

Memorandum 88-82

Study L-1062 - Priority for Appointment as Administrator

New Section 8461 of the Probate Code, operative July 1, 1989, states the order of priority for appointment as administrator of an intestate estate. After priority for the surviving spouse and near relatives of the decedent, priority is given to:

- (i) Children of a predeceased spouse.
- (j) Other next of kin [of the decedent].
- (k) Relatives of a predeceased spouse.
- (l) Conservator or guardian of the estate of the decedent acting in that capacity at the time of death.
- (m) Public administrator.
- (n) Creditors.
- (o) Any other person.

These priorities are subject to a qualification: A surviving spouse, or a relative of the decedent or of decedent's predeceased spouse, has priority only if entitled to succeed directly or indirectly to all or part of the estate. Prob. Code § 8462. The purpose of the priorities is to appoint the person most likely to handle the estate to the advantage of those beneficially interested. Estate of Trissel, 208 Cal. App. 2d 188, 193, 25 Cal. Rptr. 205 (1962).

The priorities listed above are the same as under existing law (*id.* § 422), except for subdivision (i) -- children of a predeceased spouse. Children of a predeceased spouse were given a new priority to correspond to their priority to take by intestate succession from the decedent (*id.* § 6402). See Comment to Section 8461.

We have received two letters objecting to the above priorities -- one from James Scannell, San Francisco Public Administrator (Exhibit 1), and one from Carol Gandy, Assistant Public Administrator of Orange County (Exhibit 2). Mr. Scannell would delete subdivision (l), which gives priority to a conservator or guardian of the estate. His concern is that if the conservator or guardian has misappropriated estate funds and is appointed administrator, he or she can conceal the misappropriation. His main concern appears to be with private professional conservators and guardians.

Ms. Gandy would go further than Mr. Scannell: She would delete subdivisions (i) (children of predeceased spouse), (j) (other next of kin of decedent), and (l) (conservator or guardian).

Staff Analysis

Ms. Gandy's suggestion to delete subdivision (i) (children of a predeceased spouse) seems pointless, since she would keep subdivision (k) (relatives of a predeceased spouse). Thus, all her suggestion would do is to move children of a predeceased spouse down the priority list from just ahead of "other next of kin" of the decedent, and put them with other "relatives of a predeceased spouse," just after "other next of kin" of the decedent. The staff sees no good reason to do this, particularly since the new scheme corresponds to the priority for inheriting from the decedent. The staff recommends keeping subdivision (i), but changing "children" of a predeceased spouse to "issue" of a predeceased spouse as set out in Exhibit 3, to correspond to the intestate succession scheme (Prob. Code § 6402).

Ms. Gandy's suggestion that we delete subdivision (j) (other next of kin of decedent) while keeping subdivision (k) (relatives of predeceased spouse) would have the anomalous effect of limiting priority to decedent's near relatives (grandparents and their issue), while giving priority to relatives of a predeceased spouse, no matter how remote. Under intestate succession, decedent's relatives may inherit no matter how remote, but only the parents of a predeceased spouse or their issue may inherit from the decedent. The staff sees no good reason to depart from the intestate succession scheme by giving priority to remote relatives of a predeceased spouse, but only to near relatives of the decedent. The staff recommends keeping subdivision (j) (other next of kin of decedent), and limiting subdivision (k) (relatives of predeceased spouse) to parents of a predeceased spouse or the issue of such parents as set out in Exhibit 3, to correspond to the intestate succession scheme.

The suggestion that we delete subdivision (l) (guardian or conservator) is made both by Ms. Gandy and by Mr. Scannell. This provision was added in 1984 by a bill sponsored by the State Bar, recommended by the 1983 State Bar Conference of Delegates, and supported by the State Bar Estate Planning, Trust and Probate Law Section. The 1983 Resolutions Committee report said:

Reasons: Where there is no relative qualified and entitled to act as administrator, it would be more efficient and practical to appoint the conservator or guardian in control of the estate at death, rather than have the public administrator or those lower in priority assume administration. By virtue of office, the conservator or guardian is familiar with the estate, the interested persons entitled to notice, and probably the estate plan. That person presently has the authority to pay the expenses of last illness and funeral and to deliver the remaining assets of a personal property estate under \$30,000 [now \$60,000] to the persons entitled under Probate Code Section 630 [now Section 13006] (Prob. Code § 2631). There is no logical reason for larger estates not to enjoy similar administrative benefits.

Mr. Scannell correctly points out that a conservator or guardian who is related to the decedent already has priority under subdivisions (a) through (k). Thus the practical effect of subdivision (1) is to give priority only to a nonrelative conservator or guardian. Since a professional or institutional conservator or guardian is presumably not related to the decedent, deleting subdivision (1) would take away priority from such a conservator or guardian without affecting the priority of a conservator or guardian who is related to the decedent. But to delete subdivision (1) would take away priority from a conservator or guardian who is a lawyer, stockbroker, investment counselor, accountant, physician, trust company, or nonprofit charitable corporation. See W. Johnstone, G. Zillgitt, & S. House, California Conservatorships §§ 1.23-1.34 (2d ed., Cal. Cont. Ed. Bar 1983). So to delete subdivision (1) seems too drastic.

