

Memorandum 86-54

Subject: Study L-1040 - Estate and Trust Code (Public Guardians and Public Administrators--draft of tentative recommendation)

Attached to this memorandum is a draft tentative recommendation relating to public guardians and public administrators. The draft incorporates decisions made by the Commission at the May 1986 meeting in Sacramento. We hope to approve the draft now to distribute to interested persons for comment.

The staff has the following matters to note concerning the draft.

§ 2942. Inventory and appraisal of estate. Section 2942 provides a number of instances where appraisal of a guardianship or conservatorship estate being administered by the public guardian is not required--(1) the ward or conservatee is eligible for SSI benefits, (2) there will be no sale of the estate, or (3) there will be a sale but the estate property other than cash is worth less than \$2,000.

The San Francisco public guardian has made additional suggestions relating to appraisal. The Commission deferred decision on these suggestions in order to give the probate referees an opportunity to review and comment on the suggestions.

The first proposal is to amend Probate Code Section 2610 (inventory and appraisal) to provide:

(d) If a conservatorship is initiated pursuant--to--the ~~Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code)~~ and no sale of the estate will occur:

(1) The inventory and appraisement required by subdivision (a) shall be filed within 90 days after appointment of the conservator.

(2) The property described in the inventory may be appraised by the conservator and need not be appraised by a probate referee.

The effect of this amendment would be to excuse valuation by the probate referee in any conservatorship estate (not just those involving the public guardian) in which there will be no sale of the estate property. The San Francisco public guardian states "This proposal is

5/30/86

Staff DraftTENTATIVE RECOMMENDATION RELATING TO
PUBLIC GUARDIANS AND PUBLIC ADMINISTRATORS

PUBLIC GUARDIANS

The new code relocates the public guardian statute from the Welfare and Institutions Code¹ to the Guardianship and Conservatorship Law. At the same time, the new code makes a few significant substantive changes in the law.

Public guardian's bond. The official bond of the public guardian stands in place of the ordinary bond of a guardian or conservator. Since the public guardian's bond is for the benefit and protection of the ward or conservatee and persons interested in the estate of the ward or conservatee, it is proper that these persons, rather than the public, should bear the cost of the bond.² The new code allows as a claim against the estate of the ward or conservatee a pro rata share of the cost of the public guardian's bond.³ This amount is remitted to the county treasury to offset the public expenditure for the official bond.

1. Welf. & Inst. C. §§ 8000-8015.

2. A guardian or conservator is generally allowed the amount of reasonable expenses incurred in performance of the duties, including the cost of any surety bond given. Prob. Code § 2623(a).

3. The pro rata share is statutorily defined as \$25 plus ¼% of the amount of an estate greater than \$4,000. This is equivalent to one half the maximum amount allowed for the bond of a personal representative under Probate Code Section 541.5.

Court ordered public guardianship or conservatorship. If the court orders the guardianship or conservatorship of any person or estate into the public guardian's hands, existing law provides in one place that the public guardian "may act" as guardian or conservator and in another that the public guardian "shall" procure letters of guardianship or conservatorship.⁴ As a consequence, whether the public guardian must accept a court referral is not clear. The new code makes clear the public guardian must accept a court referred guardianship or conservatorship. However, the court may not order the referral except upon notice to the public guardian and a determination that there is no other person qualified and willing to act and that the public guardianship or conservatorship is necessary. This will ensure that persons and property in need of protection will receive it, and that the public guardian will be required to act only in appropriate cases.

Jurisdiction of public guardian. Existing law provides that the public guardian may act with respect to persons and property "in the county".⁵ However, a person domiciled in the county may require protection when temporarily outside the county (including institutionalization outside the county), or the person's property requiring protection may be situated outside the county. Jurisdiction should be based on domicile, regardless of the temporary location of the person or property. The new code implements this concept.

4. Welf. & Inst. Code § 8006.

5. Welf. & Inst. Code § 8006.

Taking possession or control of property. Whether or not the public guardian is ultimately appointed guardian or conservator, the public guardian may take immediate possession or control of property in need of protection because of waste, lack of care, or loss. The new code extends this authority to property that is subject to misappropriation as well.

Existing law sets a statutory fee for the services of the public guardian in taking charge of the ward's or conservatee's property. The statutory fee is a \$25 minimum and a \$500 maximum.⁶ These limits are arbitrary, and bear no reasonable relation to the actual cost to the public guardian of providing services. The proposed law eliminates the statutory maximum and minimum fees, leaving the public guardian simply with a reasonable fee for services.

Employment of attorneys. Existing law enables the public guardian to employ private attorneys if necessary, provided the cost can be defrayed out of estate funds.⁷ The new code broadens this authority even where estate funds are insufficient by enabling the public guardian to employ private attorneys where satisfactory pro bono or contingency fee arrangements can be made. This will enable the public guardian to obtain adequate legal representation for the ward's or conservatee's estate without cost to the public or the estate.

6. Welf. & Inst. Code § 8006.5.

7. Welf. & Inst. Code § 8010.

Appraisal of estate. Ordinarily a guardianship or conservatorship estate must be appraised.⁸ The appraisal requirement is a substantial and unnecessary burden in the case of small estates⁹ and estates where the assets will not be sold. The new code excuses appraisal for estates valued at less than \$2,000 and for estates that will not be sold. In addition, in the case of a conservatee eligible for Social Security Supplemental Income Benefits¹⁰, the new code allows the public guardian rather than the probate referee to make the appraisal. These changes are intended to simplify administration in small estates and to prevent the ward's or conservatee's meager assets from being consumed in administrative expenses.

Disposition of assets on death of ward or conservatee. On the death of the ward or conservatee the public administrator may pay expenses of last illness and funeral expenses, and may liquidate an estate worth less than \$20,000 by summary court proceedings if existing liquid assets are insufficient for payment.¹¹ This is a useful procedure, and the new code expands it to permit liquidation and payment of other reasonable guardian or conservator charges as well, including unpaid court approved attorney's fees.¹² However, because of the expansion and because of the summary nature of the court proceedings, the new code restricts the liquidation procedure to the smallest estates--those worth less than \$5,000.

8. Prob. Code § 2610.

9. An estate handled by the public guardian need not be appraised if worth fifty dollars or less. Welf. & Inst. Code § 9011.

