

# **GUARDIANSHIP- CONSERVATORSHIP LAW**

with  
Official Comments

June 1980

California Law Revision Commission  
Stanford Law School  
Stanford, California 94305

Published in Cooperation With  
California Continuing Education of the Bar

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## NOTE

The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 15 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1981.

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STATE OF CALIFORNIA

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## PREFACE

The 1979 session of the California Legislature enacted a new guardianship-conservatorship law. The new law (Division 4 of the Probate Code) is a comprehensive statute that replaces the former separate guardianship and conservatorship statutes that were found in Divisions 4 and 5 of the Probate Code. The new law—enacted by Chapter 726 of the Statutes of 1979—becomes operative on January 1, 1981.

This pamphlet contains the full text of the new law as enacted in 1979 with the revisions made by Chapters 89 and 246 of the Statutes of 1980. At the time this material was prepared for the printer, Assembly Bill 2898 (relating to limited conservatorships) was pending in the Legislature but had not been enacted; this bill is referred to in this pamphlet by reference to "Assembly Bill 2898." A note is included following each of the sections that will be affected by Assembly Bill 2898, if enacted. The text of those sections as they will read if Assembly Bill 2898 is enacted is set out in the Exhibit contained at the end of this publication. Revisions, if any, made by other laws enacted by the 1980 session of the Legislature are not included. The official Comment to each section is set out following the text of the section.

Legislation also was enacted in 1979 to make revisions (additions, amendments, and repeals) in other code sections to conform to the new guardianship-conservatorship law. See 1979 Cal. Stats. ch. 730. This pamphlet includes a list of the sections affected by the conforming legislation and sets out the official Comment to each section. The text of the sections is omitted, except for a few sections which made significant changes in prior law.

The new guardianship-conservatorship law and the conforming revisions were enacted as the result of two recommendations of the California Law Revision Commission:

(1) *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978).

(2) *Recommendation Relating to Uniform Veterans Guardianship Act*, 15 Cal. L. Revision Comm'n Reports 1289 (1980).

The portion of the Law Revision Commission's recommendation explaining its proposed new guardianship-conservatorship law is set out in the first portion of this pamphlet. The text of the recommendation has been revised to reflect changes made in the Commission's proposed legislation before it was enacted. Although these revisions were made by the Commission's legal staff, the revised material does not necessarily represent the views of the Commission. The revised Commission recommendation does not indicate fully the effect of Assembly Bill 2898 (limited conservatorship provisions) on the provisions applicable to conservators generally. Major changes that the new limited conservatorship bill (Assembly Bill 2898) would make if enacted have been noted briefly in the revised recommendation in some—but not all—cases.

The official Comments are taken from the pertinent Law Revision Commission recommendation or from the special report adopted by the Assembly Committee on Judiciary or the Senate Committee on Judiciary providing new or revised Comments for particular sections. See *Report of Assembly Committee on Judiciary on Assembly Bills Nos. 261 and 167*, Assembly J. May 9, 1979, and the report referred to therein which is on file with the Assembly Committee on Judiciary, both republished in 15 Cal. L. Revision Comm'n Reports 1061-96 (1980); *Report of Senate Committee on Judiciary on Assembly Bill No. 261*, Senate J. July 17, 1979, republished in 15 Cal. L. Revision Comm'n Reports 1097-1100 (1980).

The disposition of each section of the repealed guardianship and conservatorship divisions of the Probate Code is noted in the Comment to the section set out in the Appendix to this pamphlet.

The Exhibit to this pamphlet contains the text of the sections which would be added or revised by Assembly Bill 2898. This bill, which revises the new guardianship-conservatorship statute to provide for limited conservatorships, was pending in the Legislature when this pamphlet was sent to the printer and appeared likely to be enacted in 1980.

The California Continuing Education of the Bar (CEB) paid the cost of publishing this Commission pamphlet. The Commission is pleased to assist CEB in its effort to inform lawyers, judges, practitioners, and others concerning the new guardianship-conservatorship law.

Any defect believed to exist in the new legislation should be brought to the attention of the Law Revision Commission so that the Commission can study the matter and present any necessary corrections for legislative consideration.

John H. DeMouly  
Executive Secretary





## ACKNOWLEDGMENTS

The proposed law is the result of a joint effort of the Commission and a special subcommittee of the Subcommittee on Guardianships and Conservatorships of the Estate Planning, Trust, and Probate Law Section of the State Bar of California. The members of the State Bar subcommittee are: Arne S. Lindgren, Chairman (Los Angeles), William S. Johnstone, Jr. (Pasadena), Commissioner David C. Lee (Oakland), Judge Arthur K. Marshall (Los Angeles), Matthew S. Rae, Jr. (Los Angeles), and Commissioner Ann E. Stodden (Los Angeles). Commissioner Lee and Messrs. Lindgren, Johnstone, and Rae attended Commission meetings and the Commission drew heavily on their expert advice and experience in preparing the proposed legislation. Judge Marshall submitted written comments on preliminary drafts of the proposed legislation.

The California Land Title Association created a special committee to work with the Commission on this project. The members of the special committee are Edward J. Wise, Chairman (Los Angeles), Helen Byard (Los Angeles), Michael Melton (Van Nuys), Harvey Pederson (San Diego), and Dean A. Swift (San Francisco). Mr. Wise regularly attended Commission meetings and assisted with his comments and suggestions.

A number of other persons attended Commission meetings and gave generously of their time and expertise. W. Allen Bidwell, Los Angeles County Counsel's Office, and G. Sinclair Price, United California Bank (San Francisco) regularly attended the meetings and were particularly helpful. Margaret Fraser, Assemblyman Lanterman's office (Sacramento) provided useful information by telephone and at a Commission meeting concerning recent legislation affecting Probate Code conservatorships and guardianships of incompetent adults. Neal Dudovitz (Los Angeles), and Martin Levine (Los Angeles), both of the State Bar Legal Services Section, also attended a Commission meeting.

The Commission also received valuable written comments from various persons, including Almon B. McCallum, California Bankers Association (San Francisco); John K. Spencer, Jr. (San Francisco); Judge Bruce W. Sumner (Santa Ana); Barbara Tam Thompson, Deputy County Counsel, Orange County; and the State Department of Health Services.

The Commission is especially indebted to Garrett H. Elmore, who served as the primary consultant to the Commission on this

topic and provided invaluable counsel to the staff of the Commission and at the Commission meetings. The Commission also is grateful to Professor Brigitte M. Bodenheimer of the U.C. Davis Law School, who serves as the Commission's consultant on child custody matters and submitted useful written comments.

While the contribution of the persons listed above and others who assisted in this project is gratefully acknowledged, the members of the Commission necessarily must assume the sole responsibility for the content of this recommendation.

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CALIFORNIA LAW REVISION COMMISSION  
RECOMMENDATION

*relating to*

**GUARDIANSHIP-CONSERVATORSHIP LAW**

(Revised to Reflect Changes Made by Legislature)

**Editorial note.** The material that follows is taken from the Law Revision Commission's *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978). The material has been revised to reflect the changes made by the 1979 Legislature after the Commission-recommended legislation was introduced. Revisions also are made to indicate briefly the changes made in 1980 to the proposed legislation as enacted in 1979, including the major changes that would be made by Assembly Bill 2898 of the 1980 session if that bill were enacted. Although these revisions were made by the Commission's legal staff, the revised material does not necessarily represent the views of the Commission.

Material added to the Commission's original printed recommendation is shown in italic. The omission of material that was contained in the original recommendation also is indicated. The omitted material related to the legislation as proposed by the Commission; the omitted material is no longer relevant in view of changes made in the proposed legislation before it was enacted.



## SUMMARY OF REPORT

The proposed law recommended by the Commission is a new comprehensive statute relating to Probate Code guardianships and conservatorships and certain other protective proceedings under the Probate Code.

The major purposes of the proposed law are (1) to clarify the standard for appointment of a guardian of the person of a minor, (2) to limit guardianships to minors and to retain conservatorships for adults, and (3) to consolidate procedural and other provisions common to guardianship and conservatorship law. The proposed law largely continues the substance of existing guardianship and conservatorship law, but makes some substantive changes and numerous minor, technical, and drafting improvements. The proposed law will not become operative until January 1, 1981, and includes transitional provisions. The major changes made by the proposed law are summarized below.

### Common Provisions

Because the guardianship and conservatorship statutes are each largely self-contained, many provisions common to both proceedings are duplicated, such as those concerning jurisdiction, venue, temporary appointments, oaths, letters, bonds, powers, duties, inventories, and accounts. To avoid needless repetition and inadvertent variances, the proposed law consolidates the common provisions into a uniform statute.

### Scope of Guardianship and Conservatorship

The proposed law eliminates guardianship for incompetent adults. Conservatorship is an existing and preferable alternative for such persons.

[Material omitted.]

The proposed law also eliminates guardianship of the person for married minors. Protection of the person of a married minor is governed by the conservatorship law. Guardianship of the person is retained for unmarried minors, this being the traditional form of protective proceeding for minors in California. Guardianship of the estate is retained for minors, whether or not married.

### **Nomination and Appointment of Guardian**

Existing law provides for testamentary "appointment" of a guardian by will or deed, subject to confirmation by the court. The proposed law changes the nomenclature so that initially the guardian is "nominated," and the appointment is made by the court. The proposed law permits such a nomination to be made by any signed writing and also permits a nomination to be made in the petition for appointment of the guardian or at the hearing on the petition. The existing law makes provision for testamentary appointment of a guardian for particular property a minor may receive from the person making the appointment. The proposed law broadens this provision so that a nomination may be made with respect to any property the minor may receive from the nominator, whether inter vivos or upon death. The proposed law also permits a will nominating a guardian to grant the guardian additional powers. For good cause, the court may limit the powers granted by the will.

The standards of guardianship law for appointment of a guardian of the person of a minor conflict with the standards of the Family Law Act for awarding custody of a minor. The proposed law makes clear that the Family Law Act controls; this codifies recent court decisions. The Family Law Act is also revised to make clear that a nomination of a guardian of the minor's person by a parent is to be given due weight, subject to the paramount consideration of the best interest of the minor.

The present statutory order of preference for appointment of a guardian of the estate of a minor is replaced in the proposed law by a general requirement that the guardian be selected in accordance with the best interest of the minor, taking into account the guardian's



ability to manage and preserve the estate as well as the guardian's concern for and interest in the welfare of the ward. The proposed law also requires that a person nominated as guardian of the estate or as guardian of particular property be appointed by the court unless the court determines that the nominee is unsuitable. If the minor is of sufficient age to form an intelligent preference as to the person to be appointed as guardian, that preference is to be considered by the court in determining the person to be appointed.

### **Streamlining 1976 Procedural Reforms**

The proposed law resolves a number of practical problems in the legislation adopted in 1976 providing for biennial court review of guardianships and conservatorships, investigation by a court investigator, advice of rights, and right to counsel. The provisions relating to mandatory appointment of counsel and attendance of the proposed conservatee at the hearing are slightly modified to accommodate cases where they would serve no useful purpose or would be harmful to the proposed conservatee. Similarly modified are the provisions requiring production of a temporary conservatee at the hearing on a petition to move the residence of the temporary conservatee.

The proposed law does not continue the existing requirement that petitions concerning powers and duties of guardians and conservators be set for hearing within 30 days of the filing of the petition.

### **Capacity of Conservatee**

[Material omitted.]

*Under existing law, the appointment of a conservator is not of itself an adjudication that the conservatee is incompetent. However, the existing conservatorship statute permits the court to adjudicate the conservatee to be incompetent by providing in the order of appointment that the conservatee is a person "for whom a guardian could be appointed" under the guardianship statute.*

*The new law reverses the presumption so that the appointment of a conservator does constitute an adjudication of the conservatee's incompetence unless the court orders otherwise. The new law gives the court flexibility to fashion an order appropriate to the circumstances of the particular conservatee.*

### **Medical Treatment**

Existing law does not clearly indicate the extent to which a guardian or conservator may require the ward or conservatee to submit to medical treatment. The proposed law grants a guardian the same authority a custodial parent has to require a child to receive medical treatment. However, if the minor is 14 or over, court authorization is required for involuntary surgery except in emergency situations. For any medical treatment of a conservatee (other than in emergency situations), the proposed law requires consent of the conservatee, a court order authorizing the treatment, or an adjudication of lack of capacity to give consent. The proposed law also clarifies the right of a temporary guardian or conservator to require the ward or conservatee to receive medical treatment.

The proposed law extends to minors the existing prohibition against involuntary commitment to a mental health facility except pursuant to the Lanterman-Petris-Short Act.

### **Marriage of Conservatee**

*The new law provides that the appointment of a conservator does not affect the capacity of the conservatee to marry. However, the court is authorized to make an order determining whether the conservatee has the capacity to enter into a valid marriage at the time the order is made.*

### **Court Supervision**

Existing statutes are based upon the principle that the guardian or conservator should generally act under court supervision but are unclear as to what acts of estate

management are permitted by the guardian or conservator without prior court authorization. The court may grant a conservator authority to exercise some powers independently without prior court authorization.

The proposed law relieves the guardian or conservator from the need to make court application for authorization of certain types of transactions such as (1) sales of tangible personal property (subject to limitations) and (2) investment of funds in, or sale of, government bonds or securities listed on an established exchange. The proposed law also permits a guardian, as well as a conservator, to apply to the court for authority to exercise one or more specified powers independently without prior court authorization.

The proposed law makes clear that any power exercised or duty performed by a guardian or conservator is subject to a general duty to use ordinary care and diligence.

### **Doctrine of Substituted Judgment**

California cases—relying on the doctrine of substituted judgment—recognize that a guardian of an adult or a conservator may make gifts of surplus income or assets in accordance with the presumed intent of the ward or conservatee. The proposed law codifies this doctrine and makes clear that the court may authorize a conservator on behalf of the conservatee to perform a variety of acts that are necessary or desirable in modern estate planning or management. The proposed law does not extend this authority to the guardian of a minor since the estate of the minor ordinarily needs to be fully preserved.

### **Procedural Matters**

The proposed law permits a guardianship or conservatorship proceeding to be maintained in a county other than the county of residence of the proposed ward or conservatee if to do so is in the best interest of the ward or conservatee.

The proposed law expands the existing notice requirements to ensure that notice of the hearing on the guardianship petition is given to all persons who may have

an interest in the proceeding. Notice is required to be given to the minor if 14 or over, to the person having legal custody of the minor, to the person having the care of the minor if other than the person having custody, to the minor's spouse (if any), and to relatives within the second degree. *However, the court may dispense with notice to one or more relatives if the petition is for guardianship of the estate only.* The court may dispense with notice *in other cases* only if the court determines that notice cannot be given with the exercise of reasonable diligence or that the giving of notice would be contrary to the interests of justice. After establishment of a guardianship or conservatorship, notices of hearings on petitions, accounts, and other matters generally are required to be given to *the guardian or conservator, to a ward who is 14 or over or to the conservatee, . . . to the spouse of the ward or conservatee, and to any interested person who has appeared in the particular matter to which the hearing relates,* unless the court for good cause dispenses with the notice. The proposed law also expands the list of matters of which special notice is required if requested.

The proposed law resolves present uncertainty as to when a right to jury trial exists by providing that there is no right to a jury except where expressly authorized by statute. Existing statutes expressly authorizing jury trial are preserved with one exception: proceedings to remove the guardian or conservator will be determined by the court.

The proposed law includes a new provision that authorizes the guardian or conservator, with court approval, to submit a dispute to arbitration. Another new provision permits reference of a claim against the ward or conservatee or the estate to a commissioner, referee, or judge pro tempore for summary determination. Existing provisions for the conveyance of real property subject to a preexisting contract and for the conveyance or transfer of real or personal property claimed to belong to another are broadened and revised.

A new provision is added to permit the court to authorize periodic payments on account for fees of a guardian or conservator of the person or estate or both and to the

attorney for such guardian or conservator. The proposed law also expressly authorizes the guardian or conservator, with court authorization or approval, to make a contingent fee contract with an attorney when the matter is of a type that is customarily the subject of a contingent fee contract and the contract is in the best interest of the ward or conservatee or the estate.

The proposed law creates a uniform scheme of appealable orders in guardianship and conservatorship proceedings. The scheme broadens the orders appealable in guardianship and narrows the orders appealable in conservatorship. The new scheme is drawn in part from the provisions that apply to decedents' estates.

### **Nonresident Ward or Conservatee**

Existing law provides for the transfer of a guardianship or conservatorship proceeding out of state in the case of a nonresident ward or conservatee. The proposed law revises these provisions to permit transfer of some or all of the assets in the California proceeding to a guardian, conservator, or similar fiduciary in another jurisdiction, rather than transfer of the proceeding itself.

### **Community or Homestead Property of Incompetent Persons**

Existing provisions relating to community and homestead property of an incompetent spouse provide for management and control of the property by a competent husband, disposition of the property with the consent of a conservator, and disposition of the property if there is no conservator upon court authorization. The proposed law revises these provisions to reflect the enactment of legislation giving each spouse the right of management and control of community property. The proposed law also broadens the existing provisions to permit a court to authorize transactions in a few situations not presently covered or, as an alternative, to make a determination that either or both spouses are competent to participate in the transaction.

## **Authorization of Medical Treatment for Adult Without Conservator**

The proposed law provides a new optional procedure to obtain court authorization for a medically recommended course of medical treatment for an adult who has no conservator but who, because of lack of capacity or some other reason, is unable to give an informed consent to the treatment. The proposed law includes provisions to protect the interests of the person for whom treatment is sought.

## **Other Protective Proceedings**

Existing law permits a parent or guardian of the estate, with prior court authorization, to compromise a disputed claim of a minor. The proposed law continues the guardian's right to compromise the minor's claim and eliminates the requirement of court approval in some instances where there is no pending action or proceeding. The parent's right to compromise a minor's claim is limited to cases where the minor has no guardian of the estate.

The proposed law continues existing provisions for disposition of the proceeds of a compromise or judgment for a minor or incompetent person but increases the amount that the court may order be paid directly to a parent to hold in trust for the minor from \$1,000 to \$5,000 and gives the court greater discretion in ordering the disposition of an amount between \$10,000 and \$20,000.

Existing law provides for administration of a small estate of a minor without the need for a guardian. The proposed law continues these provisions but increases the amount that the court may order be paid directly to a parent to hold in trust for the minor from \$2,000 to \$5,000 and removes the existing \$2,000 minimum and the \$20,000 maximum limits on the amount of money the court may order be placed in a court-controlled account.

The proposed law also increases from \$5,000 to \$20,000 the amount of personal property of an absentee (prisoner of war or person missing in action) that may be set aside by the court to the absentee's family for the maintenance of a reasonable and adequate standard of living.

**Limited Conservatorships**

*In 1980, provisions were added to the 1979 comprehensive guardianship-conservatorship statute that govern the establishment and regulation of a limited conservatorship for a developmentally disabled adult.*





# RECOMMENDATION

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## INTRODUCTION

The guardianship statute<sup>1</sup> permits a guardian of the person or the estate or both to be appointed for a minor or for an incompetent adult. The conservatorship statute,<sup>2</sup> enacted in 1957, provides an alternative to a guardianship for an adult. A conservator may be appointed for a broad category of adults in need of protective supervision, without the need for a determination of incompetency.<sup>3</sup> An important purpose in enacting the conservatorship statute was to provide a procedure that avoids the stigma associated with the finding of incompetency required for a guardianship.<sup>4</sup>

The provisions for guardianship of incompetent adults were not repealed when the conservatorship statute was enacted. The provisions were retained temporarily to give the bar and the public time to become familiar with the new conservatorship proceedings,<sup>5</sup> but these "temporarily retained" provisions have not been repealed and still remain in effect. The result is that California has two kinds of protective proceedings for adults—guardianship and conservatorship.

The conservatorship statute is largely self-contained.<sup>6</sup> It duplicates many of the provisions of the guardianship statute.<sup>7</sup> In some cases, the guardianship and

<sup>1</sup> Prob. Code §§ 1400-1700.

<sup>2</sup> Prob. Code §§ 1701-2207.

<sup>3</sup> An adjudication of incompetency may be made in a conservatorship proceeding under existing law by a finding in the order of appointment that the conservatee is a person "for whom a guardian could be appointed." Prob. Code § 1751; Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, 1051 n.6, 1054, 120 Cal. Rptr. 407, 411 n.6, 414 (1975).

<sup>4</sup> Lord, *Conservatorship v. Guardianship*, 33 L.A. B. Bull. 5, 5-6 (1957); 32 Cal. St. B.J. 585 (1957); W. Johnstone & G. Zillgitt, California Conservatorships § 1.2, at 3 (Cal. Cont. Ed. Bar 1968).

<sup>5</sup> W. Johnstone & G. Zillgitt, California Conservatorships § 1.2, at 3 (Cal. Cont. Ed. Bar 1968).

<sup>6</sup> The conservatorship statute also contains a provision that, where no specific provision of the statute is applicable to a particular situation, the provisions of the statutes governing guardianships and decedent's estates govern insofar as those provisions are applicable to like situations. Prob. Code § 1702.

<sup>7</sup> Compare, for example, the following Probate Code guardianship provisions with the

conservatorship provisions are virtually identical. In other cases, the conservatorship provision is an improved version of the comparable guardianship provision. In still other cases, comparable provisions of the two statutes are inconsistent without apparent reason.

The proposed law replaces the separate guardianship and conservatorship statutes with a new comprehensive statute. The proposed law limits guardianships to minors, retains conservatorships for adults,<sup>8</sup> and consolidates provisions common to guardianships and conservatorships in one comprehensive set of statutory provisions.<sup>9</sup> The new statutory scheme is consistent with recommendations made in 1974 by the Assembly Interim Committee on Judiciary<sup>10</sup> and by the former Probate and Trust Law Committee of the California State Bar.<sup>11</sup>

corresponding conservatorship provisions.

<i>Guardianship</i>	<i>Conservatorship</i>
§ 1483.1 .....	§ 1803
§ 1486 .....	§ 1805
§ 1519 .....	§ 1862
§ 1550 .....	§ 1901
§ 1554 .....	§ 1905
§ 1554.1 .....	§ 1906
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§ 1560 .....	§ 1911
§ 1561 .....	§ 1910
§ 1580 .....	§ 1951
§ 1641 .....	§ 2202
§ 1642 .....	§ 2203
§ 1643 .....	§ 2204
§ 1644 .....	§ 2205
§ 1645 .....	§ 2206
§ 1646 .....	§ 2207

<sup>8</sup> Under the Lanterman-Petris-Short Act, there may be conservatorships for minors. See Welf. & Inst. Code §§ 5008(h), 5350. The Commission's proposed law does not disturb this scheme under the Lanterman-Petris-Short Act.

<sup>9</sup> A few provisions are appropriate for guardianship only or for conservatorship only. Examples of such provisions are additional powers granted a guardian by will, special procedural protections for a proposed conservatee or temporary conservatee, waiver of bond by a conservatee, waiver of bond in nomination of a guardian, differences in manner of authorization of medical treatment of wards and conservatees, payment of surplus income to relatives of a conservatee, application of the doctrine of substituted judgment in conservatorship proceedings, and settlement of accounts with the guardian by a ward who has reached majority.

<sup>10</sup> The Assembly Interim Committee on Judiciary held hearings in 1974 on the subject of Probate Code guardianships and conservatorships and concluded that the guardianship and conservatorship statutes should be revised into one workable statute. See Report of the Assembly Interim Committee on Judiciary on Probate Code Guardianships and Conservatorships 16 (October 7, 1974).

<sup>11</sup> The former Probate and Trust Law Committee of the State Bar concluded in 1974 that guardianships should be limited to minors, that conservatorships should be retained

Legislation introduced by former Assemblyman Frank Lanterman and enacted in 1976 made important procedural and substantive changes in the Probate Code provisions relating to guardianships for incompetent adults and conservatorships.<sup>12</sup> Technical corrections and additional substantive changes were made in 1977 and 1978.<sup>13</sup> The proposed law continues the provisions of the legislation enacted in 1976, 1977, and 1978, but makes a few modifications to deal with practical problems that have arisen under the provisions.<sup>14</sup>

The proposed law makes a number of other substantive changes and clarifications in existing law and includes new provisions to deal with the matters not adequately covered by the existing statutes. The major changes and additions are discussed below. Minor changes, additions, and clarifications are noted in the Comments following the text of the sections of the recommended legislation.

A companion bill to the proposed law makes conforming revisions throughout the codes to reflect the elimination of guardianships for adults,<sup>15</sup> to insert references to conservatorship where appropriate,<sup>16</sup> to adjust references to provisions of existing law that will be superseded by the

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for adults, and that the guardianship and conservatorship statutes should be consolidated to eliminate unnecessary inconsistencies and duplication. Recognizing the magnitude of the task of drafting legislation to accomplish those objectives, the State Bar Committee suggested that the matter be referred to the Law Revision Commission for study.

<sup>12</sup> 1976 Cal Stats. ch. 1357. Important changes or additions made by the 1976 legislation include: New criteria for appointment of a conservator are provided; notice requirements to the conservatee are expanded; excuse from personal attendance of the proposed conservatee at the hearing on the appointment is limited; a procedure for periodic review of the need for the conservatorship is established; the right to legal counsel (including the requirement that legal counsel be appointed for a person unable to obtain legal counsel) and the right to jury trial are recognized by express statutory provision; an express prohibition against involuntary mental health treatment under the Probate Code is added. Similar changes were made in the guardianship law applicable to adult incompetents.

<sup>13</sup> See 1977 Cal. Stats. chs. 273, 453, 1237; 1978 Cal. Stats. chs. 1268, 1315, 1363, 1369.

<sup>14</sup> The changes that the Commission recommends are noted in the discussion of the particular subject matter *infra*.

<sup>15</sup> Existing references to a guardian of an incompetent adult have been retained in those instances where it appears that the reference was intended to include a foreign guardian. See, e.g., Code Civ. Proc. § 416.70.

<sup>16</sup> Numerous sections of the California codes refer to guardians or guardianship in a context where it is apparent that the section should also refer to conservators or conservatorship. When the conservatorship law was added to the Probate Code in 1957 (1957 Cal. Stats. ch. 1902), the other codes were not conformed to add these parallel references. About two-thirds of the conforming revisions are recommended by the Commission to add the appropriate parallel references to conservators or conservatorship.

proposed law, and to eliminate other inconsistencies.