Perhaps a narrower alternative can be drafted to exclude from subdivision (1) private professional conservators where the abuses have allegedly occurred. The Assembly Committee on Aging and Long Term Care is working on the problem of private professional conservators, but has not yet developed a satisfactory definition of a "private professional conservator." The staff solicits suggestions from the public administrators as to how such a narrower alternative might be drafted.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

City and County of San Francisco

Public Administrator
Public Guardian

September 28, 1988

Immediate Action Code:

Bureau: _____

File No.: _____

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CA LAW REV. COMMISSION

SEP 30 1988

RECEIVED

RE: Section 8461 (L) - Conservators, Guardians

Dear Nat:

Section 8461 (L), identifies Conservators or Guardians of the estate at the time of death as having priority for appointment as the administrator of an estate.

I am personally uncomfortable with this statement and I have been asked by the Public Administrator/Public Guardians Association to petition the LRC to remove (L) entirely from the section.

We believe giving private conservators or guardians priority is both unnecessary and very dangerous.

Any conservator or guardian who is related to the deceased would be eligible under (a) through (k). This would cover most of the private conservators/guardians.

A private conservator/guardian who is selling services for profit should not be given the opportunity to hide any misappropriations of funds while the conservator/guardian by becoming the administrator of the estate.

The probate courts do not have the staff or the mandate to actively investigate each estate.

An honest administration is the last check and balance the system has and should not be given to someone who might have a self interest to serve.

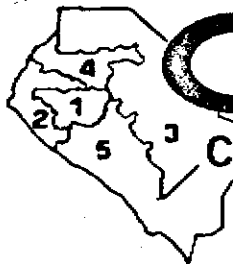
Very truly yours,

A handwritten signature in dark ink, appearing to read "J R Scannell", written over a circular stamp or seal.

JAMES R. SCANNELL
Public Administrator
Public Guardian

JRS:nf1

25 Van Ness Avenue, Suite 200, San Francisco, CA 94102
Public Guardian - Suite 110- Enter on Oak Street
Principal Number 415/554-1150



COUNTY OF ORANGE

COMMUNITY SERVICES AGENCY

OFFICE OF THE
PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN

October 5, 1988

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Asst. Executive Secretary
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CA LAW REV. COMM'N

OCT 11 1988

RECEIVED

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Public Administrator
Public Guardian

CAROL GANDY, Assistant
Public Administrator
Public Guardian

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Santa Ana, California

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Santa Ana, CA 92711
(714) 567-7660

RE: Section 8461 J - Public Administrator

Dear Mr. Sterling:

Government Code 24000 mandates the Office of the Public Administrator. The Probate Code Section 8461, effective 7-1-89, will seriously jeopardize the ability of the Public Administrator to recover costs, therefore, creating a tax burden on the community to support this mandated service from general funds.

I have been asked by the Public Administrator/Public Guardian Association (CAPAG) to petition the LRC to correct Section 8461. I do this in concert with James R. Scannell, the association's liaison to the LRC.

This is a formal request to correct Probate Code Section 8461 to give the Public Administrator priority listing 8461 J. We recommend the following correction in Probate Code 8461:

Delete - 8461 i, j, k, l, m, n, o, and replace with

- i. The relatives of a previously deceased spouse, when such relatives to succeed to some portion of the estate.
- j. Public Administrator
- k. Creditors
- l. Any other person

The State Association of the Public Administrator/Public Guardians, will provide testimony supporting the need for this requested action.

Thank you for your consideration of this request.

Very Truly Yours


CAROL GANDY, Assistant
Public Administrator/Guardian

CALIFORNIA LAW REVISION COMMISSION

RE: Section 8461 J - Public Administrator

Distribution:

Douglas Kaplan - President, CAPAG
PA/PG Yolo County

James R. Scannell - CAPAC Liason to LRC
PA/PG San Francisco County

JoAnne Ringstrom - Chair, Legislative Committee
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Jeanne Mc Bride - PA/PG, San Diego County

Russell Marshall - Property Officer, Santa Clara County

Jacqueline Cannon - Chief Deputy PA, Riverside County

Joanne C. Morton - Deputy Public Administrator, Santa Cruz County

Rita A. Hildreth - Deputy Public Administrator, Yuba County

Exhibit 3

Probate Code § 8461 (amended). Priority for appointment as administrator

SEC. _____. Section 8461 of the Probate Code is amended to read:

8461. Subject to the provisions of this article, the following persons are entitled to appointment as administrator in the following order of priority:

- (a) Surviving spouse.
- (b) Children.
- (c) Grandchildren.
- (d) Other issue.
- (e) Parents.
- (f) Brothers and sisters.
- (g) Grandparents.
- (h) Issue of grandparents.
- (i) ~~Children~~ Issue of a predeceased spouse.
- (j) Other next of kin.
- (k) ~~Relatives~~ Parents of a predeceased spouse or issue of parents .
- (l) Conservator or guardian of the estate of the decedent acting in that capacity at the time of death.
- (m) Public administrator.
- (n) Creditors.
- (o) Any other person.

Comment. Section 8461 is amended to conform the priorities for appointment as administrator more closely to the priorities to take from the decedent by intestate succession. See Section 6402.