

1/24/80

Memorandum 80-12

Subject: Suggested Amendments to Bills Relating to Guardianship-
Conservatorship

Two bills relating to guardianship-conservatorship have been introduced by Assemblyman McAlister at the request of the Commission. One would repeal the Uniform Veterans' Guardianship Act and the other would make technical, corrective changes in the new guardianship-conservatorship law.

Uniform Veterans' Guardianship Act Repealer

The staff has concluded that it would be useful to include a transitional provision in the bill to repeal the Uniform Veterans' Guardianship Act. This provision will indicate what happens to existing guardianships under the Uniform Act when the Uniform Act is repealed. Attached as Exhibit 1 to this memorandum is a suggested draft. We plan to add this section to the bill introduced to repeal the Uniform Act. The proposed section (set out as Exhibit 1) will be revised to reflect any changes the Commission believes are needed.

Corrective Bill

In its present form, the corrective bill merely makes a few technical changes. These changes are necessary primarily because other legislation was enacted after the general guardianship-conservatorship bill last session and this other legislation did not take the new guardianship-conservatorship bill into account.

Greg Price has suggested a clarifying amendment to Section 2580 of the new statute. Section 2580 deals with the doctrine of substituted judgment. The proposal is that the section be revised to make clear an instrument creating a trust may preclude the power of a conservator to revoke a revocable trust if the trust instrument includes a provision that only the trustor personally can revoke the trust and that a conservator cannot. Read Mr. Price's letter attached as Exhibit 2 for more detail. The staff believes that this suggestion is a good one, and we have prepared the necessary amendment (set out in Exhibit 3 attached).

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

ADDITION TO BILL REPEALING UNIFORM VETERANS'
GUARDIANSHIP ACT

SEC. 8. (a) As used in this section:

(1) "General guardianship or conservatorship" means a guardianship or conservatorship of the estate in this state other than a veterans' guardianship.

(2) "Veterans' benefits" means money received from the Veterans Administration, revenue or profits from such money or from property acquired wholly or in part from such money, and property acquired wholly or in part with such money or from such property.

(3) "Veterans' guardianship" means a guardianship created under Chapter 15 (commencing with Section 1650) of the Probate Code prior to the operative date of this act where the guardianship estate consists entirely of veterans' benefits.

(b) A veterans' guardianship for an unmarried minor ward in existence on the operative date of this act shall continue in existence after the operative date of this act as a guardianship of the estate and is governed by Division 4 (commencing with Section 1400) of the Probate Code on and after the operative date of this act.

(c) A veterans' guardianship for an adult ward or a married minor ward in existence on the operative date of this act shall continue in existence after the operative date of this act as a conservatorship of the estate. Except as provided in subdivision (d), such a conservatorship is governed by Division 4 (commencing with Section 1400) of the Probate Code on and after the operative date of this act.

(d) Notwithstanding Sections 1485 and 1872 of the Probate Code and Section 40 of the Civil Code, if immediately prior to the operative date of this act an adult or married minor is subject to a veterans' guardianship but is not subject to a general guardianship or conservatorship, on and after the operative date of this act such adult or married minor is deemed to have been adjudicated to lack legal capacity as provided in Section 40 of the Civil Code and Section 1872 of the Probate Code only with respect to veterans' benefits.

(e) If immediately prior to the operative date of this act a person is subject both to a veterans' guardianship and a general guardianship or conservatorship, the general guardianship or conservatorship shall

continue after the operative date of this act and the estate subject to the general guardianship or conservatorship shall include the veterans' benefits. The court in which the general guardianship or conservatorship proceeding is pending shall make any orders necessary or convenient to implement this subdivision.

Comment. Section 8 continues a guardianship created under the Uniform Veterans' Guardianship Act prior to the operative date of this act as a guardianship or conservatorship of the estate after the operative date of this act. Subdivision (d) preserves the effect of Estate of Vaell, 158 Cal. App.2d 204, 322 P.2d 579 (1958) ("the appointment of a guardian under the uniform act has been held not to affect the legal capacity of the ward with respect to various matters other than the administration of property received from the United States under veterans' legislation"). Although under subdivision (d) the conversion of a veterans' guardianship into a conservatorship of the estate does not affect the legal capacity of the conservatee with respect to matters or property other than veterans' benefits, the conservatee may nonetheless lack legal capacity for particular transactions under other provisions of law. See, e.g., Civil Code §§ 38, 39.

Subdivision (e) recognizes that in some cases there may be both a veterans' guardianship and a general guardianship or conservatorship pending for one VA beneficiary. In such a case, the general guardianship or conservatorship is continued after January 1, 1981, as provided in Section 1481 or 1485 of the Probate Code, and the general guardianship or conservatorship estate includes the veterans' benefits.

**UNITED CALIFORNIA BANK**

TRUST DIVISION • 405 MONTGOMERY STREET • SAN FRANCISCO, CALIFORNIA

January 17, 1980 MAILING ADDRESS: BOX 7560 • SAN FRANCISCO, CALIFORNIA 94120

The California Law Revision Commission
Stanford Law School
Stanford, California 94305
ATTN: Mr. John DeMouilly

Dear John:

As I mentioned in our recent telephone conversation, substantial concern has been voiced by individuals in the trust industry with respect to the effect of new Probate Code Section 2580(b)(10). It is feared that a Probate Court might view this subsection as empowering it to authorize revocation by a conservator, even in the face of a provision in the instrument governing the trust limiting the right of exercise to the Trustor, personally. Many such instruments contain express statements to the effect that a conservator may not exercise the right to revoke on behalf of the Trustor.

The Trust Group of the California Bankers Association has authorized me formally to request that the Commissioners consider offering a clarifying amendment to this subsection. In response to your request for suggested language, I submit the following:

" . . . (10) Where the instrument governing the trust does not evidence an intent to reserve the right of revocation to the Trustor personally, exercising the right of the conservatee to revoke a revocable trust"

You will recall, I also indicated that there is opposition to the inclusion of any provision permitting revocation by a conservator. A number of reasons are given for this opposition, chief among which is the view that the trust represents the considered stated wishes of the conservatee with respect to the disposition of his or her property and should not be contravened by action of the conservator, even with the supervision of the Probate Court. I understand, however, that the Commission wishes to include in its present "clean up" proposal only those matters which are non-controversial in nature and for that reason we are at this time limiting this request to the clarification of the existing new provision.

Sincerely,

G. Sinclair Price
Vice President & Regional Trust Counsel
(415) 544-5641

GSP:mav4/11

cc: William Johnstone

EXHIBIT 3

ADDITION TO GUARDIANSHIP-CONSERVATORSHIP
CORRECTIVE BILL

On page ____, line ____, of the printed bill, insert:

SEC. 2.5. Section 2580 of the Probate Code is amended to read:

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 taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.

(3) Providing gifts for such purposes, and to such charities, relatives (including the other spouse), 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 benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(i) Life insurance policies, plans, or benefits.

(ii) Annuity policies, plans, or benefits.

(iii) Mutual fund and other dividend investment plans.

(iv) Retirement, profit sharing, and employee welfare plans and benefits.

(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.

(11) Making an election or an election and agreement referred to in Section 202.

Where the instrument governing the trust does not evidence an intent to reserve the right of revocation to the trustor personally, exercising