The operative date of the proposed law is delayed until January 1, 1981.<sup>17</sup>

## ESTABLISHMENT OF GUARDIANSHIP

### Nomination of Guardian

**Substitution of nomination procedure for testamentary appointments.** Existing law permits a parent to make a testamentary appointment of a guardian for a child.<sup>18</sup> Any person, including a parent, may by will appoint a guardian for particular property a minor may take under the will.<sup>19</sup> These testamentary appointments are subject to court confirmation.<sup>20</sup> Although it is not entirely clear, it appears that a testamentary appointment is persuasive with the court rather than absolutely binding upon it.<sup>21</sup> It is therefore somewhat misleading, especially to nonlawyers, to refer to a designation of a testamentary guardian as an "appointment."

Under the proposed law, the parent or other person will "nominate" the guardian and the "appointment" will be made by the court.<sup>22</sup> The use of these terms more accurately distinguishes between the role of the parent or other person and role of the court and simplifies the drafting of the provisions concerning appointment and qualification of guardians.

**Manner of making nomination.** Under existing law, a parent may appoint a testamentary guardian only by will or by deed, a nonparent may appoint by will only, and the appointment is effective only upon death.<sup>23</sup> This is too

<sup>17</sup> The proposed law is recommended for enactment by the Legislature in 1979. The delayed operative date will allow time for affected persons to become familiar with the law and for the Judicial Council to prepare necessary forms.

<sup>18</sup> Prob. Code § 1403. The testamentary guardian may be appointed as a guardian of the person or estate or both. The written consent of the other parent is required if consent would be required for an adoption of the child. *Id.*

<sup>19</sup> Prob. Code § 1402. If the appointment of a guardian as to particular property is made by a parent, it may be done by deed as well as by will. *Id.*

<sup>20</sup> Prob. Code § 1405.

<sup>21</sup> See G. Hemmerling, *California Will Drafting Supplement* § 10.6, at 72 (Cal. Cont. Ed. Bar 1976); Schlesinger, *Testamentary Guardianships for Minors and Incompetents*, in *California Will Drafting* § 10.10, at 312-13 (Cal. Cont. Ed. Bar 1965); 3 N. Condee, *Probate Court Practice* § 2029, at 151 (2d ed. 1964).

<sup>22</sup> Under the proposed law, a nomination may be made by a person permitted to make an appointment under existing law, and consent of the other parent is required under the same circumstances as under existing law. See note 18 *supra*.

<sup>23</sup> See Prob. Code §§ 1402, 1403.



restrictive. For example, it does not permit a sole surviving parent to nominate a guardian for a child to take effect in the event of the parent's subsequent incapacity. The proposed law broadens the manner of making a nomination so that the nomination may be made in the petition for appointment of a guardian, at the hearing on the petition, or in a writing signed either before or after the petition is filed.

**Inter vivos as well as testamentary effect of nomination.** The existing provisions making testamentary appointments effective only upon death<sup>24</sup> are broadened by the proposed law so that the nomination is effective when made, although a writing nominating a guardian may provide that the nomination becomes effective only upon the occurrence of a specified condition such as the legal incapacity or death of the nominator.<sup>25</sup>

**Expansion in types of property subject to guardianship for particular property.** Under existing law, a guardian for particular property may be appointed only as to property received by will or succession.<sup>26</sup> The proposed law broadens this provision so that a guardian for particular property may be nominated for any property that the minor receives from or by designation of the nominator (whether during the lifetime or upon the death of the nominator). The proposed law, for example, expands the existing provision to include property received by the minor by virtue of an exercise of a power of appointment, an inter vivos gift, an inter vivos or testamentary trust, provisions of an insurance policy, or provisions governing pensions or other benefits of any kind.<sup>27</sup>

<sup>24</sup> Prob. Code §§ 1402, 1403.

<sup>25</sup> The proposed law also provides that, unless the writing in which the nomination is made expressly provides otherwise, the nomination will remain effective notwithstanding the subsequent legal incapacity or death of the person making the nomination.

<sup>26</sup> If a guardian for particular property is appointed by a parent, the guardianship may apply to property received by the child from the parent by will or succession. Prob. Code § 1402. If the appointment is made by any other person, the guardianship may apply to property received from the person by will only. *Id.*

<sup>27</sup> The proposed law will change the rule in *Estate of Welfer*, 110 Cal. App.2d 262, 242 P.2d 655 (1952) (father's desire expressed in his will that designated person be guardian with respect to proceeds of insurance policy on father's life not given effect because existing Probate Code Section 1402 covers only property taken by "will or succession").

**Degree to which nomination binds the court.** Under the proposed law, the effect of a nomination on the court's discretion in appointing a guardian depends on whether the appointment is of a guardian of the minor's person or of the minor's estate.

The proposed law provides that the appointment of a guardian of the person is governed by the provisions of the Family Law Act.<sup>28</sup> By adopting these provisions, the proposed law makes clear that the nomination does not bind the court and provides a rule for guardianships that is consistent with the rule in custody matters generally.<sup>29</sup>

A companion bill to the proposed law amends the Family Law Act to require the court in choosing between nonparents competing for custody of the child to consider and give due weight to a nomination of a guardian of the minor's person made by a parent under the guardianship law. This will give some effect to the parent's wishes regardless of the nature of the custody proceeding.<sup>30</sup>

Where a guardianship of the estate is involved, whether of the general estate or of particular property, the proposed law requires that the court appoint the nominee unless the court determines that the nominee is unsuitable.<sup>31</sup> The greater binding effect of a nomination of a guardian where only property is involved is generally analogous to the free hand that the creator of a trust has in selecting the trustee.<sup>32</sup>

### **Petition for Appointment of Guardian**

The proposed law expands the required contents of the petition for appointment of a guardian to conform to existing practice,<sup>33</sup> including the existing Judicial Council

<sup>28</sup> See Civil Code § 4600.

<sup>29</sup> See discussion in text accompanying notes 45-51 *infra*. See also note 30 *infra*.

<sup>30</sup> The child custody provisions of the Family Law Act (Civil Code § 4600) apply in "any proceeding where there is at issue the custody of a minor child," including a guardianship proceeding. See note 47 *infra*.

<sup>31</sup> Existing law permits a parent of an unmarried incompetent adult child to appoint a guardian of the person, estate, or both, for the incompetent, to take effect on the parent's death. Prob. Code § 1404. If the incompetent person is married, the appointment may be made by the spouse. *Id.* These provisions are omitted from the proposed legislation along with the other guardianship provisions relating to adult incompetents. The proposed legislation does, however, contain new provisions relating to nomination of a conservator by a proposed conservatee or by the spouse or a relative of the proposed conservatee.

<sup>32</sup> See generally 7 B. Witkin, Summary of California Law *Trusts* §§ 30, 32, at 5392-95 (8th ed. 1974).

<sup>33</sup> The proposed law also requires that the petition contain information necessary to

requirement<sup>34</sup> that the petition disclose any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward of which the petitioner has knowledge. The proposed law imposes a new requirement that the petitioner amend the guardianship petition to disclose any other pending proceeding affecting custody of the proposed ward if the petitioner becomes aware of any such proceeding not disclosed in the guardianship petition. These requirements will alert the court in which the guardianship petition is filed to the other pending proceeding.

### Notice of Hearing on Petition

Under existing law, before a guardian may be appointed for a minor, notice must be given to the minor's parents, if possible, and such notice as the court deems reasonable must be given to the person having the care of the minor and to such relatives of the minor residing in California as the court deems proper.<sup>35</sup>

The proposed law significantly expands the notice requirements to ensure that notice of the hearing on the guardianship petition (accompanied by a copy of the petition) is given at least 15 days before the hearing to all persons who may have an interest in the proceeding. Notice is required to be served (in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, or in such manner as is authorized by the court) on those persons most directly affected by the proceeding: (1) The proposed ward if 14 years of age or older,<sup>36</sup> (2) the person having legal custody of the proposed ward, (3) the parents of the

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comply with the expanded notice provisions. See discussion in text accompanying notes 35-37 *infra*.

<sup>34</sup> See Petition for Appointment of Guardian of Minor (Form Approved by the Judicial Council of California, effective January 1, 1976).

<sup>35</sup> Prob. Code § 1441. Section 1441 also provides that notice shall not be given to the parents or other relatives of a minor who has been relinquished to a licensed adoption agency or who has been declared free from parental custody and control. The proposed law permits the court to order that notice be given to such parents or relatives in the unusual case where the notice would be appropriate.

<sup>36</sup> It has recently been held that a minor over the age of 14 has an independent right to assert the protections of the due process clause; the court declined to consider whether there might be circumstances in which a minor younger than 14 would have such a right. *In re Roger S.*, 19 Cal.3d 921, 931, 569 P.2d 1286, 1292, 141 Cal. Rptr. 298, 304 (1977).

proposed ward, and (4) any person nominated as a guardian for the proposed ward. In addition, notice by mail or in such manner as is authorized by the court is required to be given to: (1) the spouse, if any, of the proposed ward, (2) all relatives of the proposed ward within the second degree, whether living in California or elsewhere, and (3) the person having the care of the proposed ward if other than the person having legal custody.<sup>37</sup>

The proposed law permits the court to dispense with notice of hearing on the guardianship petition to any person if the court determines that the person cannot with reasonable diligence be given the notice or that the giving of the notice would be contrary to the interest of justice.<sup>38</sup>

*The new law also gives the court broad discretion to dispense with notice to the ward's relatives where the petition is for guardianship of the estate only.*

### Investigation of Suitability of Proposed Guardian

Under existing law, the court may require that the probation officer make an investigation of the proposed guardianship.<sup>39</sup> The proposed law expands this provision to allow the investigation to be made by the court

<sup>37</sup> The proposed law also requires notice to the State Department of Mental Health or the State Department of Developmental Services when the minor is a patient in or on leave from a state hospital under the jurisdiction of one of these departments. The existing provision for notice to the State Department of Mental Health or the State Department of Developmental Services applies only to guardianships for adult incompetents. See Prob. Code § 1461.3. Since the state may claim expenses incurred on behalf of a minor ward, the state has an interest in the guardian appointed and should receive notice.

The proposed law requires notice to be given to the Veterans Administration when the minor is receiving or is entitled to receive VA benefits. Under existing law, notice to the Veterans Administration is required when the petition for appointment of a guardian is filed under the Uniform Veterans' Guardianship Act. Prob. Code § 1655. However, it appears that, when the guardian receives VA benefits for the ward, the guardian must give notice of the account to the Veterans Administration whether the guardianship proceeding was brought under the Uniform Veterans' Guardianship Act or otherwise. See Prob. Code § 1657. Since the VA has an interest in the guardian appointed, it is advisable to require notice to the VA upon commencement of guardianship proceedings when the minor is receiving or is entitled to VA benefits.

<sup>38</sup> The court might determine that the giving of notice would be contrary to the interest of justice, for example, if the parents or relatives of the proposed ward were in a hostile country (such as Vietnam) and the giving of the notice might be dangerous to them or where a mother had abandoned the proposed ward, remarried, established a new family, and indicated in writing that she wanted to receive no further communications concerning her child because she was concealing its existence from her new family.

<sup>39</sup> Prob. Code § 1443.

investigator<sup>40</sup> or domestic relations investigator,<sup>41</sup> as well as by the probation officer, at the discretion of the court. The proposed law also includes provisions, adapted from the similar provisions of the Family Law Act,<sup>42</sup> that deal with the confidentiality of the investigator's report and permit the court, in its discretion, to order that the county be paid for the expense of the investigation by the parents or by the proposed ward's estate.

Existing law does not permit the court to order an investigation by the probation officer<sup>43</sup> where a report on the suitability of a nonrelative petitioner for guardianship is required to be made by the agency investigating a proposed adoption of the proposed ward or by a local public social services agency.<sup>44</sup> The proposed law permits the court to order an investigation notwithstanding the fact that in these cases a report is otherwise required. This authority is useful, for example, if the court believes that the agency making the report has such an interest in the matter that the report may not be objective.

### Selection of Guardian

**Guardian of the person.** The Probate Code prescribes the order of preference for appointment as guardian of a minor, authorizes a minor over 14 years of age and residing in California to nominate his or her own guardian, and provides other special rules for appointment.<sup>45</sup> However, the standards for child custody in the Family Law Act<sup>46</sup> have been held to apply to guardianship proceedings and to take precedence over the inconsistent Probate Code provisions.<sup>47</sup> The proposed law codifies existing law by

<sup>40</sup> See also Prob. Code § 1754 ("court investigator" defined).

<sup>41</sup> The inclusion of the domestic relations investigator will make the guardianship provision consistent with the Family Law Act. See Civil Code § 4602.

<sup>42</sup> Civil Code § 4602.

<sup>43</sup> See Prob. Code § 1443.

<sup>44</sup> Prob. Code § 1440.1. Such a report is required unless the petition is for guardianship of the estate exclusively, the petitioner is named in a will as guardian, or the person appointed as guardian is a public officer specified in the statute. See Prob. Code §§ 1440, 1440.3.

<sup>45</sup> Prob. Code §§ 1406-1409.

<sup>46</sup> Civil Code Section 4600 prescribes standards that apply to "any proceeding where there is at issue the custody of a minor child."

<sup>47</sup> Guardianship of Pankey, 38 Cal. App.3d 919, 934, 113 Cal. Rptr. 858, 868-69 (1974); Guardianship of Marino, 30 Cal. App.3d 952, 958-59, 106 Cal. Rptr. 655, 659-60 (1973).

substituting a provision incorporating the child custody standards of the Family Law Act for the inconsistent provisions in the guardianship statute relating to guardianship of the minor's person.<sup>48</sup> Thus, preference for guardianship will be given first to . . . *the child's parents*, then to the person or persons in whose home the child has been living in a wholesome and stable environment, and then to any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.<sup>49</sup> If the child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court is required to consider and give due weight to the child's preference.<sup>50</sup> If a parent has nominated a guardian of the child's person and the custody contest is between nonparents, the court is also required to consider and give due weight to the nomination.<sup>51</sup>

**Guardian of the estate.** Section 1407 of the Probate Code states the order of preference for selection of a guardian. This provision is designed primarily for guardianship of the person<sup>52</sup> and is inadequate for guardianship of the estate. The proposed law replaces the statutory order of preference by a general standard directing the court to appoint a guardian of the estate in accordance with the minor's best interest, taking into account the proposed guardian's ability to manage and preserve the estate as well as the proposed guardian's concern for and interest in the minor's welfare.<sup>53</sup>

The court presently has discretion to consider the minor's preference for a guardian if the minor is of sufficient age to form an intelligent preference.<sup>54</sup> If the minor is over 14 and

<sup>48</sup> This implements a recommendation of the Commission's consultant on child custody, Professor Brigitte M. Bodenheimer of the U.C. Davis Law School. See Bodenheimer, *The Multiplicity of Child Custody Proceedings—Problems of California Law*, 23 Stan. L. Rev. 703, 731 (1971).

<sup>49</sup> See Civil Code § 4600.

<sup>50</sup> See Civil Code § 4600.

<sup>51</sup> See discussion in text accompanying note 30 *supra*.

<sup>52</sup> Estate of Rosin, 226 Cal. App.2d 166, 170, 37 Cal. Rptr. 830, 833 (1964).

<sup>53</sup> The proposed law requires the court to appoint a person nominated as guardian of the estate unless the court determines that the person is unsuitable. See discussion in text accompanying notes 31-32 *supra*.

<sup>54</sup> Prob. Code § 1406; Guardianship of Turk, 194 Cal. App.2d 736, 741, 15 Cal. Rptr. 256, 260 (1961).

resides in California, the minor may nominate a guardian; however, the court must be satisfied that guardianship is necessary or convenient and that the nominee is a suitable person before it approves the nominee.<sup>55</sup> The proposed law does not continue the provision for nomination of a guardian of the estate by the minor. Instead, a minor who is 14 years of age or older is permitted to file a petition for the appointment of a guardian, specifying in the petition the name of the proposed guardian; and, whether or not the minor is the petitioner, the preference of a minor who is of sufficient age to form an intelligent preference is to be considered. But the minor's preference will not override the court's judgment in selecting a guardian of the estate consistent with the minor's best interest.

### ESTABLISHMENT OF CONSERVATORSHIP

The proposed law reorganizes and clarifies the existing provisions relating to the establishment of the conservatorship and makes a few substantive changes. No substantive change is made in the existing provisions that specify the persons for whom a conservator may be appointed, *but Assembly Bill 2898 relating to limited conservators provides special rules governing the establishment of a limited conservatorship.*<sup>55a</sup> The important substantive changes made in other provisions are noted below.

#### Nomination of Conservator

The nominee of the proposed conservatee or of specified relatives is entitled to a preference for appointment under the existing statute.<sup>56</sup> There is no express provision in the existing statute for testamentary appointment of a conservator.<sup>57</sup>

<sup>55</sup> Guardianship of Kentera, 41 Cal.2d 639, 642-43, 262 P.2d 317, 319 (1953); Guardianship of Turk, 194 Cal. App.2d 736, 741-42, 15 Cal. Rptr. 256, 260 (1961); Guardianship of Rose, 171 Cal. App.2d 677, 680-81, 340 P.2d 1045, 1047-48 (1959). See Prob. Code §§ 1405, 1406; Guardianship of Kostors, 167 Cal. App.2d 389, 390-91, 334 P.2d 305, 306 (1959).

<sup>55a</sup> See discussion of "Limited Conservatorships," *infra*.

<sup>56</sup> See Prob. Code § 1753.

<sup>57</sup> Schlesinger, *Testamentary Guardianships for Minors and Incompetents*, in California Will Drafting § 10.8, at 312 (Cal. Cont. Ed. Bar 1965). If faced with the question under existing law, the court may well give consideration to a testamentary designation of

The proposed law continues the provision of existing law<sup>58</sup> that permits a proposed conservatee to nominate the conservator. If prior to the operative date of the proposed law an adult has made a written nomination of a person to be appointed as guardian in case he or she should need one in the future, the proposed law converts the nomination into the nomination of a conservator.<sup>59</sup>

The proposed law specifies a procedure by which the spouse or a relative of the proposed conservatee may nominate the conservator<sup>60</sup> and also makes clear that the spouse or a parent of the proposed conservatee may nominate a conservator in an instrument that remains effective notwithstanding the death or incapacity of the spouse or parent.<sup>61</sup>

### Petition for Appointment of Conservator

A petition for the appointment of a conservator may be filed by the proposed conservatee or by any relative or friend of the proposed conservatee other than a creditor of the proposed conservatee.<sup>62</sup> The proposed law authorizes a relative of the proposed conservatee to file a petition even

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a conservator, either by applying Section 1405 of the Probate Code as incorporated by Section 1702 (see Schlesinger, *supra*) or by treating the designation as a nomination under Section 1753. *Cf.* Guardianship of Walsh, 100 Cal. App.2d 194, 195-97, 223 P.2d 322, 324-25 (1950) (copy of will not yet probated, nonetheless admitted into evidence to show "wishes of a deceased parent" under Probate Code Section 1407).

<sup>58</sup> Prob. Code § 1752.

<sup>59</sup> Under existing law, a nomination of one's own guardian must be made in a written instrument executed in the same manner as a witnessed will. Prob. Code § 1463. However, a nomination of one's own conservator may be made in a written instrument which need not comply with the formalities of a witnessed will, provided that the person making the nomination has at that time sufficient capacity to form an intelligent preference. See Prob. Code § 1752; W. Johnstone & G. Zillgitt, California Conservatorships § 1.5, at 4 (Cal. Cont. Ed. Bar 1968). The proposed law continues the substance of the latter provision and will give effect not only to a nomination of a guardian which meets the stricter formalities of the existing guardianship law but also to a purported nomination of a guardian which would have been defective under existing guardianship law but would satisfy the requirements of the conservatorship provision.

<sup>60</sup> Although Section 1753 of the Probate Code refers to a nominee of a spouse or relative of the proposed conservatee, no procedure for the nomination is provided.

<sup>61</sup> This is consistent with existing guardianship law which permits a testamentary appointment of a guardian for an incompetent adult by either parent if the incompetent person is unmarried or by the spouse if married. See Prob. Code § 1404.

<sup>62</sup> See Prob. Code § 1754; W. Johnstone & G. Zillgitt, California Conservatorships §§ 3.22, 3.23, at 62 (Cal. Cont. Ed. Bar 1968).



though the relative is also a creditor of the proposed conservatee. *The new law also permits a public agency to file a petition even though the public agency is also a creditor of the proposed conservatee.*

The proposed law authorizes the filing of a conservatorship petition for a minor who is approaching majority so that a minor suffering from mental disability may have a conservator appointed immediately upon reaching majority. This will avoid a possible hiatus between the end of guardianship and the beginning of conservatorship in such a case.

### Presence of Conservatee at Hearing

Under existing law, the proposed conservatee must be produced at the hearing on the petition for appointment of a conservator if able to attend.<sup>63</sup> The proposed conservatee may be excused from attending the hearing if medically unable to attend and the inability is established by an affidavit or certificate of a physician.<sup>64</sup> Experience has shown, however, that physicians are reluctant to certify that the proposed conservatee is medically unable to attend the hearing except in the most extreme, life-threatening situations. The Commission has been informed that proposed conservatees have been brought into the courtroom in an unconscious or semi-conscious state and that, in other cases, the court appearance has been a degrading, shameful, or traumatic experience for a person humiliated by public exposure of his or her infirmity.

The court should have discretion to excuse the proposed conservatee from attending the hearing if he or she is not willing to attend, does not wish to contest the establishment of the conservatorship, and neither objects to the person who is proposed as conservator nor prefers that another person be appointed. If the court investigator reports these facts to the court, the proposed law authorizes the court to make an order excusing the proposed conservatee from attending the hearing.

<sup>63</sup> Prob. Code § 1754. The proposed law continues the existing provision that the proposed conservatee need not attend the hearing if the proposed conservatee is not in the state at date of service and is not the petitioner. See Section 1754.

<sup>64</sup> Prob. Code § 1754.

## LEGAL CAPACITY OF CONSERVATEE

Under existing conservatorship law, the appointment of a conservator does not of itself render the conservatee legally incompetent to make binding contracts; this may be accomplished by the court, however, by providing in the order of appointment that the conservatee is a person "for whom a guardian could be appointed under Division 4."<sup>65</sup> The other consequences of a determination of legal incompetence in the conservatorship proceeding are not clear.<sup>66</sup>

### Capacity to Bind or Obligate Conservatorship Estate

[Material omitted.]

*The Commission recommended continuing the rule of existing law that appointment of a conservator is not of itself an adjudication that the conservatee is legally incompetent to bind or obligate the conservatorship estate and that, unless the court specifically makes such an adjudication, the conservatee retains the capacity to make contracts, subject to disaffirmance by the conservator if the contract is not such as a reasonably prudent person might make and is not for necessities.<sup>67</sup> The Commission also recommended a flexible system for the court by order to broaden or limit the limited legal capacity that the conservatee otherwise would have.*

*The Legislature was persuaded that a general rule preserving limited legal capacity for the conservatee would cause problems for the conservator in managing the conservatorship estate. Accordingly, as enacted, the new law provides that, unless the court orders otherwise, appointment of a conservator of the estate renders the*

<sup>65</sup> Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, 1051 n.6, 1054, 120 Cal. Rptr. 407, 411 n.6, 414 (1975); see Prob. Code § 1751. This is a euphemistic way of saying that the conservatee is incompetent. See W. Johnstone & G. Zillgitt, California Conservatorships § 3.28, at 68 (Cal. Cont. Ed. Bar 1968).

<sup>66</sup> Whether the finding of incompetence in a conservatorship proceeding affects the right to do such diverse things as hold public office (Gov't Code § 1770(b)), serve as a juror (Code Civ. Proc. § 198), marry (Civil Code § 4100), or have custody of children (Welf. & Inst. Code § 300(a)), for example, has not been determined.

<sup>67</sup> Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 41, 533 P.2d 1047, 1052-53, 120 Cal. Rptr. 407, 412-13 (1975).

*conservatee incompetent to bind or obligate the conservatorship estate except for the reasonable value of necessaries.<sup>68</sup> The court is given broad discretion, however, to make an order, either at the time of appointment or subsequently, giving the conservatee the right to enter into specified transactions or types of transactions.<sup>69</sup> The court may impose limits or conditions on the exercise of the authority granted to the conservatee. The court may, for example, require the conservatee to get prior approval of a transaction from the court or the conservator. Or the court may give the conservator the right to disaffirm unreasonable transactions entered into by the conservatee. In short, the law is drawn to give the court maximum flexibility in fashioning an order which is appropriate to the circumstances of the conservatee and the estate. Special provisions would be added to the new law by Assembly Bill 2898 to deal with the legal capacity of a limited conservatee.<sup>70</sup>*

### Other Legal Consequences of Order Affecting Capacity

The rules discussed above should resolve the most direct and immediate problems that now exist concerning the power of the conservatee to affect the conservatorship estate. The proposed law does not, however, attempt to clarify all the legal consequences of the appointment of a conservator . . . .<sup>74</sup> Each legal right or power of a conservatee is governed by a standard based on the social policies applicable to that right or power,<sup>75</sup> and a review of

<sup>68</sup> The exception for necessaries is consistent with existing law. See Civil Code § 38 (no conservatorship); Prob. Code § 1858 (conservatorship).

<sup>69</sup> There is precedent for this approach in Lanterman-Petris-Short Act conservatorships. See Welf. & Inst. Code § 5357.

<sup>70</sup> See discussion of "Limited Conservatorships," *infra*. [Footnotes 71-73 omitted.]

<sup>74</sup> The proposed law also continues existing provisions relating to the capacity of the conservatee to vote and adds new provisions relating to medical treatment. The provision relating to voting denies capacity only on a court finding that the conservatee is not capable of completing an affidavit of voter registration; this continues a provision of Probate Code Section 1462, enacted by 1978 Cal. Stats. ch. 1363, § 8. The provisions relating to medical consent are discussed in the text accompanying notes 119-24 *infra*.

