 1461.5, except that the requirement that the copy of the petition be a signed duplicate or be certified is not continued.

§ 2913 (repealed). Purchase of home or other real property for ward

Comment. Subdivision (a) of former Section 2913 is superseded by Section 2571. The limitation of subdivision (a) that real property may be purchased "only as a home" for the ward is not continued. The requirement of notice to the Veterans' Administration is continued in Section 1461.5. Subdivision (b) is not continued.

Subdivision (c) is superseded by Sections 2463 (partition), 2500-2501 (compromises affecting real property), and 2590-2591 (independent exercise of powers).

§ 2914 (repealed). Furnishing copy of public record without charge

Comment. Former Section 2914 is continued in Government Code Section 6107.

§ 2915 (repealed). Certificate of majority or competency; termination of guardianship; discharge of guardian and release of sureties

Comment. The first sentence of former Section 2915 is not continued. The second and third sentences are superseded by Sections 1600-1601 (guardianship), 1860-1863 (conservatorship), 2627 (discharge of guardian), and 2630 (accounts on termination of relationship).

§ 2916 (repealed). Application of part

Comment. Former Section 2916 is not continued.

§ 2918 (repealed). Construction to effect uniformity

Comment. Former Section 2918 is not continued.

§ 2917 (repealed). Law applicable to exercise of powers and duties of guardian

Comment. Former Section 2917 is not continued.