10. The current SSI asset limit is \$1,600.

11. Welf. & Inst. Code § 8012.

12. The new code makes this revision in Section 2631, which is applicable to any guardian or conservator and is not limited to the public guardian.

PUBLIC ADMINISTRATORS

The provisions of existing law governing public administrators are generally continued in the new code without substantive change, or with only minor changes that are noted in the Comments to the new code and to the repealers of existing law. There are a number of more significant changes, however, that are noteworthy.

Property subject to loss, injury, waste, or misappropriation. A public administrator must take charge of a decedent's property either (1) upon court order or (2) if there is no personal representative and the property is subject to loss, injury, or waste.¹ The new code extends this requirement to property that is subject to misappropriation as well. However, the public administrator is given express immunity with respect to property the public administrator is unable to obtain control of.

In carrying out this responsibility, the public administrator may make a search for other property, a will, and burial instructions, including a search of the decedent's safe deposit box, but only if there are reasonable grounds to believe that the public administrator may be appointed personal representative.² This limitation is unduly restrictive, since there may be an immediate need for action regardless of the likelihood the public administrator will ultimately be the personal representative. The new code deletes the likelihood of appointment requirement. The new code also adds a requirement that if the search reveals additional property of the decedent that is subject to loss, injury, or waste, the person in possession must surrender the property to the public administrator.

1. Prob. Code § 1140.

2. Prob. Code § 1141.

Existing law sets a statutory fee for the services of a public administrator in searching for and taking charge of the decedent's property that is subject to loss, injury, or waste. The statutory fee is a \$25 minimum and a \$500 maximum.³ These limits are arbitrary, and bear no reasonable relation to the actual cost to the public administrator of providing the services. The new code eliminates the statutory maximum and minimum fees, leaving the public administrator simply with a reasonable fee for services.

Public administrator's bond. The official bond of the public administrator stands in place of the ordinary bond of a personal representative. Since the public administrator's bond is for the benefit and protection of persons interested in the estates administered by the public administrator, it is proper that these beneficiaries, rather than the public, should bear the cost of the bond. The new code allows as a charge against every estate administered by the personal representative a pro rata share of the cost of the public administrator's bond.⁴ This amount is remitted to the county treasury to offset the public expenditure for the official bond.

3. Prob. Code § 1144.5.

4. The pro rata share is statutorily defined as \$25 for an estate of \$4,000 or less and ¼% of the amount of an estate greater than \$4,000. This is equivalent to one half the maximum amount allowed for the bond of a personal representative generally under Probate Code Section 541.5.

Summary proceedings. Most estates handled by the public administrator are small estates that are uneconomical to administer.⁵ Existing law seeks to cure this problem by providing summary proceedings for use by the public administrator in small estates.⁶ The existing definition of a small estate, however is unrealistically low--\$3,000 for independent action by the public administrator, and \$20,000 for action with court authorization. The new code increases these amounts to allow independent action by the public administrator if the estate is less than \$10,000, or upon court authorization if the estate is less than \$60,000. These amounts correspond to the amounts that define a small estate under general Probate Code provisions enabling collection and transfer of small estates without administration.⁷ Increasing the amounts should place the operation of the public administrator's office on a more sound economic basis.

In conducting summary administration proceedings, the public administrator may liquidate personal property assets but not real property assets.⁸ This limitation unduly impairs the utility of the summary proceedings. The new code provides that so long as the total estate is small, the public administrator may sell real property that is part of the estate. The sale should be subject to court confirmation, however, just as sales under ordinary estate administration.

5. The Public Administrator for the City and County of San Francisco, James R. Scannell, for example, informs the Law Revision Commission that 70% of the estates handled by his office are less than \$10,000 in value and 88% are less than \$50,00 in value. See Minutes of Meeting of California Law Revision Commission (March 13-14, 1986, Sacramento) at p. 28.

6. Prob. Code § 1143.

7. Prob. Code § 13000 et seq.

8. Prob. Code §§ 1143-1144.

Because no notice to creditors is given under summary proceedings, the new code includes two protections for creditors not found under existing law. First, the new code requires payment of claims made any time before distribution of the decedent's property is made, as opposed to the four month claim period applicable in ordinary administration proceedings in which creditors receive published notice. To avoid precipitous distributions, the new code prohibits distribution until four months after commencement summary disposition proceedings. Second, the new code imposes liability on recipients of property distributed pursuant to summary proceedings for unpaid creditor claims. This is analogous to personal liability imposed on recipients of property that passes without probate administration.⁹

Existing law provides no limit to the amount of time a public administrator must preserve files of summary disposition cases. The new code simplifies the record-keeping system by requiring the public administrator to file with the court a permanent statement of the decedent's estate and receipts for distributions. Thereafter, the public administrator must preserve in the office of the public administrator a temporary file of all receipts and records of expenditures for a period of two years, after which the file may be destroyed.

The minimum fee of the public administrator for summary administration is \$250.¹⁰ This fee is unrealistically low under modern conditions, and the new code increases the minimum fee to \$350. Moreover, where property escheats to the state, the new code allows the public administrator a commission that reflects the actual cost of summary disposition. If the county expends funds for the benefit of property that escheats to the state, the county should be reimbursed for the expenses that benefit the state.

9. See, e.g., Prob. Code § 13000 et seq.

10. Prob. Code §§ 1143-1144; 43 Ops. Cal. Atty. Gen. 192 (4-22-64).

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DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER
PROTECTIVE PROCEEDINGS

PART 5. PUBLIC GUARDIAN

CHAPTER 1. OFFICE OF PUBLIC GUARDIAN

§ 2900. Creation of office

2900. (a) In any county the board of supervisors may by ordinance create the office of public guardian and such subordinate positions as may be necessary and fix compensation therefor.

(b) The board of supervisors may appoint a public guardian to fill the office and provide for appointment to the subordinate positions.

Comment. Section 2900 continues former Welfare and Institutions Code Section 8000 without substantive change.

§ 2901. Termination of office

2901. The board of supervisors may by ordinance terminate the office of public guardian.

Comment. Section 2901 continues former Welfare and Institutions Code Section 8002 without substantive change.