<sup>75</sup> See generally R. Allen, E. Ferster, & H. Weinhofen, *Mental Impairment and Legal Incompetency* (1968); American Bar Foundation, *The Mentally Disabled and the Law* (rev. ed. 1971).

those social policies is beyond the scope of this recommendation.<sup>76</sup>

*The new law includes a provision that the appointment of a conservator of the person or estate or both does not affect the capacity of the conservatee to marry, but the court may by order determine whether the conservatee has the capacity to enter into a valid marriage at the time the court makes the order.*

### MARRIED MINORS

Under the Civil Code, a minor who has entered into a valid marriage is emancipated whether or not the marriage is terminated by dissolution.<sup>77</sup> Consistent with this rule, a guardian may not be appointed for the person of a married minor solely by reason of minority.<sup>78</sup> This is because the minor's marital obligations are viewed as inconsistent with and superior to the control which a guardian of the person is expected to exercise.<sup>79</sup>

The proposed law continues the prohibition against appointment of a guardian of the person of a minor who is married and makes clear that this extends to a minor whose marriage has been dissolved.<sup>80</sup> In the occasional case where such a minor is suffering from a mental disability and needs protective supervision of the person, the proposed law provides for conservatorship of the minor's person rather than guardianship. This avoids the need to duplicate in the guardianship statute the conservatorship provisions relating to legal capacity.

<sup>76</sup> The fact that the Law Revision Commission in this recommendation proposes to clarify only limited aspects of the law relating to the legal capacity of conservatees should not be taken as a determination that existing law in this area is adequate. The Commission plans to request that the 1979 Legislature authorize a Commission study of the entire area of the law relating to the rights and powers of minors and incompetent persons to determine whether the law should be revised.

<sup>77</sup> Civil Code § 62(a). See also Civil Code § 204.

<sup>78</sup> Prob. Code § 1433. If a minor is under guardianship and the appointment was made solely because of the ward's minority, marriage of the ward terminates the guardianship of the person. See Prob. Code §§ 1500, 1590(1).

<sup>79</sup> See 39 Am. Jur.2d *Guardian and Ward* § 55 (1968).

<sup>80</sup> Under the proposed law, if the minor's marriage is adjudged a nullity, the minor may be placed under a guardianship of the person just as though the minor had never been married. However, if a conservatorship of the person has been established for a married minor and the marriage is adjudged a nullity, the conservatorship does not terminate.

The proposed law continues the rule of existing law<sup>81</sup> that the marriage of a minor does not preclude appointment of a guardian of the estate or terminate a guardianship of the estate.<sup>82</sup>

## LEGAL COUNSEL FOR WARD OR CONSERVATEE

### Mandatory Appointment of Counsel

**Conservatorship proceedings.** Under existing law, the court must appoint legal counsel (the public defender or some other attorney) if the conservatee or proposed conservatee chooses to be represented by legal counsel but is unable to retain one in a proceeding for:

- appointment of a conservator.<sup>83</sup>
- removal of a temporary conservatee from his or her place of residence.<sup>84</sup>
- termination of the conservatorship.<sup>85</sup>

[Material omitted.]

*The new law continues these provisions and, in addition, permits the court to appoint counsel in any of these proceedings if the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee. A new requirement would be added by Assembly Bill 2898 that the court appoint legal counsel for a ward or conservatee not having legal counsel in a proceeding for a court order requiring medical treatment.*

<sup>81</sup> See Prob. Code §§ 1433, 1500, 1590(1).

<sup>82</sup> It will thus be unnecessary to inquire into the mental capacity of a married minor where the proceedings are for protection of the estate. The minority of the proposed ward, together with a showing of the need for appointment of a guardian of the estate, will constitute the grounds for such an appointment. The result that a married but mentally disabled minor may simultaneously be subject to a conservatorship of the person and a guardianship of the estate, though seemingly anomalous, is recommended as a practical resolution of the conflicting policies involved.

<sup>83</sup> Prob. Code § 2006. See also Prob. Code §§ 1754, 1754.1 (advice of rights). The new law breaks down the proceeding for the appointment of a conservator into three aspects: (1) establishment of the conservatorship, (2) selection of the conservator, and (3) orders expanding the conservatee's legal capacity and modification or revocation of those orders. The right to appointed counsel under the new law applies to all three aspects of the proceeding.

<sup>84</sup> See Prob. Code § 2201.

<sup>85</sup> Prob. Code § 2006.

*Assembly Bill 2898 also requires that the court appoint legal counsel for a proposed limited conservatee not having legal counsel.*

A special provision of existing law provides for appointment of legal counsel to represent the conservatee to bring proceedings, the need for which is revealed by the biennial review.<sup>86</sup> The proposed law continues this requirement.

The proposed law also continues the existing requirements that the conservatee or proposed conservatee pay the cost of appointed counsel to the extent able to pay<sup>87</sup> and, if unable to pay, that the county bear the cost of the public defender or make the payment to appointed private counsel.<sup>88</sup>

**Proceedings in lieu of conservatorship.** Existing law provides for court authorization of a proposed transaction involving community or homestead property where one of the spouses is incompetent without the need to establish a guardianship or conservatorship.<sup>89</sup> Existing law also provides for a person to represent the incompetent spouse in the proceeding<sup>90</sup> but makes no provision for the appointment of counsel for the incompetent spouse. The proposed law continues these existing provisions in revised form<sup>90a</sup> and adds a requirement that the court appoint the public defender or private counsel for the spouse alleged to lack legal capacity where he or she . . . is unable to retain counsel . . . and requests appointed counsel. This added

<sup>86</sup> Prob. Code § 1851.1. The court is required to notify the attorney of record for the conservatee, if any, or to appoint legal counsel to represent the conservatee if (1) the court investigator determines that the conservatee wishes to petition the court for termination of the conservatorship, for removal of the conservator, or for restoration of the right to vote or (2) the court determines that a hearing for termination or removal is in the best interests of the conservatee.

<sup>87</sup> Prob. Code § 2006.

<sup>88</sup> Probate Code Section 2006 refers to the person's "present ability to pay," while the proposed law refers merely to the person's "ability to pay." Thus, under the proposed law the court may take into account the person's future economic prospects in determining whether the person should be ordered to pay all or a portion of the costs of appointed counsel.

<sup>89</sup> Prob. Code §§ 1435.1-1435.18.

<sup>90</sup> An incompetent spouse may in certain instances be represented by the Director of Mental Health or the Director of Developmental Services (See Prob. Code § 1435.6) or the public guardian, public administrator, or a guardian ad litem (Prob. Code §§ 1435.5, 1435.7).

<sup>90a</sup> See discussion in text accompanying notes 246-65 *infra*.

requirement gives the spouse the same right the spouse would have if a conservatorship proceeding were commenced and will ensure that the spouse's procedural rights are protected.

The proposed law provides a new proceeding for court authorization of medical treatment for an adult without the need to appoint a conservator of the person.<sup>91</sup> The court must appoint legal counsel in such a proceeding unless the patient has retained his or her own legal counsel. This requirement will ensure procedural due process where a person's basic right to give or withhold consent to medical treatment is at stake.

As in the case of mandatory appointment of counsel in conservatorship proceedings, the person for whom counsel is appointed is responsible for the cost of counsel to the extent able to pay; otherwise, the county bears the cost.<sup>92</sup>

### Discretionary Appointment of Private Counsel

A provision was recently added to the Family Law Act to allow the court to appoint private counsel to represent the interests of a minor when the minor's custody is in issue.<sup>93</sup> There is no comparable provision in existing guardianship law.<sup>94</sup>

The proposed law provides general authority for discretionary appointment of private counsel (but not the public defender) for a ward, proposed ward, conservatee, or proposed conservatee whenever the person is not otherwise represented and the provisions for mandatory appointment of counsel do not apply. The court has authority to appoint counsel under the discretionary appointment provision if the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests. As

<sup>91</sup> See discussion in text accompanying notes 266-68 *infra*.

<sup>92</sup> See discussion in text accompanying notes 87 and 88 *supra*.

<sup>93</sup> 1976 Cal. Stats. ch. 588 (codified as Civil Code § 4606).

<sup>94</sup> It has been recommended that legislation be enacted to authorize the court to appoint a legal representative for a minor in all custody proceedings. See Bodenheimer, *The Multiplicity of Child Custody Proceedings—Problems of California Law*, 23 Stan. L. Rev. 703, 733 (1971).

under the Family Law Act, the attorney's fees are payable privately and the county is not responsible.<sup>95</sup>

Upon request, or upon order of the court, Section 27706 of the Government Code requires the public defender to represent a person who is not financially able to employ counsel in a guardianship or conservatorship proceeding. The proposed law does not affect this duty of the public defender.

### BIENNIAL REVIEW OF CONSERVATORSHIP

Existing law requires a review of each conservatorship one year after appointment of the conservator and biennially thereafter.<sup>96</sup> When a review is required, the court investigator must visit the conservatee, inform the conservatee that the conservatee is under conservatorship, and tell the conservatee the name of the conservator. The court investigator must also determine whether the conservatee wishes to petition the court to terminate the conservatorship, whether the conservatee still needs the conservatorship, whether the conservatee has the capacity to complete an affidavit of voter registration, and whether the present conservator is acting in the best interests of the conservatee. The investigator's findings, including the facts upon which the findings are based, are certified in writing to the court. Based either upon the conservatee's wishes or the court's independent determination, proceedings for the termination of the conservatorship, restoration of the right to register to vote, or the removal of the existing conservator may follow.

The proposed law continues the existing law with a number of minor modifications:

(1) The review is dispensed with if *the conservatorship is of the estate only and* the conservatee resides outside of California and is not present in this state.<sup>97</sup> The benefits of

<sup>95</sup> The attorney's fees are to be fixed by the court and paid from the guardianship or conservatorship estate or, in the case of a minor, by the minor's parent or parents or from the estate, or both, in such proportions as the court deems just.

<sup>96</sup> Prob. Code § 1851.1.

<sup>97</sup> This provision is analogous to the provision of existing law which excuses the personal attendance of the proposed conservatee at the hearing on the petition for appointment of a conservator if the proposed conservatee is not the petitioner and is not in California when served with the citation and copy of the petition. See Prob. Code § 1754.



the review in such a case are offset by the high cost of an out-of-state visit by the court investigator.

(2) It is made clear that no review is required where the conservatee is an absentee (prisoner of war or missing in action).<sup>98</sup>

(3) The court investigator is given the additional duty of reviewing any court order expanding . . . legal capacity of the conservatee to determine whether the order continues to be appropriate or should be modified or revoked.

(4) A copy of the court investigator's report is required to be mailed to the conservator at the same time it is certified to the court. *The new law also requires that a copy of the report be mailed to the attorney of record of the conservator and conservatee.*

(5) The existing provision which permits the court to require a hearing for termination of the conservatorship or for removal of the conservator based on information contained in the court investigator's report<sup>99</sup> is broadened so that the court may act upon information from whatever source received.

Under existing law, if the court investigator is unable to locate the conservatee, the court directs the conservator to produce the conservatee.<sup>100</sup> If the conservator fails to do so without good cause, the court is required to terminate the conservatorship.<sup>101</sup> [Material omitted.] *The new law continues this sanction.*

*The new law also prescribes more detailed qualifications for a court investigator than the prior law.*

*Assembly Bill 2898 includes special provisions concerning the periodic review to be made by the court investigator of limited conservatorships.*

<sup>98</sup> Under existing law, a conservator may be appointed for a person who is an "absentee." Prob. Code § 1751. "Absentee" means U.S. military and other specified personnel in missing status as defined under federal law. See Prob. Code § 1751.5.

<sup>99</sup> Prob. Code § 1851.1.

<sup>100</sup> Prob. Code § 1851.1. The proposed law makes some technical improvements in the procedure for ordering production of the conservatee.

<sup>101</sup> Prob. Code § 1851.1.

<sup>102</sup> [Omitted.]

## TEMPORARY GUARDIAN OR CONSERVATOR

### Temporary Guardian of the Person

Existing law provides for temporary conservators of the person or estate or both,<sup>103</sup> and temporary guardians of the estate,<sup>104</sup> but there is no provision for a temporary guardian of the person. The guardianship law does, however, provide for a temporary custody order if the minor's welfare would be imperiled by the minor remaining in the custody of the person then having care of the minor.<sup>105</sup> The proposed law replaces the provision for temporary custody of a minor in a guardianship proceeding with new provisions for temporary guardianship of the person of a minor.<sup>106</sup> These new provisions deal comprehensively with the problems that may arise during the interim pending the appointment of the permanent guardian.<sup>107</sup>

### Removal of Temporary Conservatee From Place of Residence

Under existing law, if a temporary conservator proposes to change the place of residence of the temporary conservatee, the temporary conservator must make a written request to the court.<sup>108</sup> Court approval may be obtained after the change of residence if the former residence is unfit for habitation or if the temporary

<sup>103</sup> Prob. Code § 2201.

<sup>104</sup> Prob. Code § 1640. Under existing law, a temporary guardian is referred to as a "special" guardian. See Prob. Code §§ 1640-1646.

<sup>105</sup> Prob. Code § 1442. In such situation, the court may cause a warrant to be issued directing a sheriff, coroner, or constable to take the minor into custody. Although Probate Code Section 1442 applies by its terms to guardianship proceedings, it has been applied in a custody proceeding between parents. See *Titcomb v. Superior Court*, 220 Cal. 34, 29 P.2d 206 (1934). With respect to a custody proceeding between parents, Section 1442 appears to be superseded by provisions of the Family Law Act (Civil Code §§ 4600, 4600.1).

<sup>106</sup> The new provisions for temporary guardianship of the minor's person are consolidated with the provisions for temporary conservatorship of the person.

<sup>107</sup> The proposed law gives the temporary guardian such powers as are necessary to provide for the temporary care, maintenance, and support of the ward, the same authority as a permanent guardian to require and to give consent for medical treatment needed by the ward, and such additional powers and duties as may be ordered by the court.

<sup>108</sup> Prob. Code § 2201.

conservatee has a medical condition which presents an immediate threat to his or her physical survival.<sup>109</sup> A hearing must be held on the request. The temporary conservatee must be present at the hearing unless it would jeopardize his or her physical survival.<sup>110</sup>

The proposed law permits removal of the temporary conservatee from the place of residence without prior court authorization<sup>111</sup> where the temporary conservator determines in good faith based upon medical advice that the case is an emergency case in which such removal is required to provide medical treatment to alleviate severe pain or to diagnose or treat a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death. The provision of existing law which permits such removal only where the temporary conservatee has a medical condition which presents an immediate threat to physical survival is too stringent and may delay essential medical treatment during the period required to obtain a court hearing and order. The proposed law adds a new provision to make clear that court authorization is not required to move a temporary conservatee from one health facility where the conservatee is receiving medical care to another health facility where the conservatee will receive medical care.

The proposed law also conforms the provisions for excusing the temporary conservatee from attending the hearing to the proposed provisions for excusing a conservatee from attending the hearing on a petition to appoint a conservator.<sup>112</sup> Under the proposed law, the court may, in its discretion, send a court investigator to interview the temporary conservatee and determine whether he or she is willing to attend the hearing, wishes to oppose the request, and desires counsel. If the court investigator reports to the court that the temporary conservatee is not willing to attend the hearing and does not oppose the

<sup>109</sup> Prob. Code § 2201.5.

<sup>110</sup> Prob. Code § 2201.

<sup>111</sup> The proposed law continues the existing requirement that the temporary conservator file a written request for authorization to change the place of residence not later than one judicial day after the emergency removal.

<sup>112</sup> See discussion in text accompanying notes 63-64 *supra*.

proposed change of residence, the court may excuse the temporary conservatee from attending the hearing. This will avoid the need to produce the temporary conservatee at the hearing when to do so would serve no useful purpose.

The proposed law also conforms the standard for excusing the temporary conservatee from the hearing for medical reasons to the standard applicable on appointment of a conservator.<sup>113</sup>

### LIMITED CONSERVATORSHIPS

*In 1980, Assembly Bill 2898 proposed that the guardianship-conservatorship law be revised to provide for the establishment of a limited conservatorship for a developmentally disabled adult.<sup>113a</sup> The proposed limited conservatee, with his or her consent, is assessed at a regional center for persons with developmental disabilities and a report is furnished by the regional center to the court concerning the proposed limited conservatee's disability, if any.<sup>113b</sup> If a limited conservatorship is established,<sup>113c</sup> the powers and duties of the limited conservator are specified so as to permit the limited conservatee to care for himself or herself or to manage his or her financial resources commensurate with his or her ability to do so.<sup>113d</sup> In any proceedings to establish a limited conservatorship, the court is required to appoint the public defender or private legal counsel to represent the proposed limited conservatee.<sup>113e</sup>*

<sup>113</sup> See Prob. Code § 1754. "Medical inability" to attend the hearing is substituted for jeopardy to the temporary conservatee's physical survival. See also discussion in text accompanying notes 63-64 *supra*.

<sup>113a</sup> The bill amended Sections 1471, 1801, 1821, 1822, 1823, 1824, 1828, 1829, 1830, 1851, 1860, 1872, 1873, 1890, 2351, 2400, 2401, 2405, 2600, and 3004 of the Probate Code and added Sections 1410, 1411, 1420, 1431, 1827.5, 1860.5, and 2351.5 to the Probate Code.

<sup>113b</sup> See Sections 1822(f), 1827.5, 1828.5.

<sup>113c</sup> See Section 1801(d).

<sup>113d</sup> See Sections 1821(h), 1828.5, 1830(b), 2351.5. As to termination of a limited conservatorship, see Section 1860.5.

<sup>113e</sup> See Section 1471(c).

## POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE PERSON

### General Duties

A guardian of the person has the care and custody of the ward's person, has charge of the education of a minor ward, may fix the ward's residence . . . at any place within this state but not elsewhere without permission of court, and must advise the court promptly in writing of all changes in the ward's residence . . . .<sup>114</sup> A conservator of the person has the same powers and duties except that the conservator lacks express authority to provide for the conservatee's education.<sup>115</sup> The proposed law expressly grants this power to conservators since it may be desirable to provide for the education of the conservatee.

*The new law permits the court to limit the powers and duties that a conservator of the person otherwise would have. The new law also provides that an order giving permission to the guardian or conservator to fix the residence of the ward or conservatee outside California must also require either that the ward or conservatee be returned to California within four months or such longer or shorter period as is provided in the order or that a guardianship or conservatorship proceeding be commenced in the place of the new residence.*

*The powers and duties of a limited conservator under Assembly Bill 2898 differ significantly from those of a conservator generally. These differences are not discussed here.*<sup>114a</sup>

<sup>114</sup> Prob. Code § 1500. Existing law refers to the "residence and domicile" of the ward or conservatee. See Prob. Code §§ 1500, 1851. The new law omits "and domicile."

<sup>114a</sup> In 1980, new provisions were proposed by Assembly Bill 2898 governing the powers and duties of a limited conservator. See discussion under heading "Limited Conservatorships," *supra*.

<sup>115</sup> See Prob. Code § 1851. A conservator of the person also has "control" of the conservatee. Although this word does not appear in the guardianship statute, the omission appears to have no practical significance. W. Johnstone & G. Zillgitt, California Conservatorships § 5.3, at 152-53 (Cal. Cont. Ed. Bar 1968). The proposed law adds "control" to the authority of a guardian of the person for purposes of uniformity.

The guardianship statute authorizes the court, with consent of the guardian, to insert in the order of appointment conditions not otherwise obligatory for the care, treatment, education, and welfare of a minor.<sup>116</sup> The proposed law expands this provision to apply to conservatorships of the person as well.

### **Court Confirmation or Instructions**

The guardianship statute permits the court to give instructions to a guardian of the estate upon petition where no other or different procedure is provided but fails to permit instructions to a guardian of the person.<sup>117</sup> The provision in the conservatorship statute for instructions by the court is broader and applies to a conservator of the person as well as of the estate.<sup>118</sup> The proposed law generalizes the broader conservatorship provision to apply both to guardians of the person and of the estate.

### **Medical Treatment for Ward or Conservatee**

The extent to which a guardian or conservator of the person has the power to make necessary medical decisions for the ward or conservatee is unclear under existing law.<sup>119</sup> The proposed law grants the guardian the same power as a custodial parent to require the ward to receive medical treatment but requires a court order for surgery on a minor over 14 unless the minor consents or an emergency exists in which the minor faces loss of life or serious bodily injury.<sup>120</sup> Under the proposed law, a conservator may require the conservatee to receive medical treatment only if (1) an emergency exists,<sup>121</sup> (2) a court order is obtained specifically authorizing the medical treatment, or (3) the

<sup>116</sup> Prob. Code § 1512.

<sup>117</sup> See Prob. Code § 1516.

<sup>118</sup> Prob. Code § 1860. See discussion in text accompanying notes 182-84 *infra*.

<sup>119</sup> See 60 Ops. Cal. Att'y Gen. 375 (1977).

<sup>120</sup> This provision is drawn from the Lanterman-Petris-Short Act (Welf. & Inst. Code § 5358).

<sup>121</sup> An emergency exists "where the conservator determines in good faith based upon medical advice that the case is an emergency case in which the medical treatment is required because (1) such treatment is required for the alleviation of severe pain or (2) the conservatee has a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death."

court has previously determined that the conservatee lacks the capacity to give informed consent to medical treatment.<sup>122</sup> If the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing, the conservator may only require treatment by an accredited practitioner of that religion or must obtain a court order authorizing conventional medical treatment.

Under existing law, involuntary commitment of an adult ward or a conservatee to a mental health facility is not permitted except pursuant to the Lanterman-Petris-Short Act.<sup>123</sup> The proposed law extends this prohibition to include minor wards.

The proposed law also clarifies the interrelationship of the medical treatment provisions of guardianship-conservatorship law with provisions of other codes relating to medical treatment.<sup>124</sup>

## POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE ESTATE

### Introduction

The existing statutory provisions governing powers and duties of guardians and conservators of the estate<sup>125</sup> are

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<sup>122</sup> Concerning the requirement of informed consent, see *Cobbs v. Grant*, 8 Cal.3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (1972).

<sup>123</sup> See Prob. Code §§ 1500, 1851.

<sup>124</sup> The proposed law makes clear that the provisions of other codes relating to highly intrusive forms of medical treatment are the only provisions under which such treatment may be authorized for a ward or conservatee, thus assuring that the procedural safeguards contained in those provisions will be applied. The provisions relate to administration of experimental drugs (Health & Safety Code §§ 26668-26668.9), convulsive treatment (Welf. & Inst. Code §§ 5326.7-5326.95), and sterilization (Welf. & Inst. Code § 7254). The proposed law also makes clear that a valid and effective directive made by a conservatee to withhold or withdraw life-sustaining procedures if the conservatee is in a terminal condition (popularly known as a "living will") is not affected by the conservatorship. See Health & Safety Code §§ 7185-7195.

<sup>125</sup> The proposed law changes the term "conservator of the property" to "conservator of the estate." Existing conservatorship provisions use the two terms interchangeably. However, the term "estate" is probably more apt and is more widely used. W. Johnstone & G. Zillgitt, *California Conservatorships* § 3.3, at 54 (Cal. Cont. Ed. Bar 1968).

confusing, conflicting, and often difficult to locate.<sup>126</sup> The guardianship statute sets forth a fairly detailed listing of powers and duties.<sup>127</sup> The conservatorship statute, on the other hand, largely relies on incorporation by reference of the powers and duties of a guardian of the estate.<sup>128</sup> The conservatorship statute also authorizes the court to give a conservator of the estate specified powers thereafter independently exercisable, thereby avoiding the need for prior case-by-case authorization by the court.<sup>129</sup>

The proposed law consolidates the powers and duties provisions into a single consistent scheme. The powers and duties of guardians and conservators of the estate are virtually identical under the proposed law.<sup>130</sup> The proposed

<sup>126</sup> For example, the guardianship provisions are contained principally in Chapters 7 (powers and duties) and 8 (sales, mortgages, leases, and conveyances) of Division 4 of the Probate Code. However, some provisions are found in Chapter 9 (inventory and accounting) and others are scattered elsewhere throughout Division 4. See, e.g., Prob. Code §§ 1405, 1405.1, 1484, 1557, 1557.1, 1557.2, 1558, 1560, 1561. See also Prob. Code §§ 1571 (powers and duties of guardian of nonresident ward), 1642 (powers and duties of special guardian of the estate).

<sup>127</sup> Prob. Code §§ 1500-1561.

<sup>128</sup> See Prob. Code § 1852. In addition, the conservatorship provisions set forth a few specific powers, but these largely duplicate or overlap parallel provisions of the guardianship law. The duplicative or overlapping provisions are as follows:

<i>Guardianship</i>	<i>Conservatorship</i>
§ 1502 .....	§ 1855
§ 1558 .....	§ 1856
§ 1504 .....	§ 1857
§ 1501 .....	§ 1858
§ 1503 .....	§ 1859
§ 1516 .....	§ 1860
§ 1519 .....	§ 1862

Despite the conservatorship provision incorporating and applying the powers and duties from the guardianship statute (Prob. Code § 1852), the specific powers in the conservatorship statute take precedence over the inconsistent guardianship provisions in a conservatorship proceeding. *W. Johnstone & G. Zillgitt, California Conservatorships* § 5.7, at 155 (Cal. Cont. Ed. Bar 1968).

<sup>129</sup> See Prob. Code § 1853. There appears to be a conflict between this provision and the concept of incorporation by reference of the guardianship provisions. *Compare* *Place v. Trent*, 27 Cal. App.3d 526, 530, 103 Cal. Rptr. 841, 843 (1972), *with* *Olson v. United States*, 437 F.2d 981, 985 (Ct. Cl. 1971).

<sup>130</sup> The proposed law broadens the existing provision permitting a conservator to pay a reasonable allowance for personal use of the conservatee (Prob. Code § 1861) to apply to guardianships as well. However, the provisions authorizing payment of surplus income to the next of kin (Prob. Code § 1856) and the new substitution of judgment provisions are limited to conservatorships because those provisions are not appropriate for use in the case of a minor. See discussion in text accompanying notes 166-75 *infra*.



law also gives the guardian or conservator more latitude to act without prior court authorization, thus saving judicial resources and reducing expenses to the estate.

*In 1980, special provisions were proposed by Assembly Bill 2898 relating to the powers and duties of a limited guardian of the estate. These provisions make the powers and duties of a limited conservatee differ significantly from those of a conservatee generally. The new provisions are not discussed here.*<sup>130a</sup>

### Duty to Use Ordinary Care and Diligence

The proposed law provides that the guardian or conservator, in managing and controlling the estate, shall use ordinary care and diligence. This standard is consistent with trust principles that apply to guardianships and conservatorships under existing law.<sup>131</sup> What constitutes ordinary care and diligence is to be determined according to all the circumstances of the particular estate.

