

Memorandum 88-18

Subject: Study L-1030 - Notice to Decedent's Guardian or Conservator
in Summary Proceedings for Small Estates

Attached to this Memorandum as Exhibit 1 is a letter from Deborah DeBow of Assemblyman Harris' office with an attachment relating to Alameda County's legislative program. The pertinent item is from the Alameda County Counsel's Office and concerns the recently-enacted provisions of the Probate Code relating to the two summary procedures for transfer of decedent's real property of small value.

Decedent's successor may obtain title to decedent's real property worth \$10,000 or less merely by filing an affidavit with the court clerk and recording a certified copy (Prob. Code §§ 13200-13209), and may obtain title to decedent's real property worth \$60,000 or less by petitioning for a court order (*id.* §§ 13150-13157). The Alameda County Counsel's Office wants amendments to ensure that, if the decedent had a guardian or conservator of the estate, notice of either of these two summary proceedings will be given to the guardian or conservator.

The usual way the guardian or conservator prevents unauthorized transfer of real property of the ward or conservatee is by recording a certified copy of letters of guardianship or conservatorship in any county where there is such property. *Id.* § 1875; W. Johnstone, G. Zillgitt & S. House, California Conservatorships § 5.11, at 240-41 (Cal. Cont. Ed. Bar, 2d ed. 1983). If this is done, decedent's real property cannot be transferred without either consent of the guardian or conservator or a court order.

In a formal probate, there is no requirement that decedent's guardian or conservator be given notice of the commencement of the proceeding. See Prob. Code § 328. Similarly, there is no requirement that the guardian or conservator be given notice of a community property petition. See *id.* § 13655.

It seems difficult to justify requiring notice of a summary proceeding when notice of a formal proceeding is not required and there is such a cheap and easy way for the guardian or conservator to protect against unauthorized transfer of real property. Moreover, to impose a

new requirement that, in a summary judicial proceeding, the court clerk forward copies of all documents to persons entitled to notice would probably require an appropriation, making enactment of the proposal unlikely. Accordingly, the staff recommends against the amendments suggested by the Alameda County Counsel's Office.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel



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on

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January 22, 1988

John DeMouly
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303

Dear John:

Enclosed is a proposal which Alameda County has requested Assemblyman Harris to carry. Please advise us as to whether there are problems with this proposal and, if possible, the extent to which these problems can be eliminated from the Alameda County proposal. Many thanks for your assistance.

Sincerely,

Deborah M. DeBow

DMD:mea

Enclosure

Already included within the County's Legislative Program is a request from the Fremont Municipal Court for an additional judicial position to similarly replace a Traffic Commissioner position. This request has been part of the County's Legislative Program for several years and we have been unsuccessful thus far in securing the position for Alameda County.

Proposal: That Alameda County seek legislation to change the Government Code to authorize a third judicial position for the Livermore-Pleasanton Municipal Court.

Submitted by: John Lewis, Presiding Judge
Livermore-Pleasanton Judicial District

• TECHNICAL

7. Within the California Probate Code, there are two chapters, effective July 1, 1987, that affect the functioning of the County's Public Guardian/Conservator's Department. Under Probate Code, Section 2467, a conservator of the estate has a continued duty of custody and conservation of the estate after the death of a conservatee or ward, pending delivery to the personal representative of other disposition according to the law. The Public Guardian, as conservator of the estate in many cases is of course subject to this section.

However, effective July 1, 1987, Sections 13150 and 13200 do not require notice to the descendant's conservator or guardian. This leaves the Public Guardian, as conservator, in the dark as to when his duty of custody and preservation terminates.

Proposal: That Alameda County 1) seek amendments to Probate Code, Chapter 4, Section 13152 and Chapter 5, Section 13200 adding language giving the names and addresses of all persons and entities serving as the conservator or guardian; and, 2) seek an amendment to Chapter 5, Section 13202 of the Probate Code requiring the court clerk to forward copies of all documents to persons and entities identified in Section 13200.

Submitted by: County Counsel

8. In September, 1987, your Board approved a request by John Lewis, Presiding Judge, Livermore-Pleasanton Judicial District for an amendment to the County Ordinance setting forth new boundaries for the District as well as authorizing a change in the name of the District to include the City of Dublin.