§ 2902. Public administrator as public guardian

2902. The board of supervisors may by ordinance designate that the public administrator is ex officio public guardian.

Comment. Section 2902 continues former Welfare and Institutions Code Section 8001 without substantive change.

§ 2903. Termination of public administrator as public guardian

2903. If the public administrator has been designated ex officio public guardian the board of supervisors may by ordinance terminate the designation and appoint another public guardian and all authority vests in the successor.

Comment. Section 2903 continues former Welfare and Institutions Code Section 8003 without substantive change.

§ 2904. Termination of public guardian and appointment of public administrator

2904. If the board of supervisors has not designated the public administrator as ex officio public guardian, but has appointed another public guardian, it may terminate the appointment and may by ordinance designate that the public administrator is ex officio public guardian and all authority vests in the successor.

Comment. Section 2904 continues former Welfare and Institutions Code Section 8004 without substantive change.

§ 2905. Termination of authority of public guardian

2905. The authority of the public guardian or ex officio public guardian ceases upon the termination of his or her tenure in office as public guardian or ex officio public guardian and his or her authority vests in his or her successor.

Comment. Section 2905 continues former Welfare and Institutions Code Section 8005 without substantive change.

§ 2906. Official bond

2906. The public guardian shall give an official bond in such amount as may be fixed, from time to time, by the board of supervisors. The bond shall be for the joint benefit of the guardianship or conservatorship estates and the county. The public guardian may not be required to give a bond in an individual estate.

Comment. Section 2906 continues former Welfare and Institutions Code Section 8008 without substantive change. See also Section 2923 (letters, oath, and bond). The public guardian is allowed a pro rata share of the cost of the bond as an expense of administration. Section 2944 (expenses of public guardian).

§ 2907. Advance on expenses of public guardian

2907. (a) Necessary expenses of the public guardian in the conduct of any guardianship or any conservatorship estate may be advanced by the county. If so ordered by the board of supervisors, such expenses are a county charge, but the county shall be reimbursed therefor out of any funds or property of the estate by the public guardian.

(b) As a means of advancing necessary expenses to a public guardian who receives a salary in lieu of fees, the county board of supervisors may establish a revolving fund to be used by the public guardian. The revolving fund shall be established pursuant to Article 7 (commencing with Section 29460) of Chapter 2 of Division 3 of Title 3 of the Government Code.

Comment. Section 2907 continues former Welfare and Institutions Code Section 8015 without substantive change.

CROSS-REFERENCES

Definitions

Property § 62

CHAPTER 2. APPOINTMENT OF PUBLIC GUARDIAN

§ 2920. Taking possession or control of property

2920. (a) The public guardian may take prompt possession or control of property of persons domiciled in the county referred to the public guardian for guardianship or conservatorship if the property is liable to loss, injury, waste, or misappropriation.

(b) A public guardian who takes possession or control of property pursuant to this section is entitled to costs incurred for the protection of the property, together with a reasonable fee for services, in case of the subsequent appointment of another person as guardian or conservator of the estate. The costs and fee are a proper and legal charge of the estate of the ward or conservatee.

Comment. Subdivision (a) of Section 2920 continues the fifth sentence of former Welfare and Institutions Code Section 8006, with the addition of misappropriation as a ground for taking possession or control. Subdivision (b) restates former Welfare and Institutions Code Section 8006.5, eliminating the maximum and minimum fees.

CROSS-REFERENCES

Definitions

Conservatee § 1411

Conservator § 1410

Property § 62

§ 2921. Application for appointment

2921. If any person domiciled in the county requires a guardian or conservator and there is no other person qualified and willing to act as guardian or conservator:

(a) The public guardian may apply for appointment as guardian or conservator of the person and estate or person or estate.

(b) The public guardian shall apply for appointment as guardian or conservator of the person and estate or person or estate if the court so orders after notice to the public guardian and a determination that the appointment is necessary.

Comment. Section 2921 supersedes the first, second, and a portion of the third sentences of former Welfare and Institutions Code Section 8006. Section 2921 applies even though a person may be institutionalized in a facility in another county if the person is domiciled in the county of the public guardian.

CROSS-REFERENCES

Definitions

Conservator § 1410

Trust company as fiduciary § 300

§ 2922. Persons under jurisdiction of Departments of Mental Health or Developmental Services

2922. If the public guardian makes application for guardianship or conservatorship of the person and estate or person or estate of any person who is under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the application shall not be granted without the written consent of the department having jurisdiction of the person.

Comment. Section 2922 continues former Welfare and Institutions Code Section 8007 without substantive change.

§ 2923. Letters, oath, and bond

2923. If the public guardian is appointed as guardian or conservator:

(a) The public guardian shall procure letters of guardianship or conservatorship in the same manner and by the same proceedings as letters of guardianship or conservatorship are issued to other persons.

(b) The official bond and oath of the public guardian are in lieu of the guardian or conservator's bond and oath on the grant of letters of temporary guardianship, letters of guardianship, letters of temporary conservatorship, or letters of conservatorship.

Comment. Section 2923 continues the third and fourth sentences of former Welfare and Institutions Code Section 8006 without substantive change. See also Section 2906 (official bond). The public guardian is allowed a pro rata share of the cost of the bond as an expense of administration. Section 2944 (expenses of public guardian).

CROSS-REFERENCES

Definitions

Conservator § 1410

CHAPTER 3. ADMINISTRATION BY PUBLIC GUARDIAN

§ 2940. Deposit of funds

2940. All funds coming into the custody of the public guardian shall be deposited or invested in the same manner and subject to the same terms and conditions as deposit or investment of money of an estate by the public administrator pursuant to Article 4 (commencing with Section 7660) of Chapter 7 of Division 7.

Comment. Section 2940 supersedes former Welfare and Institutions Code Section 8009. It cross-refers to comparable provisions of the public administrator statute.

§ 2941. Employment of attorneys

2941. If necessary the public guardian in the public guardian's discretion may employ private attorneys where the cost of employment can be defrayed out of estate funds or where satisfactory pro bono or contingency fee arrangements can be made.

Comment. Section 2941 continues former Welfare and Institutions Code Section 8010 with the addition of reference to satisfactory pro bono or contingency fee arrangements.

§ 2942. Inventory and appraisal of estate

2942. (a) Notwithstanding Section 2610:

(1) The property described in the inventory may be appraised by the public guardian and need not be appraised by a probate referee if the conservatee is eligible for Social Security Supplemental Income Benefits.