The proposed law also makes clear that the standard of ordinary care and diligence determines the extent to which a power otherwise granted by statute should or should not be exercised. A number of duties of the guardian or conservator under existing law have been recast as powers under the proposed law since the proposed law adopts the concept that whether the exercise of a power is mandatory or discretionary depends on the circumstances in light of the basic duty to use ordinary care and diligence.<sup>132</sup>

### Court Supervision Generally

A significant problem with existing law is the uncertainty concerning when the guardian or conservator of the estate may act without prior court authorization and when prior

<sup>130a</sup> See discussion under heading "Limited Conservatorships," *supra*.

<sup>131</sup> See Prob. Code §§ 1400, 1702; W. Johnstone & G. Zillgitt, *California Conservatorships* § 5.2, at 152 (Cal. Cont. Ed. Bar 1968). Under general trust law, a trustee must use at least ordinary care and diligence in the execution of the trust. Civil Code § 2259.

<sup>132</sup> It has been said that there is no clear distinction between a power and a duty in conservatorship law, and each may usually be spoken of interchangeably. W. Johnstone & G. Zillgitt, *California Conservatorships* § 5.1, at 152 (Cal. Cont. Ed. Bar 1968).

court authorization is required. While some provisions specifically indicate whether court authorization is or is not required for exercise of a power,<sup>133</sup> many are silent or unclear on the question.<sup>134</sup>

There are a number of possible approaches to court supervision of the guardian or conservator. The Uniform Probate Code, for example, gives a conservator all of the powers of a trustee, exercisable without court authorization or confirmation.<sup>135</sup> The Uniform Probate Code approach does not afford sufficient protection for the estate. On the other hand, it would be inefficient and uneconomical to require the guardian or conservator to obtain prior court authorization for every action.

The proposed law adopts a middle ground. Prior court authorization is not required for routine actions (unless the court upon petition or upon its own motion specifically limits the authority of the guardian or conservator) but is required for actions that have a significant impact on the estate. The proposed law gives the guardian or conservator somewhat more freedom to act without prior court authorization than the existing law. The proposed law also makes clear that the guardian or conservator may seek instructions from the court concerning exercise of a power that does not require prior court authorization.<sup>136</sup>

The powers and duties exercisable under the proposed law without prior court authorization (unless the court otherwise orders) include:

(1) Endorsing, cashing, or depositing checks payable to the ward or conservatee which constitute property of the estate.

(2) Depositing money in banks, savings and loan associations, or credit unions and depositing personal property with a trust company.

<sup>133</sup> *E.g.*, Prob. Code §§ 1504-1507, 1515, 1515.5, 1518, 1530-1532, 1534a, 1537-1538.5, 1540, 1557-1558, 1856, 1857, 1861 (court approval required); Prob. Code §§ 1508, 1538.6 (court approval not required).

<sup>134</sup> *E.g.*, Prob. Code §§ 1500, 1501-1502, 1513, 1514, 1517, 1520, 1533, 1855.

<sup>135</sup> See Uniform Probate Code §§ 5-424, 5-425.

<sup>136</sup> This provision is based on the conservatorship provision (Prob. Code § 1860) which covers the entire range of the conservator's activities (*W. Johnstone & G. Zillgitt, California Conservatorships* § 5.9, at 156 (Cal. Cont. Ed. Bar 1968)), rather than on the guardianship provision (Prob. Code § 1516) which by its terms is limited to cases where no other or different procedure is provided by statute.

(3) Maintaining in good condition and repair the home of the ward or conservatee or the home of those legally entitled to such maintenance and repair from the ward or conservatee.

(4) Obtaining, renewing, modifying, or terminating health and disability insurance.

(5) Insuring the property of the estate against loss or damage.

(6) Insuring the ward or conservatee, the guardian or conservator, and the estate against liability to third persons.

(7) Paying, contesting, or compromising taxes and making tax returns.

(8) Instituting and maintaining actions<sup>137</sup> for the benefit of the ward or conservatee or the estate and defending actions and proceedings against the ward or conservatee or the estate.

(9) Disposing of or abandoning valueless property.

(10) Compromising claims (other than (a) a claim for support, personal injury, or wrongful death, (b) a claim involving real property, (c) a claim of the ward or conservatee against the guardian or conservator, or (d) a compromise involving the transfer or encumbrance of assets of the estate or the creation of a liability against the estate in excess of \$25,000).<sup>138</sup>

(11) Buying and selling stocks, bonds, and other securities which are listed on an established exchange in the United States and direct obligations of the United States.<sup>139</sup>

(12) Selling or exchanging tangible personal property in any calendar year not in excess of \$5,000, subject to certain limitations.<sup>140</sup>

(13) Renting real property for a term not exceeding two years and a rental not exceeding \$750 monthly or, regardless of the amount of the rental, when the lease is from month to month.<sup>141</sup>

<sup>137</sup> Court authorization is required to commence a partition action.

<sup>138</sup> This recommendation would not affect Section 372 of the Code of Civil Procedure, which requires court approval of a compromise or settlement of a pending action or proceeding. See also discussion in text accompanying notes 143-44 *infra*.

<sup>139</sup> See discussion in text accompanying notes 159-62 *infra*.

<sup>140</sup> See discussion in text accompanying notes 159-61 *infra*.

<sup>141</sup> This changes existing law to increase the term from one year to two years and the amount from \$250 to \$750 a month. See Prob. Code § 1538.6. The increase in the amount takes into account the effect of inflation on the value of real property in recent years.

(14) [P]etitioning for a determination that . . . community property not be . . . administered *in the estate of a deceased spouse*.<sup>142</sup>

### Compromising Claims and Actions

Under existing law, a guardian or conservator of the estate may, with court approval, compromise any suit, claim, or demand by or against the ward or conservatee, the estate, or the guardian or conservator as such, and the court may also authorize the guardian or conservator to extend, renew, or modify the terms of any obligation owing to the ward or conservatee or the estate.<sup>143</sup>

The proposed law permits the guardian or conservator to compromise a claim, action, or proceeding, or to extend, renew, or modify an obligation, without prior court approval except to the extent the court limits the authority of the guardian or conservator and except where court approval is otherwise specifically required. Court approval is specifically required:

- (1) Where real property is affected.
- (2) Where the transaction requires a transfer or encumbrance of assets of the estate, or creates a liability of the estate, in excess of \$25,000.
- (3) Where the claim is by the ward or conservatee against the guardian or conservator.
- (4) Where the debt to be extended, renewed, or modified is owed by the guardian or conservator to the ward or conservatee or the estate.
- (5) Where the claim is for the support, maintenance, or education of the ward or conservatee or of a person the ward or conservatee is legally obligated to support.
- (6) Where the claim is by the ward or conservatee for wrongful death or physical or nonphysical harm to the person.

The reduction of the instances where court approval is

<sup>142</sup> See Prob. Code § 650 (petition not to have property administered in estate). The companion bill to the proposed law gives the guardian or conservator discretion in such a case without the need for authorization or approval by the court in which the guardianship or conservatorship proceeding is pending.

<sup>143</sup> See Prob. Code §§ 1530a, 1852. See also Prob. Code § 1501.

required for compromises by the guardian or conservator is consistent with the general objective of the proposed law to economize on judicial resources and to minimize expenses incurred by the estate.

The proposed law also makes clear the rules that determine which court is a proper court for approval of a compromise of a claim or matter. If the claim or matter is the subject of a pending action or proceeding, the proper court is the court where the action or proceeding is pending. However, if the action or proceeding is pending in a federal court, sister state court, or court outside the United States, the required approval may be obtained either from the court in which the action or proceeding is pending or from the guardianship or conservatorship court. If the claim or matter is not the subject of a pending action or proceeding, court approval may be obtained from any of the following: (1) the guardianship or conservatorship court, (2) the superior court of the county where the ward or conservatee or guardian or conservator resides, or (3) the superior court of any county where suit on the claim or matter properly could be brought.

The proposed provisions do not affect Section 372 of the Code of Civil Procedure (compromise of pending action or proceeding) or any other statute that may be applicable to a particular case. Where approval of a compromise of an administrative proceeding is required in such administrative proceeding in order for the compromise to be valid,<sup>144</sup> the approval is governed by that statute, and approval in the guardianship or conservatorship proceeding is not required.

### **Special Procedures for Determining Disputes or Adverse Claims**

**Arbitration.** The proposed law makes clear that the guardian or conservator may make a written agreement submitting a dispute to arbitration<sup>145</sup> if the agreement is approved by the court and the approved agreement is filed in the guardianship or conservatorship proceeding.

<sup>144</sup> *E.g.*, Labor Code § 5001 (compromise of worker's compensation proceeding).

<sup>145</sup> This is consistent with the rule in other U.S. jurisdictions. See 5 Am. Jur.2d *Arbitration and Award* § 63, at 566-67 (1962).

**Summary determination.** The proposed law authorizes the guardian or conservator to make a written agreement with a person who has a claim against the ward or conservatee or the estate to refer the claim for summary determination to a commissioner or referee who is regularly attached to the court and designated in the agreement or to a judge pro tempore designated in the agreement. The agreement may provide for referral to a probate judge for summary determination with the written consent of the judge. The matter is heard and determined by summary procedure, without pleadings, discovery, or jury trial. Judgment is entered on the decision of the designated person and is as valid and effective as an ordinary judgment. Like the comparable provisions applicable to the administration of estates of decedents,<sup>146</sup> the new procedure is designed to save costs to the guardianship or conservatorship estate and to ease the court's workload by encouraging the summary disposition of claims against the estate.<sup>147</sup>

### **Conveyance or Transfer of Property Claimed to Belong to Ward, Conservatee, or Other Person**

Under existing law, the court may direct a guardian of the estate to convey real property to the person entitled to the property when (1) an adult ward is bound to do so by a contract in writing executed by the ward while competent or executed by the ward's predecessor in interest or (2) a minor ward has succeeded to the interest of a person bound by a contract in writing to do so.<sup>148</sup> Under a separate provision of existing law, the court may direct a guardian of the estate to convey or transfer real or personal property which is claimed to belong to another unless (1) a civil action concerning the matter is pending, (2) an objection is made that the venue would be improper for a civil action,

<sup>146</sup> Prob. Code § 718.

<sup>147</sup> See Review of Selected 1968 Code Legislation 226-27 (Cal. Cont. Ed. Bar 1968).

<sup>148</sup> Prob. Code § 1537. There is similar authority in the provisions relating to the administration of decedents' estates. See Prob. Code § 850. The provisions relating to decedents' estates have broader scope since they authorize the court to direct the transfer of personal property as well as the conveyance of real property. *Id.*

or (3) the court determines that the matter should be determined by civil action.<sup>149</sup> These provisions are also made applicable to conservatorship proceedings.<sup>150</sup>

The proposed law consolidates and continues these provisions and broadens them in several respects.<sup>151</sup> The provision for enforcement of a preexisting contract to convey real property is broadened to include specifically enforceable contracts to transfer personal property.<sup>152</sup> The provision for conveyance or transfer of real or personal property claimed to belong to another is broadened to include the situation where the property is owned or held by another and is claimed by the ward or conservatee.<sup>153</sup>

Under existing law, there are a number of procedural protections which apply in a proceeding to determine an adverse claim to property<sup>154</sup> but do not apply in a proceeding to enforce a preexisting contract.<sup>155</sup> (1) The proceeding may not go forward if there is an objection that the venue would not be proper for a civil action or if a civil action concerning the matter is pending or if the court determines that the matter should be determined by civil action<sup>156</sup> and (2) there is a right to a reasonable continuance to conduct discovery or to make other preparations for the hearing.<sup>157</sup> The proposed law extends these provisions to apply to a proceeding to enforce a preexisting contract in a guardianship or conservatorship proceeding.<sup>158</sup>

<sup>149</sup> See Prob. Code § 1537.5 (incorporating Prob. Code §§ 851.5, 852). There is similar authority in the provisions relating to the administration of decedents' estates. See Prob. Code §§ 851.5, 852. However, the provisions applicable to decedents' estates have broader scope since they permit the court to authorize and direct another person to convey real property or to transfer personal property to the executor or administrator under certain circumstances. Prob. Code §§ 851.5, 852.

<sup>150</sup> See Prob. Code § 1852.

<sup>151</sup> The notice provisions of the proposed law do not include any posting or publication requirements. Compare Prob. Code §§ 851.5, 1200. However, an express provision is included in the proposed law permitting filing of notice of the pendency of a proceeding affecting real property.

<sup>152</sup> This change will conform guardianship-conservatorship law to the law relating to executors and administrators. See Prob. Code § 850.

<sup>153</sup> This change will conform guardianship-conservatorship law to the law relating to executors and administrators. See Prob. Code § 851.5.

<sup>154</sup> See Prob. Code §§ 1537.5, 851.5, 852.

<sup>155</sup> See Prob. Code §§ 1537, 850, 852.

<sup>156</sup> Prob. Code §§ 851.5, 852.

<sup>157</sup> Prob. Code § 851.5.

<sup>158</sup> The application of the abatement provisions (note 156 *supra*) to the enforcement of preexisting contracts in guardianship and conservatorship proceedings will result in such proceedings being abated under circumstances where comparable proceedings in the administration of decedent's estates would not be abated. However, the

### Sales Permitted Without Prior Court Authorization

Under existing law, sales in guardianship and conservatorship proceedings generally must conform to the provisions concerning sales by administrators.<sup>159</sup> Under the latter provisions, notice of most sales must be published or posted, and the court must confirm the sale before title passes.<sup>160</sup> In the case of stocks, bonds, and certain other securities, a simplified procedure is permitted: representative seeks court authorization before the sale, advising the court of the proposed minimum sale price or that the sale will be made on an established stock exchange; if the court authorizes the sale, no subsequent confirmation is necessary.<sup>161</sup>

The proposed law generally continues existing law except that the procedure for sales of securities and tangible personal property is further simplified in the interest of saving judicial resources and expense to the estate: Except as specifically limited by court order, the guardian or conservator, without court authorization or confirmation, may sell stocks, bonds, and other securities traded on an established exchange in the United States and direct obligations of the United States. The market price of these securities is readily ascertainable at the time of sale. Similarly, the guardian or conservator may sell or exchange tangible personal property of the estate without court authorization or confirmation so long as the aggregate of the sales or exchanges made during any calendar year do not exceed \$5,000. However, sale or exchange of personal effects or of household furnishings may be made only with the consent of the ward if 14 years of age or over or with

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abatement provisions provide desirable protections that should apply when one party seeks to enforce a preexisting contract in the guardianship or conservatorship proceeding instead of in a civil action.

<sup>159</sup> See Prob. Code §§ 1534, 1852; W. Johnstone & G. Zillgitt, *California Conservatorships* § 5.55, at 202 (Cal. Cont. Ed. Bar 1968). The provisions concerning sales by administrators are in Sections 750-814 of the Probate Code.

<sup>160</sup> See Prob. Code §§ 755, 772, 780; Hudner, *Sales of Estate Property*, in 1 *California Decedent Estate Administration* § 14.17, at 511 (Cal. Cont. Ed. Bar 1971). An exception is made in the case of perishable or depreciating personal property. Prob. Code § 770.

<sup>161</sup> Hudner, *Sales of Estate Property*, in 1 *California Decedent Estate Administration* § 14.64, at 549 (Cal. Cont. Ed. Bar 1971); see Prob. Code § 771; W. Johnstone & G. Zillgitt, *California Conservatorships* § 5.55, at 202 (Cal. Cont. Ed. Bar 1968).



the consent of the conservatee if such consent is within the conservatee's capacity. This authorization will permit sale of a motor vehicle or other excess tangible personal property and will avoid the expense of court proceedings to the estate. The interest of the ward or conservatee will be adequately protected since sales of securities or tangible personal property under the proposed provision are subject to an express requirement that the sale be in the best interest of the ward or conservatee or the estate, and the sale is subject to review on settlement of the accounts of the guardian or conservator.

### Investments Permitted Without Prior Court Authorization

Under existing law, investments by the guardian or conservator generally require prior court authorization.<sup>162</sup>

The proposed law liberalizes existing law to permit investment of estate funds without prior authorization in:

(1) Stocks, bonds, and other securities that are purchased on an established exchange in the United States.

(2) Direct obligations that will mature within five years after the time of acquisition issued by the United States or by the State of California.

(3) United States Treasury bonds redeemable at par value on the death of the holder for payment of federal estate taxes regardless of the maturity date.

The market price of these investments is readily ascertainable at the time of purchase.

### Credit Sales

*The new law does not continue the requirement of existing law that in no case shall credit exceed 20 years from the date of sale.<sup>162a</sup> The sale, however, is subject to authorization, confirmation, or direction of the court as under existing law.*

<sup>162</sup> See Prob. Code §§ 1557, 1852; W. Johnstone & G. Zillgitt, California Conservatorships § 5.73, at 217 (Cal. Cont. Ed. Bar 1968); Cupp, McCarroll, & McClanahan, *Guardianship of Minors*, in 1 California Family Lawyer § 16.64, at 654 (Cal. Cont. Ed. Bar 1962).

<sup>162a</sup> Prob. Code § 1532.

### Independent Exercise of Powers

The conservatorship law authorizes the court to grant the conservator one or more "additional" powers which the conservator may thereafter exercise independently without case-by-case court authorization.<sup>163</sup> The proposed law continues this authority,<sup>164</sup> expands it to apply to guardianships, and makes clear that the court may impose restrictions, conditions, and limitations on the exercise of the powers granted.<sup>165</sup>

### Gifts on Conservatee's Behalf; Estate Planning for Conservatee

**Payment of surplus income to relatives.** Under existing law, the court may direct a guardian of the estate of an incompetent adult, or a conservator of the estate, to pay surplus income to the "next of kin" whom the ward or conservatee in the court's judgment would have aided if able.<sup>166</sup> However, the meaning of "next of kin" is not clear in this context.<sup>167</sup> The proposed law permits payments to the spouse and to relatives within the second degree of the conservatee<sup>168</sup> and codifies case law permitting the court to impose conditions on the payment of surplus income if the court finds that the conservatee would have imposed them.<sup>169</sup>

**Substituted judgment.** The estate of a conservatee may substantially exceed the amount needed for the conservatee. Such an estate may be subject to income and inheritance or estate taxes that a reasonably prudent person

<sup>163</sup> Prob. Code § 1853; W. Johnstone & G. Zillgitt, *California Conservatorships* § 5.74, at 217-18 (Cal. Cont. Ed. Bar 1968).

<sup>164</sup> The authority is more accurately characterized in the proposed law as "independent exercise of powers."

<sup>165</sup> The court probably has the power under existing law to attach restrictions or conditions on the exercise of such powers. W. Johnstone & G. Zillgitt, *California Conservatorships* § 5.75, at 218 (Cal. Cont. Ed. Bar 1968).

<sup>166</sup> Prob. Code §§ 1558, 1856.

<sup>167</sup> W. Johnstone & G. Zillgitt, *California Conservatorships* § 5.33, at 181 (Cal. Cont. Ed. Bar 1968).

<sup>168</sup> The proposed law does not include authority for payment of surplus income in a guardianship proceeding since it would not be appropriate to make gifts from a minor's estate. It is not possible to predict the minor's needs during the minor's lifetime.

<sup>169</sup> See *Guardianship of Hudelson*, 18 Cal.2d 401, 115 P.2d 805 (1941).

similarly situated would minimize through estate planning techniques. In addition, there may be persons whom the conservatee would consider proper objects of bounty, and there may be charities or other activities that the conservatee supported before the conservatorship was established. The conservator may seek to minimize taxes through estate planning techniques or to make gifts from excess income or assets to charities, relatives, friends, and other objects of bounty that would be likely recipients of gifts from the conservatee. Persons interested in the estate may attempt to compel the conservator to take these actions.

In *Estate of Christiansen*,<sup>170</sup> the California Court of Appeal held that the "doctrine of substituted judgment" enables the guardian of an adult incompetent person to make gifts from the estate to carry out the presumed donative intent of the ward. In *Conservatorship of Wemyss*,<sup>171</sup> the California Court of Appeal extended the use of the doctrine of substituted judgment to conservatorships.

The proposed law gives statutory recognition to the doctrine of substituted judgment and lists by way of illustration matters that are to be considered in applying the doctrine. At the same time, the proposed law gives the court discretion and flexibility in applying the doctrine under the circumstances of each case. The proposed law applies only to conservators and not to guardians; the estate planning considerations that are important for the estate of an adult are not ordinarily present for the estate of a minor.

The proposed law also clarifies a number of matters that are uncertain under existing law. For example, the proposed law makes clear that the court may authorize the conservator to:

(1) Exercise the right of the conservatee as a surviving spouse to elect to take under or against the will of a deceased spouse.<sup>172</sup>

<sup>170</sup> 248 Cal. App.2d 398, 56 Cal. Rptr. 505 (1967).

<sup>171</sup> 20 Cal. App.3d 877, 880, 98 Cal. Rptr. 85, 87 (1971).

<sup>172</sup> A will that leaves community property in trust, including the community property interest of the surviving spouse, may contain a provision that, if the surviving spouse elects to take a statutory share of the community property, the surviving spouse forfeits benefits under the will. Brawerman, *Handling Surviving Spouse's Share of*

(2) Exercise a disclaimer on behalf of the conservatee.<sup>173</sup>

(3) Exercise or release a power of appointment of which the conservatee is the donee.<sup>174</sup>

(4) Exercise the power of the conservatee to revoke a revocable trust.<sup>175</sup>

*The new law gives the court authority to authorize the conservator to make an election on behalf of the conservatee whether to have community property administered in the estate of the conservatee's deceased spouse.*<sup>175a</sup>

The proposed law also gives the court discretion to require the production of the conservatee's estate plan (including the conservatee's will) for confidential examination in a proceeding requesting approval of a proposed action involving the exercise of substituted

*Marital Property*, in California Will Drafting § 8.7, at 229 (Cal. Cont. Ed. Bar 1965). It has been argued that a conservator ought to be able to exercise the right of the conservatee who is the surviving spouse to make this election. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.72, at 216-17 (Cal. Cont. Ed. Bar 1968).

<sup>173</sup> Probate Code Sections 190-190.10 allow beneficiaries to disclaim inter vivos gifts (outright or in trust), powers of appointment, and interests passing by will or by intestate succession, thereby permitting the disclaimant to avoid inheritance taxation. G. Hemmerling, California Will Drafting Supplement § 14.23, at 115 (Cal. Cont. Ed. Bar 1976). Probate Code Section 190.2 provides that a disclaimer on behalf of a conservatee shall be made by the conservator of the estate, but the statute contains no guidelines for determining when a conservator should make the disclaimer and does not address the question of whether prior court authorization is required.

<sup>174</sup> The authority of a conservator to exercise a power of appointment on behalf of the conservatee is not clear, but it has been suggested that "a conservator attempting to exercise a power should seek court authority." W. Johnstone & G. Zillgitt, California Conservatorships § 1.26, at 13 (Cal. Cont. Ed. Bar 1968). If the power permits the conservatee to appoint to himself or herself, an appointment to a third person will affect the conservatorship estate. See California Will Drafting §§ 13.22-13.24, at 466 (Cal. Cont. Ed. Bar 1965) (tax consequences). Yet existing law provides no standards for determining when a conservator should exercise or release a power of appointment.

<sup>175</sup> Existing law is unclear whether a conservator, even with court authority, may revoke a revocable trust created by the conservatee while competent. W. Johnstone, M. Levine, & G. Zillgitt, California Conservatorships Supplement § 5.72A, at 78 (Cal. Cont. Ed. Bar 1978); Drafting California Revocable Inter Vivos Trusts § 5.9, at 141 (Cal. Cont. Ed. Bar 1972). However, it has been urged that the conservator should have such power. W. Johnstone, M. Levine, & G. Zillgitt, *supra*.

<sup>175a</sup> See Prob. Code § 202.

judgment.<sup>176</sup> In exercising this discretion, the court will take into account any expressed or implied desire of the conservatee to keep a relevant document confidential. This desire will be balanced against the importance of the document as a factor to be considered in making a determination on the proposed action that will be in accord with the conservatee's probable intent.

### ADDITIONAL POWERS OF GUARDIAN NOMINATED BY WILL

Under existing law, the powers and duties of a testamentary guardian appointed by will may be "legally modified, enlarged, or changed" by the will.<sup>177</sup> However, the extent to which the will can change the statutory powers and duties is not clear.<sup>178</sup>

The proposed law replaces the vague provision of existing law with more detailed provisions for guardians nominated<sup>179</sup> by will. With respect to a guardian of the person, the will may give the guardian the same authority that a custodial parent would have.<sup>180</sup> With respect to a guardian of the estate, the will may give the guardian the authority to exercise—without notice, hearing, or prior

<sup>176</sup> *Vigne v. Superior Court*, 37 Cal. App.2d 346, 99 P.2d 589 (1940), held that the probate court lacked statutory authority to require the custodian of an incompetent ward's will (the custodian was not the lawyer who drafted the will) to deliver the will to the ward's guardian. The proposed law provides a limited exception to this holding by giving the court discretion to compel the custodian to deliver the will to the court for confidential consideration by the court and the attorneys in connection with a petition involving the exercise of substituted judgment. The court may adjudge any person disclosing the content of the will to be in contempt of court.

<sup>177</sup> Prob. Code § 1484.

<sup>178</sup> Schlesinger, *Testamentary Guardianships for Minors and Incompetents*, in California Will Drafting § 10.48, at 329 (Cal. Cont. Ed. Bar 1965). It has been said that a draftsman attempting to use the statutory provision and to modify the guardian's powers by will is "embarking on uncharted seas." *Id.*

<sup>179</sup> Under the proposed law, the guardian is "nominated" rather than "appointed" by will.

<sup>180</sup> Although a guardian of the person is said to stand in loco parentis, 39 Am. Jur.2d *Guardian and Ward* § 65 (1968), the guardianship law places some limits on the guardian's power to act as a parent. For example, the guardian may not change the ward's residence and domicile to a place outside California without obtaining court permission. Prob. Code § 1500. Under the proposed law, the will could grant the guardian the power to change the residence and domicile of the ward without court permission.

court authorization—any one or more of the powers that may be granted by the court under the provisions concerning independent exercise of powers.<sup>181</sup> The court for good cause may limit the powers granted by the will.

