

First Supplement to Memorandum 79-55

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

In Memorandum 79-55, the staff has recommended the repeal of the Uniform Veterans' Guardianship Act (Prob. Code §§ 2900-2918) and the incorporation of a few useful provisions of the act into general guardianship-conservatorship law. We have now received by letter the preliminary comments of the Office of the District Counsel of the Veterans' Administration for Northern California on the staff proposal. The letter is attached to this supplement as Exhibit 1. The letter raises three points which are discussed below.

Prima Facie Effect of VA Certificate of Incompetency

The VA is concerned about the staff-recommended repeal of Probate Code Section 2905 (until January 1, 1981, this is Section 1654) which provides that a VA certificate setting forth that the proposed ward has been rated incompetent by the VA and that the appointment of a guardian is a condition precedent to the payment of VA benefits is "prima facie evidence of the necessity for the appointment." The effect of this provision is to create a rebuttable presumption that the proposed ward is incompetent only with respect to money or property received from the VA. Estate of Vaell, 158 Cal. App.2d 204, 322 P.2d 579 (1958). It does not affect the legal capacity of the ward with respect to matters other than the administration of VA benefits. Id.

Some ten states have repealed the Uniform Act. Presumably these states no longer have the provision giving prima facie effect to the VA certificate. Moreover, in California, conservators are rarely appointed under the Uniform Act. It is our understanding that appointments are normally made under the general conservatorship statute, in which case the VA certificate would not be given prima facie effect.

Nevertheless, if the Commission desires to retain the effect of the provision in question, this could be accomplished by adding a new section to the article on "Establishment of Conservatorship" as follows:

§ 1804 (added). Effect of certificate of Veterans' Administration that proposed conservatee rated as incompetent

1804. If the proposed conservatee has no property other than money received or to be received from the Veterans' Administration, a certificate of the Administrator of Veterans' Affairs of the United States or the administrator's authorized representative, setting forth that the proposed conservatee has been rated incompetent by the Veterans' Administration on examination in accordance with the laws and regulations governing the Veterans' Administration and that the appointment of a conservator or other fiduciary is a condition precedent to the payment of any money due to the proposed conservatee by the Veterans' Administration, establishes a rebuttable presumption affecting the burden of producing evidence of both of the following:

(a) The need for the appointment of a conservator of the estate for the proposed conservatee.

(b) That the proposed conservatee is a person for whom a conservator of the estate may be appointed.

Comment. Section 1804 continues the substance of former Section 1654 (repealed and reenacted as Section 2905 which was to have become operative on January 1, 1981, as part of Chapter 726 of the Statutes of 1979), except that Section 1827.5 applies only if the proposed conservatee has no property other than money received or to be received from the Veterans' Administration. Under prior law, a certificate of incompetence by the VA affected the legal capacity of the ward only with respect to the VA benefits, and not with respect to other matters. Estate of Vaell, 158 Cal. App.2d 204, 322 P.2d 579 (1958).

The former provision that the certificate was "prima facie evidence" has been revised to provide that the certificate establishes a rebuttable presumption affecting the burden of producing evidence to be consistent with the language used in the Evidence Code. See Evid. Code §§ 601-604.

If this section is approved, the staff will revise the Comment to repealed Section 2905 to indicate the disposition of its provisions.

Should the Copy of the Petition Furnished to the VA Be a Signed Duplicate, a Certified Copy, or a File-Marked Copy?

Under existing law, a "signed duplicate or certified copy" of a petition for the appointment of a guardian or for court authorization of the purchase of real property under the Uniform Veterans' Guardianship Act must be sent to the Veterans' Administration. See Prob. Code §§ 2906, 2913 (until January 1, 1981, these are Prob. Code §§ 1655, 1661.5). Under the staff draft of Section 1461.5 of the Probate Code set forth in Memorandum 79-55, it is no longer required that the copy of the petition be a signed duplicate or a certified copy. The VA requests

that at least file-marked copies be required so the VA can be assured that the papers are the ones before the court.

Many provisions of the new guardianship-conservatorship law require that a copy of a petition be sent to a public agency or to designated private persons. None of these provisions require any more than that a "copy" be sent. However, the provision is complied with only if the copy is actually a copy of what is filed. We see no justification for requiring special validation that the copy sent to the VA is actually a copy of what is filed. If we adopted this requirement for the VA, we would probably have to impose a similar requirement for each case where the statute requires that a copy of a petition be served.

Real Property is Held in the Name of the Ward or Conservatee

The staff draft does not continue the provision of Section 2913 (until January 1, 1981, this is Section 1661.5) that title to real property "shall be taken in the ward's name." The VA requests clarification of the intent in not continuing this provision.

It is the general practice in conservatorship proceedings to take title to real property in the name of the conservatee. W. Johnstone & G. Zillgitt, California Conservatorships § 4.17, at 116 (Cal. Cont. Ed. Bar 1968). However, the Commission purposely did not mandate in the statute that title must always be taken only in the conservatee's name. See Section 2572. The staff proposes to revise the Comment to repealed Section 2913 as follows:

§ 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. Notwithstanding the omission of the second sentence of subdivision (b) (which required that title be taken in the name of the ward), it is the accepted practice in guardianship and conservatorship proceedings to take title to real property in the name of the ward or conservatee. See W. Johnstone & G. Zillgitt, California Conservatorships § 4.17, at 116 (Cal. Cont. Ed. Bar 1968).

Respectfully submitted,

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