(2) If no sale of the estate will occur, the public guardian shall file an inventory but need not file an appraisal of property in the estate other than cash.

(3) If a sale of property in the estate will occur, and the estate other than cash has an estimated value of less than \$2,000, the public guardian shall file an inventory but need not file an appraisal of property in the estate other than cash if the public guardian files with the inventory a verified declaration stating the estimated value of the property.

(b) As used in this section, "cash" means money, currency, cash items, and other assets that may be appraised by the public guardian pursuant to subdivision (c) of Section 2610.

Comment. Section 2942 supersedes former Welfare and Institutions Code Section 8011. An "eligible" conservatee, within the meaning of subdivision (a)(1), includes a conservatee who may have more cash than the SSI limit (currently \$1600) but also has known bills that will reduce the estate to below this limit. Section 2545 remains applicable to a sale of property pursuant to subdivision (a)(3). Assets that may be appraised by the public guardian within the meaning of subdivision (b) include money, currency, cash items, accounts in financial institutions, and money market and brokerage accounts. See Section 8901 (appraisal by personal representative).

CROSS-REFERENCES

Definitions

Property § 62

§ 2943. Disposition of property on death of ward or conservatee

2943. (a) Upon the death of the ward or conservatee the public guardian may pay in full or in part from assets of the ward or conservatee that are in the possession or control of the public guardian the unpaid expenses and charges of the guardianship or conservatorship in the manner and to the extent provided in Section 2631.

(b) If payment of expenses and charges pursuant to subdivision (a) cannot be made in full and the total market value of the remaining estate of the decedent does not exceed \$5,000, the public guardian may petition the court for an order permitting the public guardian to liquidate the decedent's estate. The public guardian may petition even though there is a will of the decedent in existence if the will does

not appoint an executor or if the named executor refuses to act. No notice of the petition need be given. If the order is granted, the public guardian may sell any personal property of the decedent, withdraw any money of the decedent in an account in a financial institution, and collect any debt, claim, or insurance proceeds owed to the decedent or the decedent's estate, and any person shall pay or deliver the money or property to the public guardian. After the payment of any remaining amounts due, the public guardian may transfer any remaining assets pursuant to Section 2631.

Comment. Section 2943 restates former Welfare and Institutions Code Section 8012, but limits estates that may be liquidated pursuant to subdivision (b) to \$5,000 or less.

CROSS-REFERENCES

Definitions

Account § 21
Conservatee § 1411
Court § 1418
Financial institution § 40
Order § 53
Person § 56
Personal property § 57
Petition § 1430
Property § 62
Will § 88

§ 2944. Expenses of public guardian

2944. The public guardian has a claim against the estate of the ward or conservatee for all of the following:

(a) Reasonable expenses incurred in the execution of the guardianship or conservatorship.

(b) Such compensation for services of the public guardian and the attorney of the public guardian, and the filing and processing services of the county clerk, as the court deems just and reasonable.

(c) A pro rata share of the cost of the public guardian's official bond, in the amount of twenty-five dollars (\$25) plus one-fourth of one percent of the amount of an estate greater than four thousand dollars (\$4,000). The amount charged shall be deposited in the county treasury.

Comment. Subdivisions (a) and (b) of Section 2944 restate former Welfare and Institutions Code Section 8013 without substantive change. Subdivision (c) is new; it is comparable to Section 7641(c) (public administrator).

CROSS-REFERENCES

Definitions

Clerk § 27

Conservatee § 1411

Court § 1418

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

CHAPTER 7. PUBLIC ADMINISTRATORS

Article 1. General Provisions

§ 7600. Notice of death

7600. (a) If a public officer or employee, hospital, or other person knows or has reason to believe that a person has died in the county without known beneficiaries, the public officer or employee, hospital, or other person shall promptly report the facts to the public administrator of the county.

(b) A person who fails to comply with this section is liable for any damage that results from the failure. The liability may be enforced by the public administrator or any interested person.

Comment. Section 7600 supersedes former Probate Code Section 1145. See also Section 7620 (report of public officer or employee).

CROSS-REFERENCES

Definitions

Beneficiary § 24
Interested person § 48
Person § 56

§ 7601. Assistant or deputy public administrator

7601. An assistant or deputy public administrator or other subordinate officer may be appointed to act and has the powers and may perform the duties of the office of the public administrator to the extent provided in Article 7 (commencing with Section 1190) of Chapter 1 of Division 4 of Title 1 of the Government Code.

Comment. Section 7601 replaces former Probate Code Section 1142.5 with a reference to the general Government Code provisions governing assistants and deputies.

Article 2. Taking Possession or Control of Property
Subject to Loss, Injury, Waste, or Misappropriation

§ 7620. Report of public officer or employee

7620. A public officer or employee shall inform the public administrator of property of a decedent known to the officer or employee to be liable to loss, injury, or waste that ought to be in the possession or control of the public administrator.

Comment. Section 7620 restates former Probate Code Section 1146 without substantive change.

CROSS-REFERENCES

Definitions

Property § 62

§ 7621. Authority of public administrator

7621. (a) If no personal representative has been appointed, the public administrator of a county shall take prompt possession or control of property of a decedent in the county that is liable to loss, injury, waste, or misappropriation, or that the court orders into the possession or control of the public administrator after notice to the public administrator.

(b) If property described in subdivision (a) is beyond the control of the public administrator, the public administrator is not liable for failing to take possession or control of the property.

Comment. Section 7621 restates the first sentence of former Probate Code Section 1140(a), with the addition of misappropriation as a ground for taking possession or control and with the addition of an express immunity in the case of property that is beyond the control of the public administrator. The public administrator may also be appointed special administrator for the property. Sections 8540-8541 (special administrators).

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

Property § 62

Note. General notice and hearing provisions have not yet been drafted.

§ 7622. Search for property, will, and instructions for disposition
of remains

7622. (a) A public administrator who is authorized to take possession or control of property of a decedent pursuant to this article may make an immediate search for other property, a will, and instructions for disposition of the remains of the decedent.

(b) If a will is found, the public administrator or custodian of the will shall deliver the will as provided in Section 8200.