### COURT CONFIRMATION OR INSTRUCTIONS

Under existing law, a conservator may petition the court for instructions in advance of a proposed action or for confirmation of an action already taken.<sup>182</sup> A guardian, however, may only obtain instructions in advance and only where no other or different procedure is provided by statute.<sup>183</sup>

The proposed law continues the conservatorship provisions and extends them to guardianships.<sup>184</sup> This will give guardians the same flexibility as conservators now have to obtain instructions or confirmation from the court.

### COMPENSATION OF GUARDIAN OR CONSERVATOR OR ATTORNEY

#### Existing Law Generally

Under existing law, every guardian and conservator is allowed just and reasonable compensation for services and reasonable expenses, including attorney's fees.<sup>185</sup> The guardianship provisions authorize an attorney who has rendered services to a guardian to petition the court for compensation,<sup>186</sup> and these provisions appear also to apply to conservatorship.<sup>187</sup> There is no express authority in the

<sup>181</sup> See discussion in text accompanying notes 163-65 *supra*.

<sup>182</sup> W. Johnstone & G. Zillgitt, *California Conservatorships* § 5.9, at 156 (Cal. Cont. Ed. Bar 1968); see Prob. Code § 1860; *Place v. Trent*, 27 Cal. App.3d 526, 530, 103 Cal. Rptr. 841, 843 (1972). The petition for instructions may also be filed by a creditor or other interested party. Prob. Code § 1860.

<sup>183</sup> Prob. Code § 1516; W. Johnstone & G. Zillgitt, *supra* note 182.

<sup>184</sup> See also discussion in text accompanying notes 117-18 *supra*.

<sup>185</sup> Prob. Code §§ 1556, 1908.

<sup>186</sup> Prob. Code § 1556.1.

<sup>187</sup> See Prob. Code § 1702 (law applicable to conservatorship where no specific provision of Division 5 applies); W. Johnstone & G. Zillgitt, *California Conservatorships* §§ 6.8, 6.25, at 233, 244 (Cal. Cont. Ed. Bar 1968).

existing statutes for either (1) periodic payments on account to a guardian, conservator, or attorney or (2) a contingent fee contract between a guardian or conservator and an attorney for legal services.<sup>188</sup>

### Periodic Payments

The proposed law permits the court to give advance authority for periodic payments on account to the guardian or conservator (whether of the person or estate or both) and to the attorney for such guardian or conservator. The court has similar authority under Probate Code Section 1122 to authorize periodic payments of compensation to a trustee. In fixing the amount of the periodic payment, the court is required to take into account the services to be rendered on a periodic basis and the reasonable value of such services. The guardian or conservator of the estate may make the periodic payments authorized by the court only if the services for which the payment is authorized are actually rendered. The payments are subject to review by the court at the next regular accounting, and the court is required to take appropriate action if the court determines that the payments are excessive or inadequate in view of the services actually rendered.

This new authority for periodic payments may afford tax advantages to the estate in certain situations<sup>189</sup> and will ensure that compensation is received nearer to the time when the services are performed.

### Attorney Contingent Fee Contracts

The proposed law includes an express provision to make clear that the guardian or conservator, with court authorization or approval, may make a contingent fee contract with an attorney when the matter is of a type that is customarily the subject of a contingent fee contract and the contract is in the best interest of the ward or

<sup>188</sup> See generally *Estate of Muhammad*, 16 Cal. App.3d 726, 733, 94 Cal. Rptr. 856, 861 (1971) (contingent fee contract authorized under Prob. Code § 1020.1); *Leonard v. Alexander*, 50 Cal. App.2d 385, 387, 122 P.2d 984, 985 (1942) (attorney's fees in malpractice action brought on behalf of minor).

<sup>189</sup> See *W. Johnstone & G. Zillgitt, California Conservatorships* § 6.12, at 235 (Cal. Cont. Ed. Bar 1968).

conservatee or the estate.<sup>190</sup> This authorization will provide desirable flexibility and certainty to the guardian or conservator in making contracts with attorneys in cases where a contingent fee contract would customarily be used and would be appropriate under the circumstances. The contract may, but need not, be made prior to the rendering of any services by the attorney.

### **Petition by Attorney or Conservator of the Person for Compensation**

The proposed law makes clear that an attorney who has rendered legal services to the guardian or conservator may petition on his or her own behalf for an award of fees in both guardianship and conservatorship proceedings.<sup>191</sup> The proposed law also makes clear that a guardian or conservator of the person may petition for compensation.<sup>192</sup>

## **NOTICES**

### **Notice of Hearings Generally**

Many provisions of existing guardianship and conservatorship law require that notice of hearing be given as required by Section 1200 of the Probate Code.<sup>193</sup> Section 1200 deals with the notice required in proceedings for the administration of decedents' estates, and the section is not well tailored to the requirements of guardianship and conservatorship proceedings.<sup>194</sup>

<sup>190</sup> The most extensive use of the attorney's contingent fee contract is in personal injury and estate litigation. 1 B. Witkin, *California Procedure Attorneys* § 83, at 88 (2d ed. 1970). Such a contract may also be appropriate in other types of litigation.

<sup>191</sup> This is consistent with what appears to be existing law. See notes 186 and 187 *supra*.

<sup>192</sup> Although the existing statute is unclear as to whether a guardian or conservator of the person may independently petition the court for an allowance of compensation (see Prob. Code § 1556), it is standard practice for the guardian or conservator of the person to do so. See W. Johnstone & G. Zillgitt, *California Conservatorships* § 6.26, at 244 (Cal. Cont. Ed. Bar 1968).

<sup>193</sup> Prob. Code §§ 1483.1, 1515, 1515.5, 1516, 1530a, 1556, 1556.1, 1557, 1557.1, 1803, 1853, 1856, 1859, 1860, 1861, 1901.5, 2001, 2053; see Prob. Code §§ 1558, 1606, 1702. See also Prob. Code § 1655.

<sup>194</sup> Section 1200 of the Probate Code provides for posting of notice at the courthouse by the clerk and mailing to the personal representative and all persons who have appeared or have requested special notice.



The proposed law eliminates the references to Section 1200<sup>195</sup> and substitutes a new general requirement of mailed notice (*unless the court for good cause dispenses with notice*) to the guardian or conservator . . . , to the ward if 14 years of age or older, to the conservatee, to the spouse (if any) of the ward or conservatee, and to any interested person who has appeared in the particular matter to which the hearing relates. The provision . . . for posting of notice is narrowed in the proposed law so that posting is required only in connection with certain sales.

Existing conservatorship law permits the court, where notice is required, to dispense with notice or to require such further or additional notice as the court deems proper.<sup>196</sup> [Material omitted.] *The new law continues the authority to dispense with notice, but the court may not dispense with notice to persons who have requested special notice.*

The proposed law continues the court's authority to require further or additional notice, and makes clear that this includes a longer period of notice.<sup>197</sup> The proposed law includes general authority for the court for good cause to shorten the time for any notice required by the guardianship-conservatorship law except for notice of hearing on a petition for appointment of a guardian or conservator.

Express authority is included in the proposed law for the court to continue or postpone any hearing in the interest of justice, and no further notice of the continued or postponed hearing is required unless otherwise ordered by the court.<sup>198</sup> The Judicial Council is given statutory authority to prescribe the form in which notice is given.

The proposed law continues existing law by providing for publication of notice in connection with sales of real and

<sup>195</sup> In a few instances, the proposed law incorporates by reference procedural provisions applicable to executors or administrators. Because of this, the proposed law contains a provision that, when such incorporation by reference is made, a reference to Section 1200 in the provisions applicable to executors or administrators shall be deemed to be a reference to the notice provisions of the new guardianship-conservatorship law.

<sup>196</sup> Prob. Code § 2001.

<sup>197</sup> This appears to be the meaning of the existing provisions of Probate Code Section 2001. See W. Johnstone & G. Zillgitt, *California Conservatorships* § 2.8, at 30 (Cal. Cont. Ed. Bar 1968).

<sup>198</sup> This is consistent with Probate Code Section 1205 (decendent's estate).

personal property of the estate under the same circumstances as sales of real or personal property of a decedent's estate.<sup>199</sup>

*The new law also requires notice to the Veterans Administration, the State Department of Mental Health, and the State Department of Developmental Services in specified types of cases.*

### **Requests for Special Notice**

The proposed law consolidates the existing guardianship and conservatorship provisions relating to requests for special notice<sup>199a</sup> and adds new provisions permitting requests for special notice of the following:<sup>200</sup>

(1) A petition for transfer of the proceeding to another county.

(2) The filing of an inventory and appraisalment of the estate.

(3) A petition to direct or allow payment of a debt or claim or for attorney's fees.

(4) A petition to allow compensation or expenses of the guardian or conservator.

(5) Petitions concerning the support, maintenance, or education of the ward or conservatee or of a person legally entitled to support from the ward or conservatee.

(6) A petition for payment of surplus income to relatives of the conservatee or for gifts or other disposition of the conservatee's assets under the doctrine of substituted judgment.

<sup>199</sup> Probate Code Section 1538 (proceeding for order authorizing execution of promissory notes for money borrowed, mortgages, deeds of trust, certain leases, and agreements for sale of, or for options to purchase, mining claims or real property worked as mines) appears to require published notice by incorporating the provisions of Section 1201 (repealed in 1979). The proposed law does not carry over the publication requirement of Section 1201 into the new guardianship-conservatorship law in these limited cases.

<sup>199a</sup> Prob. Code §§ 1600-1602 (guardianship), 2002-2005 (conservatorship).

<sup>200</sup> Some of the matters listed are merely specific instances of matters now covered under the broad language of subdivision (5) of existing Probate Code Section 1600 (petitions "for allowances of any nature payable from the ward's estate").

(7) A petition for the resignation of the guardian or conservator.

(8) A petition for conveyance or transfer of property to complete a preexisting contract or to resolve adverse claims to property.

(9) A petition to compromise a claim or to extend, renew, or modify an obligation.

*The new law also permits a request for special notice of a petition for an order affecting the legal capacity of the conservatee.*<sup>200a</sup>

## JURISDICTION AND VENUE

Guardianship and conservatorship proceedings are brought in the superior court of the county in which the ward or conservatee resides or is temporarily domiciled; a guardianship proceeding for an incompetent person may be brought in any county; and a guardianship or conservatorship proceeding for a nonresident may be brought in the county in which the ward or conservatee is temporarily living or in which property is located.<sup>201</sup>

Under the proposed law, the superior court continues to have jurisdiction of guardianship and conservatorship proceedings. The proper county for commencement of the proceeding for a California resident is the county of residence or such other county as may be in the best interests of the proposed ward or conservatee. If the proposed ward or conservatee is a nonresident, the proper county for commencement of a proceeding for guardianship or conservatorship of the person or estate, or both, is the county where the proposed ward or conservatee is temporarily living or such other county as may be in the best interests of the proposed ward or conservatee. In the case of a guardianship or conservatorship of the estate of a nonresident, any county where the proposed ward or conservatee has property is also a proper county. The addition of authority to commence a guardianship or conservatorship proceeding in any county which will serve

<sup>200a</sup> See discussion in text accompanying notes 68-69 *supra*.

<sup>201</sup> Prob. Code §§ 1440, 1460, 1570, 2051.

the best interest of the proposed ward or conservatee avoids the need to litigate the issue of residence or domicile when it is in dispute.<sup>202</sup>

### JURY TRIAL

There is no right to a jury in guardianship or conservatorship proceedings unless the right is granted by statute.<sup>203</sup> In guardianship proceedings, a statutory right to a jury exists in a hearing on a petition for appointment of a guardian for an alleged incompetent adult, for restoration to capacity of an incompetent adult, and for removal of a guardian.<sup>204</sup> In conservatorship proceedings, the right exists in a hearing on a petition for appointment of a conservator, for termination of conservatorship, and for removal of a conservator.<sup>205</sup>

The proposed law preserves the right to a jury in a hearing on a petition for the establishment of a conservatorship or for the termination of conservatorship.<sup>206</sup>

The proposed law eliminates right to trial by jury on a petition for removal of a guardian or conservator. The protection of jury trial for the guardian or conservator is not appropriate. The court should have the sole power to judge the performance of the guardian or conservator and to remove the guardian or conservator if necessary.<sup>207</sup>

<sup>202</sup> See *Guardianship of Smith*, 147 Cal. App.2d 686, 306 P.2d 86 (1957); *Hillman v. Stults*, 263 Cal. App.2d 848, 70 Cal. Rptr. 295 (1968).

<sup>203</sup> See *Estate of Beach*, 15 Cal.3d 623, 642, 542 P.2d 994, 1006, 125 Cal. Rptr. 570, 582 (1975). The proposed law makes clear that only express statutory jury trial rights are recognized.

<sup>204</sup> Prob. Code §§ 1471, 1580, 1606.5. See also Prob. Code §§ 1461, 1461.1, 1461.5 (advice of rights); Prob. Code § 1435.14.

<sup>205</sup> Prob. Code §§ 1755, 1951, 2006. See also Prob. Code §§ 1754, 1754.1 (advice of rights). It has been suggested that there also may be a right to a jury to try objections to a petition for transfer of a conservatorship proceeding. *W. Johnstone & G. Zillgitt, California Conservatorships* § 2.26, at 44 (Cal. Cont. Ed. Bar 1968).

<sup>206</sup> The proposed law does not grant a jury trial on the extent to which the conservatee's legal capacity should be broadened by court order.

<sup>207</sup> The guardian or conservator is an officer of the court and is subject to the court's supervision. See Prob. Code §§ 1400, 1702; *Guardianship of Reynolds*, 60 Cal. App.2d 669, 674-75, 141 P.2d 498, 501 (1943); 39 Am. Jur.2d *Guardian and Ward* § 1 (1968).

## PREFERENCES IN SETTING FOR TRIAL OR HEARING

Legislation signed by the Governor in 1978 would have added to conservatorship law the requirement that, in a proceeding for the appointment of a conservator, court or jury trial shall commence within 10 judicial days of the date of demand and that any continuance shall not exceed 15 judicial days.<sup>208</sup> This requirement did not become law because it was superseded by a later amendment to the same section which did not include the requirement.<sup>209</sup> The 10-day time period is unrealistically short, particularly where jury trial has been demanded. The proposed law does not include this priority for trial.<sup>210</sup>

Existing law also requires that all petitions "filed under" the chapters on powers and duties of guardians and conservators, respectively, shall be set for hearing within 30 days of the filing of the petition.<sup>211</sup> There appears to be no justification for giving special priority to this limited class of petitions. The proposed law does not continue the priority.

## OATH, LETTERS, AND BOND

Under existing law, if a guardian's bond is furnished by an authorized surety company, the bond must be equal to or greater than the value of the personal property and the probable annual rents, issues, and profits of all property

<sup>208</sup> 1978 Cal. Stats. ch. 1315, § 6.

<sup>209</sup> 1978 Cal. Stats. ch. 1369, § 3.

<sup>210</sup> It should be noted that the court may appoint a temporary conservator to serve while the case is awaiting trial.

The proposed law also does not include the provision of Chapter 1315 of the Statutes of 1978 that demand for court or jury trial shall be made within five days *after* the hearing on the conservatorship petition. This is a matter better left to court discretion. If the proposed conservatee has an attorney at the initial hearing, for example, there is no sound reason to permit the attorney to delay demand for jury trial until several days after the hearing. See generally W. Johnstone & G. Zillgitt, *California Conservatorships* § 3.46, at 88 (Cal. Cont. Ed. Bar 1968) ("if the estimated trial time is short and no jury is demanded, the matter will generally be heard on the day set for hearing, at the end of the calendar or in the afternoon").

<sup>211</sup> Prob. Code §§ 1500(b) (guardianship), 1851(a) (conservatorship). The provisions were added by 1976 Cal. Stats. ch. 1357, a measure designed to provide procedural safeguards to the proposed ward or conservatee when a guardianship or conservatorship petition is filed. See *Review of Selected 1976 California Legislation*, 8 Pac. L.J. 165, 175-77 (1977). However, the provisions fail to accomplish this purpose since they do not apply to petitions to establish a guardianship or conservatorship under the Probate Code.

belonging to the ward; if the bond is furnished by a surety which is not an authorized surety company, the bond must be equal to or greater than double that amount.<sup>212</sup> This is closely similar to the standard for determining the amount of the bond of an executor or administrator.<sup>213</sup> The bond of a conservator, on the other hand, is required to be equal to or less than the bond of an administrator.<sup>214</sup>

Guardians and conservators perform the same function with respect to the estate of the protected person, and there is no justification for different standards for determining the amount of the required bond. The proposed law fixes the amount of the bond at the lowest amount permitted under the provision applicable to administrators and executors, but the court is authorized, upon a showing of good cause, to increase or decrease the amount of the bond that otherwise would be required.

The conservatorship statute authorizes reduction of the amount of the bond when money, securities, or personal assets of the conservatorship estate are deposited in a bank, savings and loan association, or trust company on the condition that the money, securities, or personal assets may be withdrawn only upon authorization of the court.<sup>215</sup> The guardianship statute provides similar authority in the case of the deposit of money or securities (but not other property) of the guardianship estate.<sup>216</sup> The proposed law includes a uniform provision based on the broader provisions of the conservatorship statute.<sup>217</sup>

The guardianship statute provides a three-year statute of limitations for an action against the sureties on the bond, and the conservatorship statute provides a two-year

<sup>212</sup> Prob. Code § 1480.

<sup>213</sup> See Prob. Code § 541.

<sup>214</sup> Prob. Code § 1802.

<sup>215</sup> Prob. Code §§ 1802 (incorporating Prob. Code § 541.1), 1804 (incorporating Fin. Code § 1586).

<sup>216</sup> Prob. Code § 1405.1.

<sup>217</sup> The requirement in the Code of Civil Procedure that a guardian's bond be in the name of and be payable to the State of California is deleted in the bill recommended to make conforming changes to other codes necessitated by the proposed law. The deleted provision is superseded by the inconsistent provision in the proposed law that the guardian's bond is to protect the ward and those interested in the estate. Compare Code Civ. Proc. §§ 304, 304.1 (guardian's bond in favor of state) with Prob. Code §§ 1480 (guardian must furnish bond to ward), 1805 (conservator's bond sued on for use and benefit of conservatee).

limitation period.<sup>218</sup> The proposed law provides a uniform three-year statute of limitations.

## ACCOUNTS

A guardian or conservator must file a first account one year after appointment.<sup>219</sup> A guardian must thereafter file accounts no less frequently than biennially, but the court may require more frequent accounting.<sup>220</sup> A conservator must file subsequent accounts biennially unless the court orders more or less frequent accounts.<sup>221</sup> The more flexible requirements of the conservatorship statute permit less frequent accountings if, for example, the circumstances of the particular estate are such that the costs of a biennial accounting would not be in the best interests of the estate. The proposed law adopts this provision for both guardians and conservators.

Neither the guardianship nor the conservatorship statute specifies the contents of the account. The proposed law includes a provision, drawn from existing local court rules, outlining the contents of the account.

Neither the guardianship nor conservatorship statute contains a provision relating to objections to the account. However, the existing practice appears to be that the ward or conservatee, any relative or friend of the ward or conservatee, or any creditor or other person interested in the estate may file written objections to items of the account.<sup>222</sup> The proposed law codifies existing practice.

*The new law includes a new optional procedure for compelling a guardian or conservator by court order to file an account that is overdue.*

*The new law also permits the court to make an order dispensing with accountings in the case of a small estate*

<sup>218</sup> Prob. Code §§ 1487 (guardianship), 1806 (conservatorship).

<sup>219</sup> Prob. Code §§ 1553 (guardian), 1904 (conservator).

<sup>220</sup> Prob. Code § 1553.

<sup>221</sup> Prob. Code § 1904.

<sup>222</sup> See W. Johnstone & G. Zillgitt, California Conservatorships § 6.42, at 253 (Cal. Cont. Ed. Bar 1968).

*that satisfies the requirements specified in the new law. However, if such an order is made, any interested person may petition the court for an order requiring the guardian or conservator to make accountings as would otherwise be required absent the order dispensing with accountings.*

### REMOVAL OR RESIGNATION

A guardian or conservator may be removed under existing law when the guardianship or conservatorship is no longer necessary.<sup>223</sup> The proposed law eliminates this ground for removal. If the guardianship or conservatorship is no longer necessary, the guardianship or conservatorship should be terminated.

A conservator's resignation, when allowed by the court, takes effect under existing law upon settlement of the conservator's accounts.<sup>224</sup> The proposed law revises this provision to give the court latitude in determining when the resignation of a guardian or conservator becomes effective. It may be desirable, for example, for the resignation to become effective immediately and for the court to appoint a successor even though the accounts of the resigning guardian or conservator have not yet been settled.<sup>225</sup>

*The 1980 limited conservatorship provisions proposed by Assembly Bill 2898 contain special rules governing when the limited conservatorship terminates.*<sup>225a</sup>

### APPEALS

Appeals in guardianship proceedings are limited by existing law to appeals from an order granting or revoking letters, settling an account, or instructing or directing the guardian and to appeals from a refusal to make one of the foregoing orders.<sup>226</sup> Orders in conservatorship

<sup>223</sup> Prob. Code §§ 1580, 1951.

<sup>224</sup> Prob. Code § 1953.

<sup>225</sup> See W. Johnstone & G. Zillgitt, *California Conservatorships* § 7.16, at 272 (Cal. Cont. Ed. Bar 1968).

<sup>225a</sup> Prob. Code § 1860.5.

<sup>226</sup> Prob. Code § 1630.



proceedings, on the other hand, are given the broadest possible appealability—an appeal may be taken from “any” order except appointment of a temporary conservator.<sup>227</sup>

The appealability of guardianship orders is too narrow, and the appealability of conservatorship orders is too broad.<sup>228</sup> The proposed statute provides for appeal in a guardianship or conservatorship proceeding from the making of, or the refusal to make, those types of orders listed in the existing guardianship statute and, in addition, from the making of, or refusal to make, any of the following orders:

(1) Directing, authorizing, or confirming property transactions.

(2) Adjudicating the merits of a claim to property.

(3) Directing or allowing payment of a debt or claim or fixing, directing, or allowing an attorney’s fee.

(4) Fixing, directing, or allowing payment of the compensation or expenses of a guardian or conservator.

(5) Directing, approving, or modifying payments for the support, maintenance, or education of the ward or conservatee or of a person legally entitled to support, maintenance, or education from the ward or conservatee.

(6) Granting permission to fix the residence . . . of the ward or conservatee at a place not within this state.

(7) Directing transfer of the assets to an out-of-state fiduciary.

(8) Approving payment of surplus income to relatives of the conservatee.

(9) Approving a gift or other disposition of the conservatee’s assets under the doctrine of substituted judgment.

(10) Affecting the legal capacity of the conservatee.

(11) *Allowing or denying a petition of the guardian or conservator to resign.*

(12) *Removing or discharging the guardian or conservator.*

(13) *Discharging the surety on the bond of the guardian or conservator.*

<sup>227</sup> Prob. Code § 2101. But see note 228 *infra*.

<sup>228</sup> See, e.g., *Conservatorship of Smith*, 9 Cal. App.3d 324, 88 Cal. Rptr. 119 (1970) (notwithstanding the broad language of Prob. Code § 2101, appeals in conservatorship proceedings are limited).

This scheme is drawn in part from the provisions found in the law governing appeals in case of a decedent's estate.<sup>229</sup>

### NONRESIDENT WARD OR CONSERVATEE

If a guardianship or conservatorship has been established for a nonresident<sup>230</sup> or for a person who is no longer a resident, existing law provides a procedure for transfer of the proceeding to the appropriate court in any other state in which the ward or conservatee resides at the time of the application for the transfer.<sup>231</sup> Although transfer of the proceeding may work well if the transfer is to another county in California,<sup>232</sup> transfer outside the state creates a

<sup>229</sup> See Prob. Code § 1240.

<sup>230</sup> A guardianship or conservatorship of the person of a nonresident who is temporarily in California may be necessary where there is a great and immediate need, such as in a medical emergency. Guardianship or conservatorship of the person of a nonresident is authorized by Probate Code Sections 1570 (guardianship) and 2051 (conservatorship). Despite the broad language of the statutory provisions, local court rules indicate that the court will not appoint a guardian or conservator of the person for a nonresident not present in California. See, *e.g.*, Contra Costa County Probate Policy Manual para. 702, Fresno County Probate Policy Memoranda para. 812, Los Angeles County Probate Policy Memoranda para. 17.03, Marin County Rules of Probate Practice para. 1126, Orange County Probate Policy Memorandum para. 9.16, San Bernardino County Probate Policy Memoranda para. 901, San Francisco County Probate Policy Manual para. 16.24, and Stanislaus County Probate Policy Manual para. 1402, in California Local Probate Rules (2d ed. Cal. Cont. Ed. Bar 1977). See also *Grinbaum v. Superior Court*, 192 Cal. 566, 221 P. 651 (1923) (former Code Civ. Proc. § 1793, now Prob. Code § 1570, did not give California court jurisdiction to appoint a guardian of the person for a nonresident not present in California).

Where a nonresident has property in California, it may be desirable or necessary to appoint a guardian or conservator of the estate. Appointment in this situation is authorized by Probate Code Sections 1570 (guardianship) and 2051 (conservatorship). In some instances, it may be in the best interest of the nonresident not to have a guardian or conservator in California. For example, if the property in California is personal property insignificant in relation to property outside the state, it may be desirable to remove the property to the other jurisdiction where it can be administered by the guardian, conservator, or other fiduciary administering the estate in the place of residence. Probate Code Sections 1572-1574 provide a procedure for removal of property to the state of residence where there is no California guardian or conservator upon application of the guardian or conservator or other fiduciary appointed in the state of residence. The substance of these sections is continued in the proposed law.

<sup>231</sup> Prob. Code §§ 1603 (guardianship, adopting by reference the procedure provided in the conservatorship statute), 2051-2055 (conservatorship).