(c) If instructions for disposition of the decedent's remains are found, the public administrator shall promptly deliver the instructions to the person upon whom the right to control disposition of the decedent's remains devolves as provided in Section 7100 of the Health and Safety Code.

Comment. Section 7622 restates the first portion of subdivision (a) and subdivision (b) of former Probate Code Section 1141 but eliminates the requirement that there be reasonable grounds to believe that the public administrator may be appointed personal representative.

CROSS-REFERENCES

Definitions

Property § 62

Will § 88

§ 7623. Providing information and access

7623. (a) A public administrator who is authorized to take possession or control of property of a decedent pursuant to this article may make a written statement of this fact. A financial institution or other person shall, without the necessity of inquiring into the truth of the written statement and without court order or letters being issued:

(1) Provide the public administrator information concerning property held in the sole name of the decedent.

(2) Grant the public administrator access to any safe deposit box rented in the sole name of the decedent for the purpose of inspection and removal of any will or instructions for disposition of the decedent's remains. Any costs or expenses incurred for drilling or forcing a safe deposit box shall be borne by the estate of the decedent.

(3) Surrender to the public administrator property of the decedent that is liable to loss, injury, or waste.

(b) Receipt of the written statement provided by this section:

(1) Constitutes sufficient acquittance for providing information or granting access to the safe deposit box, for removal of the decedent's will and instructions for disposition of the decedent's remains, and for surrendering property of the decedent.

(2) Fully discharges the financial institution or other person from any liability for granting access or for any act or omission of the public administrator with respect to the safe deposit box.

Comment. Section 7623 restates the last portion of subdivision (a) and subdivision (c) of former Probate Code Section 1141 with the elimination of the requirement that there be reasonable grounds to believe the public administrator may be appointed personal representative and with the addition of subdivision (a)(3).

CROSS-REFERENCES

Definitions

Court § 29
Financial institution § 40
Letters § 52
Order § 53
Person § 56
Property § 62
Will § 88

§ 7624. Costs and fees for taking possession or control of property

7624. If the public administrator takes possession or control of property of a decedent pursuant to this article, but another person is subsequently appointed personal representative, the public administrator is entitled to costs incurred for the preservation of the estate, together with a reasonable fee for services, as a proper and legal charge as an expense of administration of the estate of the decedent.

Comment. Section 7624 restates former Probate Code Section 1144.5, eliminating the maximum and minimum fees.

CROSS-REFERENCES

Definitions

Person § 56
Personal representative § 58
Property § 62

Article 3. Appointment as Personal Representative

§ 7640. Authority of public administrator

7640. The public administrator of the county in which the estate of a decedent may be administered shall promptly:

(a) Petition for appointment as personal representative of the estate if the decedent has no known beneficiaries.

(b) Petition for appointment as personal representative of any other estate the public administrator deems proper.

(c) Accept appointment as personal representative of an estate when so ordered by the court whether or not upon petition of the public administrator, after notice to the public administrator as provided in Section 7641.

Comment. Subdivisions (a) and (b) of Section 7640 restate the second sentence of former Probate Code Section 1140 without substantive change. Subdivision (c) is new. See also Sections 7050-7051 (jurisdiction and venue of probate proceedings) and 8461 (priority for appointment).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Court § 29

Personal representative § 58

§ 7641. Appointment of public administrator

7641. (a) Except as otherwise provided in this section, appointment of the public administrator as personal representative shall be made, and letters issued, in the same manner and pursuant to the same procedure as for appointment of and issuance of letters to personal representatives generally.

(b) Appointment of the public administrator may be made upon the court's own motion, after notice to the public administrator.

(c) The public administrator's oath and official bond are in lieu of the personal representative's oath and bond. Every estate administered under this chapter shall be charged with a pro rata share of the cost of the public administrator's official bond, in the amount of twenty-five dollars (\$25) plus one-fourth of one percent of the amount of an estate greater than four thousand dollars (\$4,000). The amount charged shall be an expense of administration and that amount shall be deposited in the county treasury.

Comment. Section 7641 restates former Probate Code Section 1140(b), with the addition of subdivision (b) and the provision of subdivision (c) allowing the county to recoup a share of the cost of the public administrator's official bond. The amount allowed under subdivision (c) is half the amount allowed for the bond of a personal representative generally under former Probate Code Section 541.5. Removal of the public administrator is subject to the same procedures as removal of administrators generally, including removal at the request of a person having a higher priority for appointment. Section 8503.

CROSS-REFERENCES

Definitions

Court § 29

Letters § 52

Personal representative § 58

§ 7642. General rules governing administration of estates apply

7642. Except as otherwise provided in this chapter:

(a) The public administrator shall administer the estate in the same manner as a personal representative generally, and the provisions of this division apply to administration by the public administrator.

(b) The public administrator shall receive the same compensation and allowances as are granted by this division to a personal representative generally.

Comment. Section 7642 restates former Probate Code Section 1142 without substantive change. The public administrator must file an inventory, institute suits for the recovery or protection of property, render accounts, and deliver up the property of the estate in the same manner as personal representatives generally.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 7643. Payment of unclaimed funds

7643. (a) After final settlement of an estate, if any money remains in the possession of the public administrator that should be paid over to the county treasurer pursuant to Chapter 4 (commencing with Section 11800) of Part 10, the court shall order payment to be made within 60 days.

(b) Upon failure of the public administrator to comply with an order made pursuant to subdivision (a), the district attorney of the county shall promptly institute proceedings against the public administrator and the sureties on the official bond for the amount ordered to be paid, plus costs.

Comment. Section 7643 restates former Probate Code Section 1154, referring to the general provisions for deposit of funds in the county treasury instead of to "unclaimed" property and allowing 60 instead of 10 days for payment to be made.

CROSS-REFERENCES

Actions at chambers § 7061
Definitions
Court § 30

Note. This draft will be circulated to the county treasurers for comment.

§ 7644. Additional compensation

7644. (a) As used in this section, "additional compensation" means the difference between the reasonable cost of the administration of an estate and the commission awarded under Sections [901 and 902].

(b) The public administrator may be awarded additional compensation if any of the following conditions is satisfied:

(1) A person entitled to appointment as personal representative in preference to the public administrator has been given notice under Section 8110 of the public administrator's petition for appointment, and that person has not petitioned for appointment in preference to the public administrator.

(2) The public administrator has been appointed after the resignation or removal of a personal representative.

Comment. Section 7644 continues former Probate Code Section 1142.3 without substantive change.

CROSS-REFERENCES

Definitions
Person § 56
Personal representative § 58

§ 7645. Expiration of term of office

7645. (a) Except as provided in subdivision (b), the authority of a public administrator to administer an estate for which the public administrator has been appointed personal representative does not cease upon termination of his or her tenure in the office of public administrator, but his or her authority and duties as personal representative of the estate continue until discharge, as in the case of other personal representatives.

(b) If the compensation of the public administrator is paid by salary and not by fees, the authority of the public administrator ceases upon termination of his or her tenure in the office of public administrator, and his or her authority vests in the successor in the office of public administrator.

Comment. Section 7645 restates former Probate Code Section 1152 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

Article 4. Deposit of Money of Estate

§ 7660. "Deposit in a financial institution" defined

7660. As used in this article, "deposit in a financial institution" means:

(a) Deposit in an [insured] bank in the state.

(b) Investment in an account in an insured savings and loan association.

(c) Investment in shares in an insured credit union.

Comment. Section 7660 is drawn from the first sentence of former Probate Code Section 1147 and expanded to include credit unions. See also Section 10 (singular includes plural).

CROSS-REFERENCES

Definitions

Account in insured savings and loan association § 22

Shares in an insured credit union § 72

Note. Any general language developed to refer to insured accounts in banks will be incorporated in this section.

§ 7661. Deposit by public administrator

7661. (a) The public administrator shall, upon receipt, deposit in a financial institution or with the county treasurer of the county in which the proceedings are pending all money of the estate.

(b) Upon deposit under this section the public administrator is discharged from further care or responsibility for the money deposited until the public administrator withdraws the money.

Comment. Section 7661 continues the first sentence of former Probate Code Section 1147 without substantive change.

CROSS-REFERENCES

Definitions

Deposit in a financial institution § 7660

§ 7662. Withdrawal of amounts deposited

7662. Money on deposit in a financial institution or with the county treasurer may be withdrawn upon the order of the public administrator when required for the purposes of administration.

Comment. Section 7662 continues the second sentence of former Section 1147 without substantive change.

CROSS-REFERENCES

Definitions

Deposit in a financial institution § 7660

§ 7663. Interest on money deposited

7663. (a) The public administrator shall credit each estate with the highest rate of interest or dividends that the estate would have received if the funds available for deposit had been individually and separately deposited.

(b) Any interest or dividends credited to the account of the public administrator in excess of the amount credited to the estates pursuant to subdivision (a) shall be deposited in the county general fund.

Comment. Section 7663 restates the second paragraph of former Probate Code Section 1147.

§ 7664. Deposit with county treasurer

7664. (a) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this chapter and pay the money out upon the order of the public administrator when required for the purposes of administration. The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of all such money.

(b) The county treasurer shall deliver to the State Treasurer or the State Controller all money in the possession of the county treasurer belonging to the estate, if after a final settlement of the estate, there are no beneficiaries or other persons entitled to the money, or the beneficiaries or other persons entitled to the money do not appear and claim it. Delivery shall be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 7664 restates former Probate Code Section 1148 without substantive change.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Person § 56
Personal property § 57

Note. Conforming changes are needed in various interrelated Code of Civil Procedure sections.

§ 7665. Deposit unclaimed in financial institution

7665. (a) If a deposit in a financial institution is made pursuant to this article, any money remaining unclaimed at the expiration of five years from the date of the deposit, together with the increase and proceeds of the deposit, shall be presumed abandoned in any of the following situations:

(1) The deposit belongs to the estate of a known decedent for which a personal representative has never been appointed.

(2) The deposit belongs to the estate of a known decedent for which a personal representative has been appointed but no order of distribution has been made due to the absence of interested persons or the failure of interested persons diligently to protect their interests by taking reasonable steps for the purpose of securing a distribution of the estate.

(b) The State Controller may, at any time after the expiration of the five-year period, file a petition with the court setting forth the fact that the money has remained on deposit in a financial institution under the circumstances described in subdivision (a) for the five-year period, and requesting an order declaring that the money is presumptively abandoned and directing the holder of the money to pay the money to the State Treasurer.

(c) Upon presentation of a certified copy of a court order made pursuant to subdivision (b), the financial institution shall forthwith transmit the money to the State Treasurer for deposit in the State Treasury. The deposit shall be made as provided in Section 1310 of the Code of Civil Procedure. All money deposited in the State Treasury under the provisions of this section shall be deemed to be deposited in the State Treasury under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure. The deposit shall be transmitted, received, accounted for, and disposed of as provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

Comment. Section 7665 continues former Probate Code Section 1147.5 without substantive change.

CROSS-REFERENCES

Definitions

Court § 29
Deposit in a financial institution § 7660
Financial institution § 40
Interested person § 48
Order § 53
Personal representative § 58

Article 5. Summary Disposition of Small Estates

§ 7680. Summary disposition authorized

7680. (a) If a public administrator takes possession or control of, or is appointed personal representative of, an estate pursuant to this chapter, the public administrator may summarily dispose of the estate in the manner provided in this article in either of the following circumstances:

(1) The total value of the estate of the decedent does not exceed ten thousand dollars (\$10,000). The authority provided by this paragraph may be exercised without further court authorization.

(2) The total value of the estate of the decedent does not exceed the amount prescribed in Section 13100 (affidavit procedure for collection or transfer of personal property). The authority provided by this paragraph may be exercised only upon order of the court. The order may be made upon ex parte application. The fee to be allowed to the clerk for the filing of the application shall be set by the court.

(b) Summary disposition may be made whether or not there is a will of the decedent in existence, if the will does not name an executor or if the named executor refuses to act.

(c) Nothing in this article precludes the public administrator from filing any petition with the court pursuant to any other provision of this division if necessary for the proper administration of the estate.

Comment. Subdivisions (a) and (b) of Section 7680 supersede portions of former Probate Code Section 1143(a) and (b), increasing the summary disposition amounts from \$3,000 to \$10,000 and from \$20,000 to the amount prescribed in Section 13100. Subdivision (c) is new. Section 7680 is not limited to summary disposition of personal property but may include real property of small value as well.