<sup>232</sup> The provisions for transfer of the proceeding outside California are combined in the existing statute with the provisions for transfer of the proceeding to another county within California. To avoid confusion, the proposed law covers transfers to other California counties in a separate set of statutory provisions.

number of difficulties and uncertainties.<sup>233</sup>

In the case of a guardianship or conservatorship of the person, transfer of the proceeding is unnecessary. If the guardianship or conservatorship was established for a nonresident, the guardianship or conservatorship needs only to be terminated when the need for the California proceeding no longer exists; and, if a guardianship or conservatorship in the place of residence is required, appropriate proceedings can be commenced in that place. If the guardianship or conservatorship was established for a person who is no longer a resident, the existing transfer procedure is cumbersome.<sup>234</sup> It would be preferable to terminate the California proceeding, for example, (1) upon the appointment and qualification of a guardian or conservator of the person in the other state or (2) upon the determination by an appropriate court of the other state that a guardianship or conservatorship of the person is not needed.<sup>235</sup>

In the case of a guardianship or conservatorship of the estate, the existing statute appears to assume that all the property will be transferred to the other state and the California proceeding terminated.<sup>236</sup> Yet, if the estate includes real property in California, it is not clear that the California proceeding can be transferred to another state, or even whether all of the other assets may be transferred

<sup>233</sup> One troublesome problem is that of sending the papers in the file to the transferee court in the other state. Although the existing statute directs the California court clerk to send all the papers in the file to the court in the other state (Prob. Code § 2053), some courts are understandably reluctant to do so, and the practice varies among the counties. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 2.34, at 49 (Cal. Cont. Ed. Bar 1968). The proposed law eliminates this problem since the papers on file in the California proceeding will be retained as in any other case where there has been a disposition of some or all of the assets of the estate.

<sup>234</sup> Because the ward or conservatee must reside in the other state when the application for transfer is made, the guardian or conservator must first obtain permission of the California court to move the residence and domicile of the ward or conservatee, then commence proceedings in the other state to have the same or a different guardian or conservator appointed, and then petition in California to transfer the California proceedings. See Prob. Code §§ 1500, 1603 (guardianship), 1851, 2052 (conservatorship); *W. Johnstone & G. Zillgitt, California Conservatorships* § 2.28, at 45 (Cal. Cont. Ed. Bar 1968).

<sup>235</sup> This procedure would appropriately leave to the state of residence the decisions as to whether the ward or conservatee is in need of a guardian or conservator of the person and, if so, who would be a proper person to serve in that capacity.

<sup>236</sup> See Prob. Code § 2055.

to the out-of-state guardian or conservator and the California proceeding retained only for the real property in this state.<sup>237</sup> The proposed law replaces the existing scheme with provisions authorizing the court to order the transfer of some or all of the assets to a guardian or conservator in a jurisdiction outside California where the ward or conservatee is a resident.<sup>238</sup> If all the assets of the estate are so transferred, the guardian or conservator can petition for the termination of the California proceeding on that ground.<sup>239</sup> Otherwise, the California proceeding can be continued as long as is necessary.

### EFFECT ON EXISTING GUARDIANSHIPS AND CONSERVATORSHIPS

The proposed law converts a guardianship of an adult or of the person of a married minor<sup>240</sup> in existence on the operative date (January 1, 1981) into a conservatorship. [Material omitted.]

Guardianships of unmarried minors, guardianships of the estate of married minors, and conservatorships in existence on the operative date will continue as such and will be governed by the proposed law.

*Under the new law, a conservatee subject to a conservatorship of the estate lacks legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate except for the reasonable value of*

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<sup>237</sup> See W. Johnstone & G. Zillgitt, California Conservatorships § 2.28, at 45 (Cal. Cont. Ed. Bar 1968).

<sup>238</sup> The new provisions are drawn from provisions enacted in 1971 providing a procedure for the transfer of some or all of the assets of a trust to another jurisdiction outside of California. Prob. Code §§ 1139-1139.7 (1971 Cal. Stats. ch. 958, § 9).

<sup>239</sup> Transfer of the proceeding under existing law does not avoid the need to make a final accounting and to petition for discharge. Prob. Code §§ 1603 (guardianship), 2055 (conservatorship).

<sup>240</sup> Under existing law, "[n]o guardian shall be appointed of the person of a married minor solely by reason of such minority." Prob. Code § 1433. And, "[w]here the appointment of a guardian was made solely because of the ward's minority, the marriage of a minor ward terminates the guardianship of the person." Prob. Code § 1590. It thus appears that, where there is an existing guardianship of the person of a married minor, there has been at least an implied finding that the minor is suffering from some mental disability or impairment and that the minor will need the continuing protection of a conservatorship under the new law.

necessaries.<sup>241</sup> This preserves the legal effect of guardianships of adults in existence on January 1, 1981,<sup>242</sup> and of conservatorships in existence on the operative date where the conservator was appointed on the ground that the conservatee was a person "for whom a guardian could be appointed."<sup>243</sup> For conservatorships in existence on January 1, 1981, where the conservator was not appointed on this ground, however, the proposed law takes away the limited legal capacity which the conservatee had under prior law,<sup>244</sup> but at the first periodic review after January 1, 1981, the court is required to determine whether an order should be made broadening the legal capacity of the conservatee.

The proposed law authorizes the Judicial Council to make additional rules for the orderly transition of pending guardianship and conservatorship proceedings.

## UNIFORM VETERANS' GUARDIANSHIP ACT

[Material omitted.]

*Under follow-up legislation recommended by the Law Revision Commission and enacted in 1980, the Uniform Veterans' Guardianship Act was repealed. The text of the Commission's recommendation proposing the repeal follows.*

California first enacted the Uniform Veterans' Guardianship Act in 1929.<sup>1</sup> The Uniform Act was revised and continued in the 1979 comprehensive revision of guardianship-conservatorship law.<sup>2</sup>

<sup>241</sup> See discussion in text accompanying notes 67-69 *supra*.

<sup>242</sup> See *Hellman Commercial Trust & Sav. Bank v. Alden*, 206 Cal. 592, 604-05, 275 P. 794, 799-800 (1929).

<sup>243</sup> See *Board of Regents State Univs. v. Davis*, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, 1051 n.6, 1054, 120 Cal. Rptr. 407, 411 n.6, 414 (1975).

<sup>244</sup> *Id.*

<sup>245</sup> [Omitted.]

<sup>1</sup> 1929 Cal. Stats. ch. 663. In 1931, the Uniform Veterans' Guardianship Act was codified in the Probate Code (§§ 1650-1669). 1931 Cal. Stats. ch. 281.

<sup>2</sup> See 1979 Cal. Stats. ch. 726, enacting Prob. Code §§ 2900-2918 (operative January 1, 1981). The 1979 revision of guardianship-conservatorship law was enacted upon recommendation of the California Law Revision Commission. See *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978). Pursuant to the Commission's recommendation, the Uniform Veterans'

The Uniform Act provides special procedures for appointment of a guardian or other fiduciary to receive payments from the Veterans Administration when one is needed as a precondition of paying benefits to a minor or incompetent person. The Uniform Act also imposes regulations on the manner of handling and disposing of the payments so received. Nevertheless, if the minor or incompetent person has estate assets derived from other sources and a guardian or conservator is needed, a guardianship or conservatorship must be established under the general law since the Uniform Act relates only to VA benefits. For this reason, the general practice<sup>3</sup> has been to establish a guardianship or conservatorship under the general law and not under the Uniform Act. As a result, the Uniform Act has been little used.<sup>4</sup>

A number of other states have repealed the Uniform Veterans' Guardianship Act and leave veterans' guardianships to be governed by general law relating to the administration of estates of persons unable to manage their own property.<sup>5</sup> The Commission recommends that the Uniform Veterans' Guardianship Act be repealed as a separate part of the guardianship-conservatorship statute

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Guardianship Act was continued without major substantive revision. However, two obsolete sections relating to commitment, transfer, or discharge of persons of unsound mind to or from facilities operated by the Veterans Administration or other agency of the United States government (former Sections 1663 and 1664 of the Probate Code) were not continued, since these provisions have been superseded by the Lanterman-Petris-Short Act (Welf. & Inst. Code §§ 5000-5464).

<sup>3</sup> The Commission's understanding about the general practice where veterans' benefits are concerned is based on information furnished informally by the Veterans Administration.

<sup>4</sup> Prior to the enactment of the 1979 guardianship-conservatorship law, a problem existed if a conservatorship under the general conservatorship statute was used instead of a guardianship under the Uniform Act. This problem was created by the requirement that VA benefits be paid to the adult beneficiary unless the beneficiary is incompetent. It was unclear under former law whether the appointment of a conservator was an adjudication that the conservatee was incompetent for the purposes of payment of VA benefits. See Board of Regents State Univ. v. Davis, 14 Cal.3d 33, 533 P.2d 1047, 120 Cal. Rptr. 407 (1975). The new guardianship-conservatorship statute makes clear that the appointment of a conservator deprives the conservatee of legal capacity with respect to estate assets. See Prob. Code § 1872 (enacted by 1979 Cal. Stats. ch. 726, operative January 1, 1981). Accordingly, the problem under former law will no longer exist when the new law becomes operative.

<sup>5</sup> See 8 Uniform Laws Annotated, Estate, Probate and Related Laws 645 (master ed. 1972); *id.* at 173-74 (Supp. 1979).

and that the useful provisions of the Uniform Act be continued in the general law. Since the Veterans Administration needs to be advised of proceedings taken under general law which may affect the interest of the ward or conservatee in money or other benefits from the VA, the notice provisions of the Uniform Veterans' Guardianship Act<sup>6</sup> should be continued and expanded<sup>7</sup> in general law. Certain other useful provisions of the Uniform Act<sup>8</sup> should also be continued in general law.

## COMMUNITY OR HOMESTEAD PROPERTY OF INCOMPETENT PERSONS

### Introduction

In 1973, the applicable Civil Code provisions were revised<sup>246</sup> to provide that, where both spouses are competent,<sup>247</sup> either spouse has the management and control of community real<sup>248</sup> and personal<sup>249</sup> property. This

<sup>6</sup> See Prob. Code §§ 2906 (petition for appointment of guardian or conservator), 2906 (accounts), 2910 (extraordinary compensation), 2911 (investment or deposit of surplus funds), 2912 (support of third persons), 2913 (purchase of real property), 2915 (termination of proceeding). These sections were added by 1979 Cal. Stats. ch. 726, operative January 1, 1981.

<sup>7</sup> In addition to the matters of which the Veterans Administration is required to be given notice under existing law (see note 6 *supra*), notice to the VA should be required of (1) a petition for support of the ward or conservatee out of the estate notwithstanding that a third person is liable for such support, (2) a petition relating to the sale of real or personal property of the estate, (3) a petition for authorization of a proposed action under the doctrine of substituted judgment, (4) a petition for independent exercise of powers, (5) an inventory and appraisal of the estate or a supplemental inventory and appraisal, and (6) a proceeding to authorize a transaction involving community or homestead property.

<sup>8</sup> Probate Code Section 2914, which requires copies of public records needed to determine eligibility for VA benefits to be furnished to the applicant free of charge, should be continued by appropriate amendments to Section 6107 of the Government Code. And the provisions of Probate Code Section 2903(b), which require a petition for appointment of a guardian to contain certain descriptive information about the proposed ward and to set forth the amount of VA benefits then due and the amount of probable future payments, should be continued in substance by appropriate amendments to Sections 1510 (guardianship) and 1821 (conservatorship) of the Probate Code. Probate Code Sections 2914, 2903, 1510, and 1821 were added by 1979 Cal. Stats. ch. 726 (operative January 1, 1981).

<sup>246</sup> 1973 Cal. Stats. ch. 987.

<sup>247</sup> See Civil Code § 5128.

<sup>248</sup> Civil Code § 5127.

<sup>249</sup> Civil Code § 5125.

right of management and control is subject to the restriction that a spouse may not convey or encumber community real property unless the other spouse joins in the conveyance or encumbrance,<sup>250</sup> and a spouse may not, without the written consent of the other spouse, make a gift of community personal property or convey wearing apparel or household furnishings which are community personal property.<sup>251</sup> Other Civil Code provisions provide that the homestead of a married person can be conveyed, encumbered, or abandoned only if both spouses execute the appropriate instrument.<sup>252</sup>

Where one or both of the spouses are incompetent, the existing Civil Code provisions<sup>253</sup> provide that Chapter 2A (commencing with Section 1435.1) of Division 4 of the Probate Code<sup>254</sup> governs the management and control and disposition of community property and the procedure for conveying, encumbering, or abandoning a homestead. However, Chapter 2A was not conformed to the 1973 revisions of California community property law which vest each spouse with equal rights to manage, control, and dispose of community property, subject to joinder or consent requirements.<sup>255</sup> The chapter is based on the former concept that the husband had the right of management and control of community property and contains provisions made obsolete by the 1973 revisions.

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<sup>250</sup> Civil Code § 5127. Both spouses, either personally or by duly authorized agent, must join in executing any instrument by which community real property or any interest therein is leased for a longer period than one year or is sold, conveyed, or encumbered. *Id.*

<sup>251</sup> Civil Code § 5125.

<sup>252</sup> Civil Code §§ 1242, 1243. The restrictions on conveyances of homesteads do not apply to a married person's separate homestead (Civil Code §§ 1300-1304).

<sup>253</sup> Civil Code §§ 1242, 1243, 5128.

<sup>254</sup> Chapter 2A derives from prior provisions of a more limited character. In 1905, legislation was enacted providing for a special proceeding to authorize a transaction involving homestead property of an insane spouse. See 1905 Cal. Stats. ch. DLX. A similar special proceeding was added for community real property in 1919. 1919 Cal. Stats. ch. 615. These procedures were consolidated in 1941 and were expanded to include community personal property in 1959. 1941 Cal. Stats. ch. 1220; 1959 Cal. Stats. ch. 125. Alternative procedures for disposition in a guardianship or conservatorship estate or for disposition with consent of the guardian or conservator were also added in 1959.

<sup>255</sup> Civil Code §§ 5125 (community personal property), 5127 (community real property).



Chapter 2A is obscure in its treatment of community personal property transactions by a competent spouse. The chapter is complex and difficult to follow.

The proposed law replaces Chapter 2A with provisions that are consistent with the recent changes in community and homestead property law. The new provisions state more specifically the interrelation of the different procedures for authorizing transactions involving community or homestead property and are consistent with the proposed conservatorship law revision.<sup>256</sup>

### Management, Control, and Disposition Generally

Under existing law, the right of the husband to manage, control, and dispose of the community property is not affected by the incompetency of the wife, whether or not the wife has a conservator.<sup>257</sup> The proposed law continues this rule but extends it to the wife. Under the proposed law, subject to the joinder or consent requirement for disposition, the right of either spouse to manage and control community property, including the right to dispose of community property, is not affected by the lack or alleged lack of legal capacity of the other spouse.

Under existing law, where the husband is competent and the wife has a guardian or conservator, the husband has the right of management, control, and disposition of the community property, but the guardian or conservator must join in any disposition for which joinder is otherwise required after obtaining authorization from the court.<sup>258</sup> The proposed law continues this rule but extends it to the wife. Under the proposed law, if one spouse has legal capacity and the other has a conservator, the spouse having legal capacity has the exclusive management and control of the community property including, subject to the joinder or consent requirement, the exclusive power to dispose of the

<sup>256</sup> For example, the unnecessary distinctions between community real property and community real property subject to a homestead are eliminated. The terms "competent" and "incompetent" are replaced by more precise references to legal capacity or lack of legal capacity.

<sup>257</sup> See Prob. Code §§ 1435.1 (last sentence), 1435.17(b). The husband's right of management and control is subject to the requirement of joinder for disposition where joinder was otherwise required by repealed Section 172a of the Civil Code which has been replaced by Section 5127.

<sup>258</sup> See Prob. Code § 1435.17(b).

community property. In such a case, the community property is not part of the conservatorship estate. However, the proposed law adds a new provision permitting the spouse having legal capacity and the conservator of the other spouse to agree that all or part of the community property will be included in and, subject to the joinder or consent requirement, be managed, controlled, and disposed of as a part of the conservatorship estate. This new authority will provide desirable flexibility to the competent spouse and the conservator in determining how to handle the community property.

The proposed law continues a provision of existing law<sup>259</sup> that, where the husband and wife each have a conservator of the estate, an undivided one-half interest in the community property may be included in and disposed of as a part of each estate, but both conservators must concur in dispositions under appropriate orders of the court. The proposed law adds a new provision that permits the two conservators by agreement to include all or specific parts of the community property in one or the other of the conservatorship estates to be managed, controlled, and disposed of as a part of that conservatorship estate, subject to the requirement that the other conservator (after obtaining court authorization) join in dispositions of property in cases where joinder is otherwise required.

### **Transactions Involving Community or Homestead Property**

The proposed law continues the procedure provided under existing law for court authorization of a transaction involving community or homestead<sup>260</sup> property where one spouse is incompetent and has no conservator of the estate,<sup>261</sup> but broadens it to permit the court to make a

<sup>259</sup> Prob. Code § 1435.17(c).

<sup>260</sup> The proposed law makes clear that it does not impose a requirement of consent or joinder where a married person's separate homestead is concerned.

<sup>261</sup> As under existing law, the proposed law permits the petition for court authorization to be brought by a conservator of one spouse where the other spouse is incompetent but has no conservator. See Prob. Code §§ 1435.3 (guardian may petition), 1435.18 ("guardian" includes "conservator"). Whether the petition is brought by a competent spouse or by a conservator, there will be a legally competent person to present the petition to the court and to carry out the court's orders in connection with the transaction if it is authorized.

declaration that the spouse whose legal capacity is doubtful does in fact have capacity for a proposed transaction and may consummate the transaction on his or her own behalf.<sup>262</sup> The proposed law permits the court to authorize a community personal property transaction which could be effected by one spouse alone without the consent of the other spouse under the Civil Code.<sup>263</sup> The proposed law also permits the court to authorize gifts for such purposes, and to such charities, relatives, friends, and other objects of bounty as would be likely beneficiaries of gifts from the spouses but only if the gift is one the court would authorize under the doctrine of substituted judgment in the case of a conservatorship.

If one or both of the spouses have a conservator of the estate, the proposed law requires joinder or consent by the conservator to the transaction in lieu of joinder or consent by the conservatee, whether or not the conservatee has been adjudicated to lack legal capacity. This makes clear with whom a buyer must deal and gives needed certainty to affected transactions, particularly those involving real property. Prior court authorization for joinder or consent by the conservator is required in all cases involving real property and in most cases involving personal property.<sup>264</sup>

Under the proposed law, if both spouses have conservators of the estate, the special proceeding for court authorization of a transaction involving community or homestead property may nonetheless be used to obtain court authorization of the transaction.<sup>265</sup> However, if both

<sup>262</sup> Such a declaration might be particularly useful, for example, where the buyer in a real property transaction is concerned about a possible later challenge to the transaction based upon questionable capacity of one of the selling spouses. An affirmative declaration of legal capacity may permit the transaction to be consummated free of such unresolved questions.

<sup>263</sup> This procedure also may have the effect of declaratory relief and thus forestall a later challenge to the legal capacity of the conveying spouse.

<sup>264</sup> Prior court authorization is not required for the conservator to join in or consent to a transaction involving community personal property if the aggregate value of such transactions does not exceed \$5,000 in any calendar year.

<sup>265</sup> The existing law is not entirely clear. Where there are guardians or conservators of the respective estates of both husband and wife, court authorization for a transaction affecting community or homestead property apparently may be obtained either in the guardianship or conservatorship proceeding or in a special proceeding brought under Probate Code Sections 1435.1-1435.14. See Prob. Code § 1435.15; *Selected 1959 Code Legislation*, 34 J. St. B. Cal. 581, 747 (1959).

conservatorship proceedings are pending in the same county, the proposed law requires the special proceeding for court authorization to be brought in that county.

### **AUTHORIZATION OF MEDICAL TREATMENT FOR ADULT WITHOUT CONSERVATOR**

In the ordinary, nonemergency case, medical treatment may be given to an adult only with that person's informed consent.<sup>266</sup> If the person is incompetent or is otherwise unable to give informed consent, a substitute decision-making process is necessary.<sup>267</sup> One alternative is the establishment of a conservatorship of the person so that the court or conservator may make medical decisions for the conservatee. However, in some cases there is no ongoing need for conservatorship; all that is needed is an expeditious means of obtaining authorization for a specific course of medically recommended treatment.

The proposed law therefore includes new provisions for a special court proceeding for court authorization of medical treatment when the patient has no conservator but is unable to give an informed consent to the treatment. The petition may be filed by the patient, the spouse of the patient, a relative or friend of the patient, a person acting on behalf of a medical facility in which the patient is located, the patient's physician, or by any other interested person. The petition may be filed in the county where the patient resides or is temporarily living or in such other county as may be in the patient's best interest. The petition is required to set forth the pertinent medical details. If the patient has not retained an attorney and does not plan to retain one, the court is required to appoint the public defender or private counsel. Notice of the hearing must be given to the patient, the patient's attorney, and to such other persons as the court may require. The attorneys for the petitioner and for the patient may stipulate that the matter be decided on the basis of the medical affidavits submitted. The court may make an order authorizing

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<sup>266</sup> *Cobbs v. Grant*, 8 Cal.3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (1972).

<sup>267</sup> See *Aden v. Younger*, 57 Cal. App.3d 662, 682, 684, 129 Cal. Rptr. 535, 548-49 (1976).

treatment only if the court determines that (1) the condition of the patient requires the treatment, (2) if untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical health of the patient, and (3) the patient is unable to give an informed consent for the treatment. The court has continuing jurisdiction to revoke or modify its order.

The new procedure for court authorization of medical treatment where the patient has no conservator is not the exclusive method of authorizing such treatment, but is in addition to the methods that exist under present law.<sup>268</sup>

### OTHER PROTECTIVE PROCEEDINGS

The guardianship and conservatorship statutes include a number of provisions that relate to transactions and situations not requiring a guardianship or conservatorship.<sup>269</sup> These provisions are compiled in a portion of the proposed law separate from the guardianship and conservatorship provisions. Many of the provisions are carried forward into the proposed law without substantive change. The major changes made by the proposed law are summarized below.<sup>270</sup>

#### Compromise of Minor's Disputed Claim

Existing law gives a parent or guardian of the estate of a minor the right, with prior court approval, to compromise a disputed claim of the minor.<sup>271</sup> The proposed law continues this right of the guardian of the estate and

<sup>268</sup> See generally *Cobbs v. Grant*, 8 Cal.3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (1972).

<sup>269</sup> *E.g.*, Prob. Code §§ 1430 (minor's estate under \$2,500), 1430.5 (minor's estate between \$2,000 and \$20,000), 1431 (compromise of minor's disputed claim), 1432 (duty of parent to account to minor), 1444 (consent of court to permit hospital or medical care or enlistment in armed forces), 1509 (fees of attorney for minor), 1510 (disposition of money or other property paid or delivered pursuant to compromise or judgment for minor or incompetent), 1511 (payment of fees of attorney for minor), 1776-1783 (setting aside property for family of military and other personnel who are in missing status). See also Prob. Code §§ 1435.1-1435.18 (transfer or disposal of community property or homestead where spouse incompetent).

<sup>270</sup> See also discussion in text accompanying notes 246-68 *supra*.

<sup>271</sup> Prob. Code § 1431. Claims that are the subject of a pending action or proceeding are governed by Section 372 of the Code of Civil Procedure.

eliminates the requirement of court approval in some instances where the claim is not the subject of a pending action or proceeding.<sup>272</sup> The parent's right to compromise a minor's claim also is continued in the proposed law but is limited to cases where the minor has no guardian of the estate.<sup>273</sup>

### **Proceeds of Compromise or Judgment for Minor or Incompetent Person**

The existing guardianship statute contains provisions for the control of money or other property to be paid or delivered pursuant to a compromise of a minor's disputed claim, a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or a judgment for a minor or incompetent person.<sup>274</sup> If the amount or value of the money or property is \$10,000 or less, the court has broad discretion to order that the money or other property be held subject to such conditions as the court deems to be in the best interest of the minor or incompetent person. If the amount or value is \$1,000 or less, the court may direct that the money or property be paid to a parent to be held in trust for the minor. If the amount or value is greater than \$10,000, the court's discretion is more narrowly circumscribed: The court must either (1) require that a guardian or conservator of the estate be appointed to receive the property or (2) require that any money be deposited in an account in a bank, trust company, insured credit union, or insured savings and loan institution, subject to withdrawal only upon order of the court.

The court should be permitted greater discretion in making the disposition of the proceeds of a compromise or judgment that is in the best interest of the minor or incompetent person. The proposed law increases to \$5,000 the amount the court may order be paid directly to the

<sup>272</sup> See discussion in text accompanying notes 142-44 *supra*.

<sup>273</sup> The proposed law also makes clear that a parent may, subject to court approval, execute a covenant not to enforce judgment on a minor's disputed claim.

<sup>274</sup> Prob. Code § 1510.

parent of a minor and increases to \$20,000<sup>275</sup> the amount subject to broad court discretion.

### Administration of Estate of Minor Without a Guardian

Existing law provides for administration of a small estate of a minor without the need for a guardian. Assets of \$2,000 or less can be paid directly to a parent to hold in trust for the minor until the minor reaches majority.<sup>276</sup> Money in excess of \$2,000 (but not exceeding \$20,000) may, pursuant to a court order, be deposited or invested in an insured account in a financial institution, withdrawable only upon court order, without the creation of a guardianship.<sup>277</sup>

These provisions can provide a substantial saving when compared to the cost of a guardianship in administering the estate of a minor. To increase the usefulness of the provisions, the proposed law increases the amount that may be paid to a parent in trust from \$2,000 to \$5,000<sup>278</sup> and removes the minimum (\$2,000 under existing law) so that the court may order an amount less than the minimum to be deposited or invested in a court-controlled account as an alternative to ordering it paid to a parent.<sup>279</sup> The proposed law also removes the \$20,000 maximum limit on the amount that may be deposited or invested pursuant to court order in court-controlled accounts without the creation of a guardianship.<sup>280</sup>

<sup>275</sup> The amount was set at \$10,000 in 1963. 1963 Cal. Stats. ch. 127, § 3. The increase will conform to the increase from \$10,000 to \$20,000 in 1973 (1973 Cal. Stats. ch. 400, § 2) in Probate Code Section 1430.5. The authority given the court under the proposed law is similar to that given the court under existing Section 1430.5. Under that section, a guardianship may be terminated where the guardianship estate consists of money not exceeding \$20,000 and the court may order the money deposited in a court-controlled account or may prescribe such other conditions for the control of the money as the court deems in the best interest of the minor.

<sup>276</sup> Prob. Code § 1430.

<sup>277</sup> Prob. Code § 1430.5.