CROSS-REFERENCES

Definitions

Clerk § 27

Court § 30

Order § 53

Personal representative § 58

Will § 88

Ex parte orders may be made at chambers § 166

§ 7681. Liquidation of assets

7681. A public administrator acting under authority of this article may:

(a) Withdraw any money of the decedent on deposit in a financial institution.

(b) Collect any indebtedness or claim owing to the decedent.

(c) Sell personal property of the decedent. Sales may be made with or without notice, as the public administrator elects. Title to the property sold shall pass without the need of confirmation by the court.

(d) Sell real property of the decedent, subject to Article 6 (commencing with Section 10300) of Chapter 17 of Part 5. Title to the property sold shall pass with the public administrator's deed.

Comment. Section 7681 restates portions of former Probate Code Sections 1143 and 1144, expanding the ability to withdraw funds to include other financial institutions besides banks and adding the ability to sell real property, subject to court confirmation.

CROSS-REFERENCES

Definitions

Court § 29
Financial institution § 40
Personal property § 57
Real property § 68

§ 7682. Payment of demands

7682. The public administrator acting under authority of this article shall pay out the money of the estate in the following order:

(a) Costs of administration, including commissions and attorney's fees.

(b) Expenses of the decedent's last illness and of disposition of the remains of the decedent.

(c) Proper claims presented to the public administrator before distribution of the decedent's property pursuant to Section 7683. Claims shall be paid in the order prescribed in Section 11401 (order of payment).

Comment. Section 7682 restates the second sentence of former Probate Code Section 1143(a) and a portion of former Probate Code Section 1143(b), with the addition of specific references to attorney's fees and costs of administration. Because no notice to creditors is given pursuant to this article, the time for making claims is extended to the time of distribution of the decedent's property, and recipients of the property remain liable for creditor claims. See Section 7684 (liability for decedent's unsecured debts). Distribution may not be made until at least four months after commencement of administration. Section 7683 (distribution of property).

CROSS-REFERENCES

Definitions

Property § 62

§ 7683. Distribution of property

7683. (a) After payment of demands pursuant to Section 7682, but in no case before four months after court authorization of the public administrator to act under this article or after the public administrator takes possession or control of the estate, the public administrator shall distribute any money or other property of the decedent remaining in the possession of the public administrator to the decedent's beneficiaries.

(b) In the absence of any such person the public administrator shall:

(1) If the proceeding is pursuant to paragraph (1) of subdivision (a) of Section 7680, deposit the balance with the county treasurer for use in the general fund.

(2) If the proceeding is pursuant to paragraph (2) of subdivision (a) of Section 7680, upon petition, distribute the money or property by court order to the State of California.

(c) Upon rendition of a court order distributing money or other property to the State of California under this section, the public administrator shall promptly transmit to the Treasurer or Controller all money or other property distributed to the State of California, subject to Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 7683 restates a portion of former Section 1143(b) and the fifth and sixth sentences of former Section 1144 without substantive change, and makes clear that distribution may not be made until at least four months after commencement of administration.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Court § 29
Order § 53
Person § 56
Property § 62

§ 7684. Liability for decedent's unsecured debts

7684. (a) A person to whom property is distributed pursuant to this article is personally liable for the unsecured debts of the decedent. Any such debt may be enforced against the person in the

same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defenses available to the decedent if the decedent had not died. The aggregate personal liability of a person under this section shall not exceed the fair market value of the property distributed, valued as of the time of the distribution, less the amount of any liens and encumbrances on that property at that time.

Comment. Section 7684 is new. It is drawn from Sections 13109 and 13112 (affidavit procedure for collection or transfer of personal property).

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

§ 7685. Public administrator's statement of disposition

7685. (a) The public administrator shall file with the clerk a statement showing the property of the decedent that came into possession of the public administrator and the disposition made of the property, together with receipts for all distributions.

(b) The public administrator shall maintain a file of all receipts and records of expenditures for a period of two years after the statement required by subdivision (a) is filed.

Comment. Subdivision (a) of Section 7685 continues the substance of the fourth sentence of former Probate Code Section 1144, substituting receipts for distributions for vouchers for expenditures. Receipts and records for expenditures, instead, are preserved in the public administrator's files for two years pursuant to subdivision (b).

CROSS-REFERENCES

Definitions

Clerk § 27

Property § 62

§ 7686. Commission of public administrator

7686. (a) The commission payable to the public administrator and the attorney, if any, for the public administrator for the filing of an application pursuant to this article and for performance of any duty or service connected therewith, are those set forth in Sections [901, 902, and 910].

(b) Notwithstanding subdivision (a):

(1) In any case administered pursuant to this article, the public administrator shall be entitled to a minimum commission of three hundred fifty dollars (\$350).

(2) In any case in which money or property is distributed by court order to the State of California pursuant to Section 7683, the public administrator shall be entitled to additional compensation within the meaning of Section 7644.

Comment. Section 7686 supersedes former Probate Code Section 1143(c) and the second sentence of former Probate Code Section 1144. See 43 Ops. Cal. Atty. Gen. 192 (4-22-64). Section 7686 increases the minimum commission under this article from \$250 to \$350, and allows the public administrator the difference between the reasonable cost of summary disposition and the standard commission where property escheats to the state.

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

Property § 62

COMMENTS TO REPEALED SECTIONS

CHAPTER 20. PUBLIC ADMINISTRATORS

Probate Code § 1140 (repealed)

Comment. The first sentence of subdivision (a) of former Section 1140 is restated in Estate and Trust Code Section 7621 (authority of public administrator), with the addition of misappropriation as a ground for taking possession or control of property. The court may also appoint the public administrator as special administrator. Estate and Trust Code Section 8541 (procedure for appointment). The second sentence of subdivision (a) is restated in Estate and Trust Code Section 7640 (authority of public administrator).

Subdivision (b) is restated without substantive change in Estate and Trust Code Section 7641 (appointment of public administrator), with the addition of provisions for appointment of a public administrator on the court's own motion and for county recoupment from the estate of a share of the cost of the public administrator's bond.

Probate Code § 1140.5 (repealed)

Comment. Former Section 1140.5 is not continued. The county may not return alien indigents to their native land.

Probate Code § 1141 (repealed)

Comment. Former Section 1141 is restated without substantive change in Estate and Trust Code Sections 7622 (search for property, will, and instructions for disposition of remains) and 7623 (providing information and access), with the elimination of the requirement that there be reasonable grounds to believe the public administrator may be appointed personal representative.

Probate Code § 1142 (repealed)

Comment. Former Section 1142 is restated without substantive change in Estate and Trust Code Section 7642 (general rules governing administration of estates apply).

Probate Code § 1142.3 (repealed)

Comment. Former Section 1142.3 is continued without substantive change in Estate and Trust Code Section 7644 (additional compensation).

Probate Code § 1142.5 (repealed)

Comment. Former Section 1142.5 is superseded by Estate and Trust Code Section 7601 (assistant or deputy public administrator).

Probate Code § 1143 (repealed)

Comment. Former Section 1143 is superseded by Estate and Trust Code Sections 7680-7686 (summary disposition of small estates). The new provisions increase the summary disposition amounts from \$3,000 to

\$10,000 and from \$20,000 to the amount prescribed in Estate and Trust Code Section 13100, and are not limited to personal property. The public administrator is allowed compensation for the actual cost of administration where summary disposition property will escheat to the state.

Probate Code § 1144 (repealed)

Comment. Former Section 1144 is superseded by Estate and Trust Code Sections 7680-7686 (summary disposition of small estates).

Probate Code § 1144.5 (repealed)

Comment. Former Section 1144.5 is restated in Estate and Trust Code Section 7624 (costs and fees for taking charge of property), with the elimination of the maximum and minimum fees.

Probate Code § 1145 (repealed)

Comment. Former Section 1145 is superseded by Estate and Trust Code Section 7600 (notice of death).

Probate Code § 1146 (repealed)

Comment. Former Section 1146 is restated without substantive change in Estate and Trust Code Section 7611 (report officer or public employee).

Probate Code § 1147 (repealed)

Comment. The first sentence of the first paragraph of former Section 1147 is restated without substantive change in Estate and Trust Code Sections 7660 ("deposit in a financial institution" defined) and 7661 (deposit by public administrator). The second sentence is continued without substantive change in Estate and Trust Code Section 7662 (withdrawal of amounts deposited). The second paragraph is restated in Estate and Trust Code Section 7663 (interest on money deposited).

Probate Code § 1147.5 (repealed)

Comment. Former Section 1147.5 is continued without substantive change in Estate and Trust Code Section 7665 (deposit unclaimed in financial institution).

Probate Code § 1148 (repealed)

Comment. Former Section 1148 is restated without substantive change in Estate and Trust Code Section 7664 (deposit with county treasurer).

Probate Code § 1149 (repealed)

Comment. Former Section 1149 is not continued. Payment of fees is controlled by general rules governing payment of the expenses of administration. See, e.g., Estate and Trust Code Sections 7642 (general rules governing administration of estates apply) and 7682 (payment of demands).

Probate Code § 1150 (repealed)

Comment. Former Section 1150 is not continued. General rules governing fiduciary obligations of the personal representative apply to the public administrator. Government Code Section 27443 provides an additional sanction.

Probate Code § 1152 (repealed)

Comment. Former Section 1152 is restated without substantive change in Estate and Trust Code Section 7645 (expiration of term of office).

Probate Code § 1154 (repealed)

Comment. Former Section 1154 is restated in Estate and Trust Code Section 7643 (payment of unclaimed funds), which allows 60 days instead of 10 days for making payment.

Probate Code § 1155 (repealed)

Comment. Former Section 1155 is not continued. Special sanctions are unnecessary in view of applicable general sanctions.

PUBLIC GUARDIAN

Welfare & Institutions Code §§ 8000-8015 (repealed)

SEC. ____ Chapter 1 (commencing with Section 8000) of Division 8 of the Welfare and Institutions Code is repealed.

Comment. Former Sections 8000 to 8015 are relocated to Part 5 (commencing with Section 2900) of Division 4 of the Estate and Trust Code. The disposition of the former provisions is indicated below.

<u>Former Provision</u>	<u>Est. & Trust Code Section</u>
8000	2900
8001	2902
8002	2901
8003	2903
8004	2904
8005	2905
8006	
First sentence	2921
Second sentence	2921
Third sentence	2921, 2923
Fourth sentence	2923
Fifth sentence	2920(a)
8006.5	2920(b)
8007	2922
8008	2906
8009	2940
8010	2941
8011	2942
8012	2943
8013	2944
8015	2907

CONFORMING CHANGES

Government Code § 29616 (repealed)

SEC. . Section 19616 of the Government Code is repealed.

~~29616.--The publication of the semiannual report by the public administrator is a county charge.~~

Comment. The semiannual report to which former Section 29616 referred was repealed in 1981. See former Probate Code § 1153.

Probate Code § 2631 (amended)

2631. (a) Upon the death of the ward or conservatee, the guardian or conservator may contract for and pay a reasonable sum for the expenses of the last illness and the funeral disposition of the remains of the deceased ward or conservatee, and for other reasonable guardian or conservator charges, including unpaid court approved attorney's fees, or may pay the unpaid expenses ~~of such last illness and funeral,~~ in full or in part, to the extent reasonable, from any assets of the deceased ward or conservatee, other than real property or any interest therein, which are under the control of the guardian or conservator.

(b) When a claim for such expenses is presented to the guardian or conservator, the guardian or conservator shall endorse thereon an allowance or rejection, with the date thereof. If the claim is allowed, it shall be presented to the court and the court shall in like manner endorse thereon an allowance or rejection. If the claim is approved by the court, the claim shall be filed with the clerk within 30 days thereafter.

(c) After payment of such expenses, the guardian or conservator may transfer any remaining assets in accordance with and subject to the provisions of ~~Section 630~~ Part 1 (commencing with Section 13000) of Division 8. The value of the property of the deceased ward or conservatee, for the purpose of ascertaining the right to transfer under ~~Section 630~~ Part 1 (commencing with Section 13000) of Division 8, shall be determined after the deduction of the expenses so paid.

Comment. Section 2631 is amended to authorize payment of attorney's fees and other reasonable expenses of the guardian or conservator. The other changes in Section 2631 are technical.