<sup>278</sup> The provision of existing law requiring a parent receiving money belonging to a minor to account to the minor upon majority is expanded to include any property received pursuant to this provision. See Prob. Code § 1432.

<sup>279</sup> This provision is consistent with Probate Code Section 1510, which places no minimum limit on the amount the court may order placed in a court-controlled account.

<sup>280</sup> This provision parallels Probate Code Section 1510, which places no maximum limit on the amount received from a compromise or judgment that the court may order deposited in a court-controlled account.

## Personal Property of Absentees

Chapter 2.5 (commencing with Section 1776) of Division 5 of the Probate Code, enacted as part of the P.O.W.—M.I.A. Family Relief Act of 1972, concerns personal property of absentees—prisoners of war and persons missing in action. The chapter permits the court, if the court finds that it will be in the best interests of the absentee, to set aside to the family of the absentee, personal property of the absentee situated in California in which the absentee's interest does not exceed \$5,000, for the purpose of managing, controlling, encumbering, selling, conveying, or otherwise engaging in any transaction with respect to such property.<sup>281</sup> The proposed law adds language to make clear that the court may set aside the property of the absentee in order to provide for the support of the dependents of the absentee<sup>282</sup> and increases the maximum amount from \$5,000 to \$20,000. This increase will avoid the expense of creation and administration of a conservatorship of the estate for the absentee merely in order to provide support for the dependents.

<sup>281</sup> Prob. Code § 1777.

<sup>282</sup> This accomplishes the purpose of the 1972 legislation which is not only to avoid "prejudice to the estates of such missing persons" but also to avoid "difficulty and hardship to their families [caused] by their inability to consummate transactions, such as to sell property, withdraw funds, cash checks, transfer securities and the like, upon which the families are dependent." 1972 Cal. Stats. ch. 988, § 9. *Cf.* Prob. Code § 295.1 (administration of estate of absentee); C. Stephenson & G. Cole, Supplement to 1 California Decedent Estate Administration § 3.31, at 36 (Cal. Cont. Ed. Bar 1976) (intended to provide for support of dependents of absentee).



**OUTLINE**  
**OF**  
**GUARDIANSHIP-CONSERVATORSHIP LAW**

**DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP,  
AND OTHER PROTECTIVE PROCEEDINGS**

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- § 1406. Account in an insured savings and loan association
- § 1410. Conservator
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- § 1600. Majority, death, or marriage of ward
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### Article 4. Special Provisions Applicable Where Proposed Conservatee Is An Absentee

- § 1840. Procedure for appointment of conservator for absentee
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**OPERATIVE DATE**

**DIVISION 4. GUARDIANSHIP,  
CONSERVATORSHIP,  
AND OTHER PROTECTIVE PROCEEDINGS**

**Note.** The guardianship-conservatorship statute, as enacted by Chapter 726 of the Statutes of 1979, is set out below as amended by Chapters 89 and 246 of the Statutes of 1980. A note under each of the sections that would be affected by Assembly Bill 2898 indicates that fact. The text of the sections affected by Assembly Bill 2898 is set out in the Exhibit at the end of this publication. The statute as set out below does not include the other changes, if any, made by the 1980 session of the California Legislature.

The official Comment follows the text of the section. Unless otherwise indicated, the Comment is taken from the Law Revision Commission *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978). The Comments designated as "Legislative Committee Comment—Assembly" are taken from the Assembly

Judiciary Committee report noted in the Assembly Journal for May 9, 1979; the Comments designated as "Legislative Committee Comment—Senate" are taken from the Senate Journal for July 20, 1979. Comments to sections affected by Chapter 89 of the Statutes of 1980 are taken from the Law Revision Commission *Recommendation Relating to the Uniform Veterans Guardianship Act*, 15 Cal. L. Revision Comm'n Reports 1289 (1980).

## PART 1. DEFINITIONS AND GENERAL PROVISIONS

### CHAPTER 1. DEFINITIONS

#### § 1400. Application of definitions

1400. Unless the context otherwise requires, the words and phrases defined in this chapter govern the construction of this division.

**Comment.** Section 1400 is new.

#### § 1403. Absentee

1403. "Absentee" means either of the following:

(a) A member of a uniformed service covered by United States Code, Title 37, Chapter 10, who is determined thereunder by the secretary concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

(b) An employee of the United States government or an agency thereof covered by United States Code, Title 5, Chapter 55, Subchapter VII, who is determined thereunder by the head of the department or agency concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

**Comment.** Section 1403 continues the definition of "absentee" contained in former Section 1751.5. "Secretary concerned" is defined in Section 1440.

**Note.** The term "absentee" is used in Sections 1803, 1813, 1840–1844, 1850, 1864, and 3700–3708. See also Section 1490.

**§ 1406. Account in an insured savings and loan association**

1406. "Account in an insured savings and loan association" means any of the following:

(a) Shares issued by a federal savings and loan association.

(b) Investment certificates issued by a state-chartered building and loan association or savings and loan association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act.

(c) Shares issued by a state-chartered building and loan association or savings and loan association doing business in this state which does not issue investment certificates and which is an "insured institution" as defined in Title IV of the National Housing Act.

**Comment.** Section 1406 continues the substance of the fourth paragraph of former Section 1510.

**Note.** The phrase "account in an insured savings and loan association" is used in Sections 2328, 2331, 2453, 2456, 2911, 3412, 3413, 3500, 3602, and 3611. See also Sections 541.1, 585, 1490; Section 1155 of the Civil Code; Section 21207 of the Government Code.

**§ 1410. Conservator**

**Note.** A new Section 1410 would be added by Assembly Bill 2898 of the 1980 session. At the time this publication was sent to the printer, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the new section added by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**§ 1411. Conservatee**

**Note.** A new Section 1411 would be added by Assembly Bill 2898 of the 1980 session. At the time this publication was sent to the printer, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the new section added by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**§ 1418. Court**

1418. "Court," when used in connection with matters in the guardianship or conservatorship proceeding, means the court in which such proceeding is pending.

**Comment.** Section 1418 is new. This definition does not apply where the context otherwise requires. See Section 1400. For examples of where the context otherwise requires, see Sections 1455, 2216, 2803, and 2903.

#### § 1419. Court investigator

1419. "Court investigator" means the person referred to in Section 1454.

**Comment.** Section 1419 is new.

#### § 1420. Developmental disability

**Note.** A new Section 1420 would be added by Assembly Bill 2898 of the 1980 session. At the time this publication was sent to the printer, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the new section added by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

#### § 1424. Interested person

1424. "Interested person" includes, but is not limited to:

(a) Any interested state, local, or federal entity or agency.

(b) Any interested public officer or employee of this state or of a local public entity of this state or of the federal government.

**Comment.** Section 1424 is new. It makes clear that a public officer or employee or a public entity may be an interested person for the purposes of this division. The section is consistent with provisions of prior law. See, *e.g.*, former Section 1600 (request for special notice in guardianship proceeding); former Section 2002 (request for special notice in conservatorship proceeding). See also Section 1461 (notice to Director of Mental Health or Director of Developmental Services) and the Comment to that section.

#### § 1430. Petition

1430. "Petition" includes an application or request in the nature of a petition.

**Comment.** Section 1430 is new.

### § 1431. Proceedings to establish a limited conservatorship

**Note.** A new Section 1431 would be added by Assembly Bill 2898 of the 1980 session. At the time this publication was sent to the printer, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the new section added by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

### § 1440. Secretary concerned

1440. "Secretary concerned" has the same meaning as defined in United States Code, Title 37, Section 101.

**Comment.** Section 1440 continues the substance of subdivision (b) of former Section 1751.5.

**Note.** The phrase "secretary concerned" is used in Sections 1403, 1842, 3700, 3704, and 3708. See also Section 1490.

### § 1443. Shares of an insured credit union

1443. "Shares of an insured credit union" means shares issued by a credit union, either federally chartered or state licensed, which are insured under Title II of the Federal Credit Union Act.

**Comment.** Section 1443 continues the substance of the fifth paragraph of former Section 1510.

**Note.** The phrase "shares of an insured credit union" is used in Sections 2453, 2456, 3412, 3413, 3500, 3602, and 3611. See also Section 1490.

### § 1446. Single-premium deferred annuity

1446. "Single-premium deferred annuity" means an annuity offered by an admitted life insurer for the payment of a one-time lump-sum premium and for which the insurer neither assesses any initial charges or administrative fees against the premium paid nor exacts or assesses any penalty for withdrawal of any funds by the annuitant after a period of five years.

**Comment.** Section 1446 continues the substance of the sixth paragraph of former Section 1510.

**Note.** The phrase "single-premium deferred annuity" is used in Sections 2456, 3412, 3413, 3500, 3602, and 3611. See also Section 1490.



**CHAPTER 2. GENERAL PROVISIONS****§ 1450. Petitions, reports, and accounts to be verified**

1450. Except as otherwise specifically provided, all of the following shall be verified:

(a) A petition, report, or account filed pursuant to this division.

(b) An objection or response filed pursuant to this division to a petition, report, or account.

**Comment.** Section 1450 is new. It establishes a general requirement that supersedes references to verification in individual sections of the former guardianship and conservatorship statutes. "Petition" includes applications and requests in the nature of a petition. See Section 1430. For an exception to Section 1450, see Section 2632.

**CROSS-REFERENCES**

Inventory and appraisal, oath, § 2610

Use in evidence of verified petition, § 1233

**§ 1451. Clerk to set matters for hearing**

1451. When a petition, report, or account which requires a hearing is filed with the clerk of the court pursuant to this division, the clerk shall set the matter for hearing.

**Comment.** Section 1451 is based on a portion of Section 1200, which was made applicable to guardianship and conservatorship proceedings by former Sections 1606 and 1702. Section 1451 supersedes comparable provisions in various sections of the former guardianship and conservatorship statutes and establishes a general requirement that the clerk of the court set petitions filed under this division for hearing. The requirement of some provisions of the former statutes that petitions be set for hearing "by the court" has not been continued. Although ordinarily petitions will be heard by the court, in some cases the right to a jury trial exists. See the Comment to Section 1452.

**CROSS-REFERENCES****Definitions**

Court, § 1418

Petition, § 1430

Notice of hearing generally, §§ 1460-1469

### § 1452. Trial by jury

1452. Except as otherwise specifically provided in this division, there is no right to trial by jury in proceedings under this division.

**Comment.** Section 1452 is new and eliminates the ambiguity under former law as to whether there was a right to jury trial when the statute was silent on the question. See, *e.g.*, *Budde v. Superior Court*, 97 Cal. App.2d 615, 218 P.2d 103 (1950) (guardianship of incompetent adult). As under prior law, the right to jury trial is continued in a hearing on a petition for establishment of a conservatorship (see Section 1827) or for termination of conservatorship (see Section 1863). However, this division does not continue that portion of former law which apparently granted a right to jury trial on a petition for removal of the conservator. See former Sections 1951 and 1755; *W. Johnstone & G. Zillgitt, California Conservatorships* § 7.8, at 264 (Cal. Cont. Ed. Bar 1968). Nor does this division provide for a jury trial on a petition to transfer the conservatorship proceeding to another county. For discussion of former law, see *W. Johnstone & G. Zillgitt, supra* § 2.26, at 44.

### § 1453. When motion for new trial allowed

1453. A motion for a new trial may be made only in cases in which, under the provisions of this division, a right to jury trial is expressly granted, whether or not the case was tried by a jury.

**Comment.** Section 1453 is new. However, it continues the principle that applied under former law that there is no authority to grant a new trial unless there is a right to a jury trial. See former Sections 1606 and 1702, incorporating the relevant parts of Section 1231 (motion for new trial in probate proceedings generally). *Cf. Estate of Van Deusen*, 30 Cal.2d 285, 182 P.2d 565 (1947) (petition for instructions to trustee).

#### CROSS-REFERENCES

Appeals, § 2750

Jury trial generally, § 1452

Jury trial granted

Establishment of conservatorship, § 1827

Termination of conservatorship, § 1863

**§ 1454. Court investigator**

1454. (a) The court shall appoint a court investigator when one is required for the purposes of a proceeding under this division. The person appointed as the court investigator shall be an officer or special appointee of the court with no personal or other beneficial interest in the proceeding.

(b) The person appointed as the court investigator shall have the following qualifications:

(1) The training or experience, or both, necessary (i) to make the investigations required under this division, (ii) to communicate with, assess, and deal with persons who are or may be the subject of proceedings under this division, and (iii) to perform the other duties required of a court investigator.

(2) A demonstrated sufficient knowledge of law so as to be able to inform conservatees and proposed conservatees of the nature and effect of a conservatorship proceeding and of their rights, to answer their questions, and to inform conservators concerning their powers and duties.

Legislative Committee Comment—Assembly

**Comment.** Subdivision (a) of Section 1454 continues the substance of a portion of the fifth and seventh paragraphs of former Section 1754. Subdivision (b) supersedes the requirement of the seventh paragraph of former Section 1754 that the court investigator be a person “trained in law.”

**§ 1455. Guardian ad litem**

1455. The provisions of this division do not limit the power of any court to appoint a guardian ad litem to protect the interests of any person.

**Comment.** Section 1455 continues the substance of former Section 1607, but the reference to “any minor or insane or incompetent person in an action or proceeding therein” has been omitted as unnecessary.

**CROSS-REFERENCES**

Guardian ad litem generally, Code Civ. Proc. §§ 372-373.5

**§ 1456. Judicial Council to prescribe forms**

1456. The Judicial Council may prescribe the form of the applications, notices, orders, and other documents required by this division. Any such form prescribed by the Judicial Council is deemed to comply with this division.

Legislative Committee Comment—Assembly

**Comment.** Section 1456 is new. See also Section 1464 (form of notice of time and place of hearing).

**CHAPTER 3. NOTICES****§ 1460. Notice of hearings generally**

1460. (a) Subject to Section 1462, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing shall be given at least 15 days before the day of the hearing as provided in this section.

(b) Subject to subdivision (e), the petitioner (which includes for the purposes of this section a person filing a petition, report, or account) shall cause the notice of hearing to be mailed to each of the following persons (other than the petitioner or persons joining in the petition):

(1) The guardian or conservator.

(2) The ward if 14 years of age or older or the conservatee.

(3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse.

(4) Any interested person who has appeared in the particular matter to which the hearing relates.

(c) The clerk of the court shall cause the notice of the hearing to be posted at the courthouse of the county where the proceedings are pending if such posting is required by subdivision (c) of Section 2543 (sales).

(d) Nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Chapter 10 (commencing with Section 2700) of Part 4.

(e) The court for good cause may dispense with the notice required to be given to a person under subdivision (b).

## Legislative Committee Comment—Senate

*Comment.* Section 1460 is based on portions of Section 1200 which under prior law was incorporated and made applicable to guardianship and conservatorship proceedings by various sections. Sections 1200 and 1201 do not apply to proceedings under this division. See Section 1469 and the Comment to that section.

The 10-day notice provision of Section 1200 is increased to 15 days in Section 1460.

Absent a request for special notice, the notice requirement under prior law apparently required notice only to the guardian or conservator. Under subdivision (b) of Section 1460, notice also is required to be given to the ward (if 14 years of age or older) or the conservatee and to the spouse of the ward or conservatee (if the ward or conservatee has a spouse). Paragraph (4) of subdivision (b) provides for notice to objectors and contestants who have already appeared in the particular matter. Any interested person may receive notice of certain specified matters by filing and serving a request for special notice under Section 2700.

The provision in Section 1200 for mailing of notice to the county seat when a mailing address is not known is not carried over into Section 1460; but, where the court determines that the notice otherwise required is insufficient under the particular circumstances, the court may require under subdivision (b) of Section 1462 that further or additional notice be given.

The court may dispense with the notice required by subdivision (b) where good cause is shown. See subdivision (e). This authority will permit the court to dispense with notice, for example, where the person specified to receive the notice is in such mental or physical condition that giving the person notice would be useless or detrimental to the person or where, after the exercise of reasonable diligence, the whereabouts of the person is unknown. The authority for the court to dispense with notice under prior law was contained in former Section 2001.

The court may for good cause shorten or lengthen the 15-day notice required by this section. Section 1462.

The posting requirement of Section 1200 that formerly applied in guardianship and conservatorship proceedings is continued in subdivision (c) of Section 1460 only in connection with certain sales. See Section 2543(c).

Subdivision (d) is included to make clear that the provisions of this section have no effect on the requirements for notice to a person who has requested special notice. Thus, although the court may have dispensed with notice to the ward or conservatee under Section 1460, the ward or conservatee may still request special notice under Chapter 10 (commencing with Section 2700) of Part 4 and is thereafter entitled to receive special notice. See Section 2700 and the Comment thereto.

Section 1460 does not deal with the effect of giving notice or the failure to receive notice. See Section 1468(b) (conclusiveness of order concerning notice) and Comment thereto. Proof of the giving of notice must be made at or before the hearing as provided in Section 1468.

## CROSS-REFERENCES

Additional notice, § 1462

Continued or postponed hearing, notice, § 1463

## Definitions

Court, § 1418

Interested person, § 1424

Petition, § 1430

Extending time of notice, § 1462

Form of notice, § 1464

## Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

## Notice to

Director of Developmental Services, §§ 1461, 2611, 2621

Director of Mental Health, §§ 1461, 2611, 2621

Director of Social Services, § 1542

Veterans Administration, § 1461.5

Proof of giving of notice, § 1468

Shortening time, § 1462

### § 1461. Notice to Director of Mental Health or Director of Developmental Services

1461. (a) As used in this section, "director" means:

(1) The Director of Mental Health when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Mental Health.

(2) The Director of Developmental Services when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Developmental Services.

(b) Except where the petition, report, or account is filed by the director, notice of the time and place of hearing on the petition, report, or account, and a copy of the petition, report, or account, shall be mailed to the director at the director's office in Sacramento at least 15 days before the hearing if both of the following conditions exist:

(1) The ward or conservatee is or has been during the guardianship or conservatorship proceeding a patient in or on leave from a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services.

(2) The petition, report, or account is filed under any one or more of the following provisions: Section 1510, 1820, 1861, 2212, 2403, 2421, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2580, 2592,

2620, or Chapter 3 (commencing with Section 3100) of Part 6.

(c) If the ward or conservatee has been discharged from the state hospital, the director, upon ascertaining the facts, may file with the court a certificate stating that the ward or conservatee is not indebted to the state and waive the giving of further notices under this section. Upon the filing of the certificate of the director, compliance with this section thereafter is not required unless the certificate is revoked by the director and notice of the revocation is filed with the court.

(d) The statute of limitations does not run against any claim of the State Department of Mental Health or the State Department of Developmental Services against the estate of the ward or conservatee for board, care, maintenance, or transportation with respect to an account that is settled without giving the notice required by this section.

*Legislative Committee Comment—Assembly*

**Comment.** Subdivision (b) of Section 1461 generalizes various provisions scattered throughout the former guardianship and conservatorship statutes. Subdivision (c) continues former Section 1554.1 and supersedes former Section 1906 but adds a provision for revoking the certificate and substitutes the “director” for the “Attorney General” as the one executing the certificate. Subdivision (d) continues the last sentence of former Section 1554 and supersedes the last sentence of former Section 1905.

The following provisions, listed in paragraph (2) of subdivision (b), require a notice in cases where the condition in paragraph (1) of subdivision (b) exists:

- Section 1510 (petition for appointment of guardian)
- Section 1820 (petition for appointment of conservator)
- Section 1861 (petition for termination of conservatorship)
- Section 2212 (petition for change of venue)
- Section 2403 (authorization and instructions or approval and confirmation by court for guardian or conservator of estate)
- Section 2421 (petition for allowance for ward or conservatee)

**Section 2422** (petition for support of ward or conservatee out of the estate notwithstanding existence of person legally obligated to provide support)

**Section 2423** (petition for payment of surplus income to relatives of conservatee)

**Article 7** (commencing with **Section 2540**) of Chapter 6 of Part 4 (petitions for sales)

**Section 2580** (substituted judgment)

**Section 2592** (independent exercise of powers)

**Section 2620** (presentation of account for settlement and allowance)

**Chapter 3** (commencing with **Section 3100**) of Part 6 (special proceeding to authorize transaction involving community or homestead property)

For other provisions concerning notice to the Director of Mental Health or the Director of Developmental Services, see **Sections 2611** (inventory and appraisal) and **2621** (hearing on accounts). See also **Section 1542** (notice of petition for nonrelative guardianship to Director of Social Services). Where the Director of Mental Health or the Director of Developmental Services is an interested person (**Section 1424**), a request for special notice may be filed under **Section 2700**.

#### CROSS-REFERENCES

##### Definitions

Court, § 1418

Petition, § 1430

Form of notice, § 1464

##### Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

#### § 1461.5. Notice to Veterans Administration

1461.5. Except for a petition filed by the Veterans Administration, notice of the time and place of hearing on a petition, report, or account, and a notice of the filing of an inventory, together with a copy of the petition, report, inventory, or account, shall be mailed to the office of the Veterans Administration having jurisdiction over the area in which the court is located at least 15 days before the hearing, or within 15 days after the inventory is filed, if both of the following conditions exist:

(a) The guardianship or conservatorship estate consists or will consist wholly or in part of any of the following:



- (1) Money received from the Veterans Administration.
- (2) Revenue or profit from such money or from property acquired wholly or in part from such money.
- (3) Property acquired wholly or in part with such money or from such property.

(b) The petition, report, inventory, or account is filed under any one or more of the following provisions: Section 1510, 1601, 1820, 1861, 1874, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2570, 2571, 2580, 2592, 2610, 2613, or 2620; Chapter 8 (commencing with Section 2640) of Part 4; or Chapter 3 (commencing with Section 3100) of Part 6.

[Added by 1980 Cal. Stats. ch. 89]

Law Revision Commission Comment

1980 Enactment

**Comment.** Section 1461.5 continues the provisions of the former Uniform Veterans' Guardianship Act which required notice to the Veterans Administration of certain procedures when veterans' benefits were involved. See former Sections 2906 (petition for appointment of guardian or conservator), 2908 (accounts), 2910 (extraordinary compensation), 2911 (investment or deposit of surplus funds), 2912 (support of third persons), 2913 (purchase of real property), 2915 (termination of proceeding). The requirement in Section 1461.5 that notice be given when the petition, report, inventory, or account is filed under Section 1874 (order expanding conservatee's legal capacity); Section 2422 (support of ward or conservatee notwithstanding third party liable); Article 7 (commencing with Section 2540) of Chapter 6 of Part 4 (sales); Sections 2580 (substituted judgment), 2592 (independent exercise of powers), 2610 (inventory and appraisal), and 2613 (supplemental inventory and appraisal); and Chapter 3 (commencing with Section 3100) of Part 6 (transaction involving community or homestead property) is new.

The requirement of former Sections 2906 and 2913 that the copy of the petition be a signed duplicate or be certified is not continued.

CROSS-REFERENCES

Definition, court, § 1418

**§ 1462. Court may extend or shorten time for notice or require additional notice**

1462. (a) Except for the notice required by Section 1511 or 1822, the court may for good cause shorten the time for giving any notice required by this division.

(b) Where the court determines that the notice otherwise required under this division is insufficient in the particular circumstances, the court may require that further or additional notice, including a longer period of notice, be given.

**Legislative Committee Comment—Senate**

*Comment.* Section 1462 supersedes a portion of former Section 2001 (conservatorship). The provision in subdivision (a) authorizing the court to shorten the time for any notice required by this division is based on Section 1005 of the Code of Civil Procedure and broadens the court's limited authority under prior law. See W. Johnstone & G. Zillgitt, *California Conservatorships* § 2.8, at 30 (Cal. Cont. Ed. Bar 1968). The time for giving the notice required by Section 1511 (notice of hearing on petition for appointment of guardian) or Section 1822 (notice of hearing on petition for appointment of conservator) may not be shortened. Where necessary, a temporary guardian or conservator of the person or estate or both may be appointed to serve pending the determination of the petition for the appointment of the guardian or conservator. See Section 2250.

Subdivision (b) continues a portion of former Section 2001, with the addition of language adapted from Section 1204. Under subdivision (b), the court may, for example, require longer notice, an additional manner of giving notice, or notice to another person. The authority of the court to require a longer period of notice is made explicit in subdivision (b). This authority was implied under former law. See W. Johnstone & G. Zillgitt, *supra*.

For provisions authorizing the court to dispense with notice in particular situations, see, e.g., Sections 1460(e) (notice of hearings generally), 1511(c)(2) (appointment of guardian of the estate only), 1862 (termination of conservatorship), 2250 (appointment of temporary guardian or conservator), 2257(b) (termination of powers of temporary guardian or conservator), 2570(c) (investments), and 2652(b) (removal of guardian or conservator).

**CROSS-REFERENCES**

Definition, court, § 1418

Notice of continued or postponed hearing, § 1463

Proof of giving of notice, § 1468

**§ 1463. Postponement of hearings; notice**

1463. The court may continue or postpone any hearing, from time to time, in the interest of justice, and no further notice of the continued or postponed hearing is required unless otherwise ordered by the court.

**Comment.** Section 1463 is drawn from Section 1205 (administrators and executors).

**§ 1464. Form of notice**

1464. When notice of the time and place of hearing is required to be given by this chapter or by any other provision of this division, the notice shall be in the form prescribed by the Judicial Council or, if the Judicial Council has not prescribed an applicable form, in compliance with Section 1200.1.

**Legislative Committee Comment—Assembly**

**Comment.** Section 1464 is new and requires that the Judicial Council form of notice of hearing be used. See Section 1456 (Judicial Council may prescribe forms required by this division). Compare Section 1200.1 (form of notice for cases in which no notice is otherwise prescribed).

**CROSS-REFERENCES**

Rules concerning orderly transition of pending proceedings, § 1491

**§ 1465. Manner of mailing; when mailing complete**

1465. Unless otherwise expressly provided:

(a) If a notice or other paper is required or permitted to be mailed to a person pursuant to this division, it shall be sent by:

(1) First-class mail if the person's address is within the United States.

(2) Airmail if the person's address is not within the United States.

(b) Mailing is complete under this division when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

**Comment.** Section 1465 is new. The introductory clause makes clear that Section 1465 does not apply to the extent that the applicable mailing provision expressly provides a different

rule. Section 1465 does not apply where service is required to be made by mail in the manner authorized in Section 415.30 of the Code of Civil Procedure. See Section 1467 and Comment thereto. Section 1465 does not apply where service is made out-of-state in the manner provided in Section 415.40 of the Code of Civil Procedure. See Code Civ. Proc. § 415.40.

**§ 1466. Personal delivery in lieu of mailing**

1466. If a notice or other paper is required or permitted to be mailed pursuant to this division (whether by first-class, airmail, certified, or registered mail), it may be delivered personally to the person to whom it is required or permitted to be mailed. Personal delivery as provided in this section is deemed to satisfy the provision that requires or permits the notice or other paper to be mailed.

**Comment.** Section 1466 makes clear that personal delivery is the equivalent of mailing.

**§ 1467. When service by mail deemed complete**

1467. If service is made by mail pursuant to this division in the manner authorized in Section 415.30 of the Code of Civil Procedure, the service is complete on the date a written acknowledgment of receipt is executed.

**Comment.** Section 1467 makes clear that, when service is made under this division in the manner authorized in Section 415.30 of the Code of Civil Procedure, the service is complete on the date the acknowledgment of receipt is executed. Section 1467 does not include the requirement found in Section 415.30 that the acknowledgment be returned "to the sender." It is sufficient if proof is made that the person served (or a person authorized to acknowledge service on behalf of such person) did execute a written acknowledgment of receipt. For example, service is complete under Section 1467 if the written acknowledgment is returned to a person other than the sender.

Section 1467 applies only where *service* is made by mail in the manner authorized in Section 415.30. The section does not apply where a provision of this division merely requires that a notice or other paper be mailed. In the latter case, the applicable provision ordinarily is satisfied when the notice or other paper is deposited in the mail. See Section 1465.

**§ 1468. Proof of giving of notice**

1468. (a) Proof of the giving of notice under this division shall be made at or before the hearing to the satisfaction of the court. Such proof may be made by, but is not limited to, the following means:

(1) Proof of notice by personal delivery may be made by the affidavit of the person making such delivery showing the time and place of delivery and the name of the person to whom delivery was made.

(2) Proof of mailing may be made in the manner prescribed in Section 1013a of the Code of Civil Procedure.

(3) Proof of posting may be made by the affidavit of the person who posted the notice.

(4) Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

(5) Proof of notice, however given, may be made by testimonial evidence presented at the hearing.

(b) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order, and such order when it becomes final is conclusive on all persons.

**Comment.** Section 1468 is drawn from former Section 2005 and from the last sentence of Section 1200, but subdivision (a) of Section 1468 makes clear that proof of notice is allowed at or before the hearing and specifies the manner of proof. Paragraph (1) is adapted from subdivision (a) of Section 417.10 of the Code of Civil Procedure. Paragraph (2) continues existing practice. See W. Johnstone & G. Zillgitt, *California Conservatorships* § 2.16, at 37 (Cal. Cont. Ed. Bar 1968). Paragraph (3) also continues existing practice. See Dorsey, *Notice and Procedure*, in 1 *California Decedent Estate Administration* § 20.12, at 785-86 (Cal. Cont. Ed. Bar 1971). Paragraph (4) is adapted from subdivision (b) of Section 417.10 of the Code of Civil Procedure. Paragraph (5) is new but continues existing practice. See W. Johnstone & G. Zillgitt, *supra* § 2.15, at 37. A declaration may be used in lieu of an affidavit required by this section. See Code Civ. Proc. § 2015.5. See also Code Civ. Proc. § 2015.6 (affirmation in lieu of oath).

Subdivision (b) is the same as the last portion of the last sentence of Section 1200. The provision in subdivision (b) for waiver of notice is derived from former Section 2005. The case law has developed exceptions to the rule of conclusiveness stated in Section 1200 and duplicated in subdivision (b) of Section 1468. See, *e.g.*, *State v. Broderson*, 247 Cal. App.2d 797, 56 Cal. Rptr. 58 (1967) (finality of decree not protected by notice given because of presence of extrinsic fraud). See also *Estate of Clarke*, 66 Cal.2d 142, 424 P.2d 337, 56 Cal. Rptr. 897 (1967); *Estate of Reed*, 259 Cal. App.2d 14, 66 Cal. Rptr. 193 (1968).

#### CROSS-REFERENCES

Definition, court, § 1418

Proof of giving special notice, § 2703

### § 1469. Application of Section 1200 to proceedings under this division

1469. When a provision of this division applies the provisions of this code applicable to executors or administrators to proceedings under this division, a reference to Section 1200 in the provisions applicable to executors or administrators shall be deemed to be a reference to this chapter.

[Amended by 1980 Cal. Stats. ch. 246]

Legislative Committee Comment—Assembly

1979 Enactment

**Comment.** Section 1469 is new. Subdivision (a) insures that the notice provisions contained in this chapter will be used in all proceedings under this division. Some sections of this division incorporate by reference and apply the procedures applicable to executors or administrators which include Section 1200 concerning notice. However, Section 1469 provides that notice is to be given under this chapter rather than as provided in Section 1200. For provisions of this division adopting procedures applicable to executors or administrators, see Sections 2543 (manner of sale) and 2546 (mines and mining claims). See also Section 2100 (law governing where no specific provision of this division applicable).

Subdivision (b) is an exception to the provisions of the sections listed above which incorporate provisions applicable to executors or administrators.

## CHAPTER 4. APPOINTMENT OF LEGAL COUNSEL

### § 1470. Discretionary appointment of legal counsel

1470. (a) The court may appoint private legal counsel for a ward, a proposed ward, a conservatee, or a proposed conservatee in any proceeding under this division if the court determines such person is not otherwise represented by legal counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests.

(b) If a person is furnished legal counsel under this section, the court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel.

(c) The court shall order the sum fixed under subdivision (b) to be paid:

(1) If the person for whom legal counsel is appointed is an adult, from the estate of such person.

(2) If the person for whom legal counsel is appointed is a minor, by a parent or the parents of the minor or from the minor's estate, or any combination thereof, in such proportions as the court deems just.

(d) The court may make an order under subdivision (c) requiring payment by a parent or parents of the minor only after the parent or parents, as the case may be, have been given notice and the opportunity to be heard on whether the order would be just under the circumstances of the particular case.

**Comment.** Section 1470 is new and gives the court discretionary authority to appoint legal counsel in guardianship and conservatorship proceedings. The section permits appointment of counsel, for example, in a guardianship proceeding involving the custody of a minor. This authority is comparable to the court's authority to appoint private counsel to represent the minor's interests in connection with a child custody issue arising in a proceeding under the Family Law Act. See Civil Code § 4606. As to the duty of the public defender to represent an indigent upon request or upon order of the court, see Gov't Code § 27706.

**§ 1471. Mandatory appointment of legal counsel**

1471. (a) If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of such person in the following proceedings under this division:

(1) A proceeding to establish a conservatorship or to appoint a proposed conservator.

(2) A proceeding to terminate the conservatorship.

(3) A proceeding to remove the conservator.

(4) A proceeding for a court order affecting the legal capacity of the conservatee.

(5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.

(b) If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interests of such person in any proceeding listed in subdivision (a) if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee.

**Note.** Section 1471 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.



## Legislative Committee Comment—Assembly

**Comment.** Section 1471 specifies those instances where appointment of counsel is required under this division. Compensation of counsel appointed under Section 1471 is governed by Section 1472.

Paragraphs (1) and (2) of subdivision (a) continue the substance of the first paragraph of former Section 2006. Paragraph (3) of subdivision (a) continues the substance of the third paragraph of former Section 1851.1. See also Section 1852. Paragraph (4) requires appointment of legal counsel upon request of the conservatee in proceedings under Sections 1890-1901 affecting the legal capacity of the conservatee. Paragraph (5) continues the substance of a portion of the second sentence of the third paragraph of former Section 2201.

Subdivision (b) requires the appointment of legal counsel in the cases listed in subdivision (a) where the conservatee or proposed conservatee does not request the appointment of legal counsel but the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee. Although the court is given discretionary authority under Section 1470 to appoint legal counsel where the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect a person's interests, the appointment under Section 1471(b) is mandatory and makes Section 1472 applicable. Sections 1471-1472 permit appointment of the public defender, compensation of legal counsel by the county in cases where the person furnished counsel is determined by the court to lack the ability to pay, and installment payments. These provisions are not found in Section 1470 which provides for discretionary appointment of private legal counsel. Subdivision (b) is based in part on the fourth paragraph of former Section 1851.1 (termination of conservatorship or removal of conservator), with the addition of the language authorizing the court to act on information from whatever source it may have been received.

Appointment of the public defender or private counsel under Sections 1471-1472 is also required under some circumstances in a proceeding under Section 1852 (removal of conservator, restoration of conservatee's right to register to vote, making, modification, or revocation of order affecting conservatee's legal capacity, termination of conservatorship), Chapter 3 (commencing with Section 3100) of Part 6 (transaction involving community or homestead property—Section 3140), or Part 7 (commencing with Section 3200) (authorization of medical treatment of an adult who does not have conservator of the person—Section 3205). See also Gov't Code § 27706 (duty of public defender to represent indigent person).

#### CROSS-REFERENCES

Duty of public defender to represent indigent person, Gov't Code § 27706  
Removal of temporary conservatee from place of residence, §§ 2253-2254

### § 1472. Compensation of mandatory court-appointed counsel

1472. (a) If a person is furnished legal counsel under Section 1471:

(1) The court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel and shall make a determination of the person's ability to pay all or a portion of such sum.

(2) If the court determines that the person has the ability to pay all or a portion of such sum, the court shall order the conservator of the estate or, if none, the person to pay in such installments and in such manner as the court determines to be reasonable and compatible with the person's financial ability.

(3) In a proceeding under Chapter 3 (commencing with Section 3100) of Part 6 for court authorization of a proposed transaction involving community or homestead property, the court may order payment out of the proceeds of the transaction.

(4) If a conservator is not appointed for the person furnished legal counsel, execution may be issued on the order in the same manner as on a judgment in a civil action.

(b) If the court determines that a person furnished private counsel under Section 1471 lacks the ability to pay all or a portion of the sum determined under paragraph (1)

of subdivision (a), the county shall pay such sum to the private counsel to the extent the court determines the person is unable to pay.

(c) The payment ordered by the court under subdivision (a) shall be made to the county if the public defender has been appointed or if private counsel has been appointed to perform the duties of the public defender and the county has compensated such counsel. In the case of other court-appointed counsel, the payment shall be made to such counsel.

**Legislative Committee Comment—Assembly**

**Comment.** Section 1472 applies where legal counsel is appointed under Section 1471. The section is based on the third paragraph of former Section 2006, with the addition of paragraph (3) of subdivision (a). Section 1472 also applies when legal counsel is appointed under Section 1852 (removal of conservator, restoration of conservatee's right to register to vote, making, modification, or revocation of order affecting conservatee's legal capacity, termination of conservatorship), 3140 (transaction involving community or homestead property) or 3205 (authorization of medical treatment for adult without conservator).

Section 1472 does not refer to the person's "present" ability to pay as did former Section 2006. This omission permits the court to order payment if the person furnished counsel has ability to pay later. This change is consistent with the policy of the 1978 amendments to comparable provisions in Penal Code Section 987.8 and Government Code Section 27712. See 1978 Cal. Stats. ch. 1134.

Subdivision (b) supersedes former Section 2007 which authorized a county without a public defender to compensate court-appointed counsel. Subdivision (b) applies to all counties and requires payment by the county to the extent the court determines that the person for whom counsel was appointed is unable to pay.

**CHAPTER 5. TRANSITIONAL PROVISIONS****§ 1480. Definitions**

1480. As used in this chapter:

(a) "Operative date" means January 1, 1981.

(b) "Prior law" means the applicable law in effect on December 31, 1980.

**Comment.** Section 1480 is new.

**§ 1481. Effect on existing guardianships and conservatorships generally**

1481. Subject to Sections 1484 and 1485, a guardianship or conservatorship in existence under this code on the operative date continues in existence and is governed by this division.

**Legislative Committee Comment—Assembly**

**Comment.** Section 1481 states the general rule that the enactment of this division and the repeal of prior law governing guardianships and conservatorships does not affect the existence of guardianships and conservatorships formed under prior law. However, on and after the operative date such guardianships and conservatorships are no longer governed by prior law but by this division. For exceptions to this general rule, see Sections 1484 (pending matters arising under prior law) and 1485 (effect on guardianships of adults and married minors). See also Section 1482 (effect on bonds and security and existing liabilities).

**CROSS-REFERENCES**

Definition, operative date, § 1480

**§ 1482. Effect on bonds and security and existing liabilities**

1482. (a) The bonds, security, and other similar obligations in effect immediately prior to the operative date shall continue to apply on and after the operative date the same as if filed, issued, taken, or incurred under this division after the operative date.

(b) If a guardian or conservator or surety is liable under prior law for any act or omission prior to the operative date, the repeals made by this act do not affect such liability. Such

liability may be determined and enforced under prior law as fully and to the same extent as if such repeals had not been made.

**Comment.** Subdivision (a) of Section 1482 is consistent with the general rule stated in Section 1481. Subdivision (b) preserves liabilities under the prior law.

#### CROSS-REFERENCES

##### Definitions

Operative date, § 1480

Prior law, § 1480

### § 1483. Appointments or confirmations made under prior law

1483. The changes made in prior law by this division on and after the operative date in the standards for appointment of a guardian shall not affect the validity of any nomination, appointment, or confirmation made under prior law, but any appointment on or after the operative date is governed by this division.

**Comment.** Section 1483 is consistent with the general rule stated in Section 1481. See also Sections 1488 (effect on nomination by adult of guardian for such adult) and 1489 (effect on appointment of guardian by parent or other person for minor).

#### CROSS-REFERENCES

##### Definitions

Operative date, § 1480

Prior law, § 1480

### § 1484. Existing orders and pending matters arising under prior law

1484. (a) Any order, judgment, or decree made under prior law shall continue in full force and effect in accordance with its terms or until modified or terminated by the court.

(b) Any petition, report, account, or other matter filed or commenced before the operative date shall be continued under this division, so far as applicable, unless in the opinion of the court application of a particular provision of this division would substantially interfere with the effective conduct of the matter or with the rights of the parties or

other interested persons, in which case the particular provision of this division does not apply and prior law applies.

**Comment.** Subdivision (a) of Section 1484 is consistent with the general rule stated in Section 1481. Subdivision (b) constitutes a limited exception to the general rule stated in Section 1481.

#### CROSS-REFERENCES

##### Definitions

Court, § 1418

Interested person, § 1424

Operative date, § 1480

Petition, § 1430

Prior law, § 1480

### § 1485. Effect on guardianships of adults and married minors

1485. (a) A guardianship of an adult, or a guardianship of the person of a married minor, in existence under this code on the operative date shall be deemed to be a conservatorship and is governed by the provisions of law applicable to conservatorships without petition or order, whether or not the letters of guardianship or the title of the proceeding are amended as provided in this chapter.

(b) The validity of transactions and acts of a guardian or conservator shall not be affected by a misdescription of the office, nor shall any judgment, decree, or order of the court be invalidated by any such misdescription.

#### Legislative Committee Comment—Assembly

**Comment.** Section 1485 continues in effect as conservatorships all guardianships for adults and all guardianships of the person of married minors established under prior law. If the guardianship established under prior law was a guardianship of the estate, its continuation as a conservatorship of the estate will have the effect of continuing to deprive the conservatee of the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate. Section 1872. See also Civil Code § 40 (lack of capacity to contract). This preserves the effect of the creation of such guardianships under prior law. See *Hellman Commercial Trust & Sav. Bank v. Alden*, 206 Cal. 592, 604-05, 275 P. 794, 799-800 (1929) (guardianship rendered adult ward incapable of making

a valid contract). However, such a person is not deemed to lack capacity to give informed consent for medical treatment unless the court so orders. See Section 2354. See also Section 1880.

## CROSS-REFERENCES

## Definitions

Court, § 1418

Operative date, § 1480

**§ 1487. Review of certain existing conservatorships**

1487. (a) At or before the time of the court's first periodic review after the operative date under Section 1850, the court shall review the conservatorship to determine whether an order should be made under Section 1873 broadening the legal capacity of the conservatee.

(b) This section does not apply with respect to guardianships described in Section 1485 or to conservatorships where the conservator was appointed under prior law on the ground that the conservatee was a person for whom a guardian could have been appointed.

(c) Noncompliance with this section gives rise to no penalty.

## Legislative Committee Comment—Assembly

**Comment.** Section 1487 requires court review of conservatorships in existence on the operative date where the conservatee has not been adjudicated to be incompetent under prior law. Where appropriate, an order may be made under Section 1873 authorizing the conservatee to enter into specified transactions or types of transactions.

## CROSS-REFERENCES

## Definitions

Court, § 1418

Operative date, § 1480

Rules of Judicial Council, § 1491

**§ 1488. Effect on nomination by adult of guardian for such adult**

1488. If, prior to the operative date, an adult has in a signed writing nominated a person to serve as guardian if a guardian is in the future appointed for such adult, such nomination shall be deemed to be a nomination of a conservator. This section applies whether or not the signed

writing was executed in the same manner as a witnessed will so long as the person signing the writing had at the time the writing was signed sufficient capacity to form an intelligent preference.

**Comment.** Section 1488 ensures that a nomination of a guardian made under former Section 1463 will be given effect under the new law (Section 1810). Under Section 1810, a conservator may be nominated in a signed writing whether or not the writing is executed in the same manner as a witnessed will. The second sentence of Section 1488 applies the same standard to a signed writing made under prior law and purporting to nominate a guardian, even though the writing may not have met the stricter requirement of former Section 1463.

#### CROSS-REFERENCES

Definition, operative date, § 1480

### **§ 1489. Effect on appointment of guardian by parent or other person for a minor**

**1489.** If, prior to the operative date, a parent or other person has in a signed writing appointed a person to serve as the guardian of the person or estate or both of a minor, or as the guardian of the property the minor receives from or by designation of the person making the appointment, such appointment shall be deemed to be a nomination of a guardian if the requirements of Section 1500 or 1501 are satisfied and, in such case, shall be given the same effect it would have under Section 1500 or 1501, as the case may be, if made after the operative date. This section applies whether or not the signed writing is a will or deed so long as the person signing the writing had at the time the writing was signed sufficient capacity to form an intelligent preference.

**Comment.** Section 1489 ensures that the appointment of a testamentary guardian made under former Section 1402 or 1403 will be given effect as a nomination of a guardian under the new law (Sections 1500 and 1501). See also Section 1514(c)-(d) and Civil Code § 4600.

Under Sections 1500 and 1501, a guardian may be nominated in a signed writing whether or not the writing is a will or deed. See Section 1502 and the Comment thereto. The second sentence of Section 1489 applies the same standard to a signed writing



made prior to the operative date and purporting to appoint a guardian, even though the writing may not have met the stricter requirements of former Section 1402 or 1403.

#### CROSS-REFERENCES

Definition, operative date, § 1480

### § 1490. References in statutes

1490. (a) When used in any statute of this state with reference to an adult or to the person of a married minor, "guardian" means the conservator of that adult or the conservator of the person in case of the married minor.

(b) Any reference in the statutes of this state to the term "absentee" or "secretary concerned" as defined in former Section 1751.5 of the Probate Code shall be deemed to be a reference to the definitions of those terms in this division.

(c) Any reference in the statutes of this state to the definitions of the terms "account in an insured savings and loan association," "shares of an insured credit union," or "single-premium deferred annuity" in former Section 1510 of the Probate Code shall be deemed to be a reference to the definitions of those terms in this division.

**Comment.** Section 1490 recognizes that through inadvertence some conforming changes may not have been made in sections containing references made obsolete by the enactment of this division.

#### CROSS-REFERENCES

##### Definitions

Absentee, § 1403

Account in an insured savings and loan association, § 1406

Secretary concerned, § 1440

Shares of an insured credit union, § 1443

Single-premium deferred annuity, § 1446

### § 1491. Rules of Judicial Council

1491. The Judicial Council may provide by rule for the orderly transition of pending proceedings on the operative date, including but not limited to rules relating to amendment of title of the proceedings and amendment of, or issuance of, letters of guardianship or conservatorship.

**Comment.** Section 1491 makes clear the authority of the Judicial Council to prescribe rules for the orderly transition of

pending proceedings on the operative date. See also the Comment to Section 1464 (form of notice). See also Section 2356 (regulation of Director of Mental Health defining "mental health treatment facility").

**Note.** The delayed operative date of January 1, 1981 (see Section 4 of the proposed legislation) does not apply to Section 1491 which will become operative on the effective date of the proposed legislation (January 1, 1980, if the proposed legislation is enacted in 1979).

#### CROSS-REFERENCES

Definition, operative date, § 1480

## PART 2. GUARDIANSHIP

### CHAPTER 1. ESTABLISHMENT OF GUARDIANSHIP

#### Article 1. Nomination of Guardian

#### § 1500. Nomination of guardian of person or estate or both by parent

1500. Subject to Section 1502, a parent may nominate a guardian of the person or estate, or both, of a minor child if:

(a) The other parent nominates, or consents in writing to the nomination of, the same guardian for the same child; or

(b) At the time the petition for appointment of the guardian is filed, either (1) the other parent is dead or lacks legal capacity to consent to the nomination or (2) the consent of the other parent would not be required for an adoption of the child.

**Comment.** Section 1500 supersedes former Section 1403, which authorized a parent to appoint a guardian, by will or deed, to take effect upon the death of the parent appointing. Section 1500 substitutes the concept of nomination for appointment. As to the effect to be given to a nomination under this section, see Section 1514.

A nomination under Section 1500 is subject to the requirements of Section 1502, which requires that the

nomination be made in the petition for the appointment of the guardian or at the hearing on the petition or in a writing signed either before or after the petition is filed. See Section 1502 and Comment thereto.

Subdivisions (a) and (b) of Section 1500 continue the substance of the requirements that were stated in former Section 1403 except that a reference to a nomination by the other parent has been added for clarity.

An appointment of a guardian for a minor under prior law is deemed to be a nomination of a guardian. See Section 1489.

#### CROSS-REFERENCES

Additional powers of guardian nominated by will, § 2106

Consent of parent to adoption of child, Civil Code § 224

Joint guardians for one ward, § 2105

One guardian for several wards, § 2106

### § 1501. Nomination of guardian as to particular property

1501. Subject to Section 1502, a parent or any other person may nominate a guardian for property that a minor receives from or by designation of the nominator (whether before, at the time of, or after the nomination) including, but not limited to, property received by the minor by virtue of a gift, deed, trust, will, succession, insurance, or benefits of any kind.

**Comment.** Section 1501 supersedes former Section 1402, which authorized a parent to appoint a guardian by will or deed for property a child took from such parent by will or succession and authorized any other person to appoint a guardian by will for property a minor took by will from such other person. Section 1501 substitutes the concept of nomination for appointment. As to the effect to be given to a nomination under this section, see Section 1514.

A nomination under Section 1501 is subject to the requirements of Section 1502, which requires that the nomination be made in the petition for the appointment of the guardian or at the hearing on the petition or in a writing signed either before or after the petition is filed. See Section 1502 and Comment thereto.

Section 1501 goes beyond prior law which limited the appointment of a guardian to property taken by will or succession in the case of a parent or property taken by will in the case of another person. Section 1501 covers all property received from or by designation of the person making the nomination, and

includes such property as proceeds from an insurance policy. This changes the rule of *Estate of Welfer*, 110 Cal. App.2d 262, 242 P.2d 655 (1952) (father's desire expressed in his will that designated person be guardian with respect to proceeds of insurance policy on father's life not given effect because former Section 1402 covered only property taken by "will or succession"). Under Section 1501, a person may nominate a guardian for the proceeds of a life insurance policy owned by the nominator on the life of the nominator or on the life of a person surviving the nominator.

Where a parent attempts to nominate a general guardian of the estate of a child as authorized by Section 1500, but the nomination does not satisfy the requirements of Section 1500 because the written consent of the other parent is required but not obtained, the nomination may nevertheless satisfy the requirements of Section 1501 and permit appointment of a guardian with respect to the property of the nominating parent that the child takes from that parent. See *Guardianship of Joaquin*, 168 Cal. App.2d 99, 335 P.2d 507 (1959).

An appointment of a guardian for a minor under prior law is deemed to be a nomination of a guardian. See Section 1489.

#### CROSS-REFERENCES

Joint guardians for one ward, § 2105  
 One guardian for several wards, § 2106  
 Powers and duties of guardian where  
   Guardian as to particular property appointed, § 2109  
   Guardian nominated in will, § 2108

### § 1502. Manner of making nomination; when effective; effect of subsequent legal incapacity or death of nominator

1502. (a) A nomination of a guardian under this article may be made in the petition for the appointment of the guardian or at the hearing on the petition or in a writing signed either before or after the petition for the appointment of the guardian is filed.

(b) The nomination of a guardian under this article is effective when made except that a writing nominating a guardian under this article may provide that the nomination becomes effective only upon the occurrence of such specified condition or conditions as are stated in the writing, including but not limited to such conditions as the subsequent legal incapacity or death of the person making the nomination.

(c) Unless the writing making the nomination expressly otherwise provides, a nomination made under this article remains effective notwithstanding the subsequent legal incapacity or death of the person making the nomination.

**Comment.** Section 1502 is new. Subdivision (a) permits the nomination to be made by a signed writing at any time or at the hearing on the petition. Former Sections 1402 and 1403 in effect provided that an appointment of a testamentary guardian was effective only if made by will or deed in the case of a parent or by will in the case of any other person and the appointment was effective only upon the death of the person making the appointment. Section 1502 liberalizes former law to permit the nomination to be effective, for example, where a guardian is needed for a child because the parent who made the nomination no longer has legal capacity and the other parent is dead.

Subdivision (b) makes clear that a writing making a nomination under this article may specify one or more conditions the occurrence of which makes the nomination become effective. Absent such specification, the nomination is effective, unless it is revoked, whenever a petition to appoint a guardian is filed.

Subdivision (c) makes clear that the death or subsequent lack of legal capacity does not affect the effectiveness of the nomination unless the writing making the nomination expressly otherwise provides.

An appointment of a guardian for a minor under prior law is deemed to be a nomination of a guardian. See Section 1489.

## **Article 2. Appointment of Guardian Generally**

### **§ 1510. Petition for appointment**

1510. (a) A relative or other person on behalf of the minor, or the minor if 14 years of age or older, may file a petition for the appointment of a guardian of the minor.

(b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed, shall specify the name and address of the proposed guardian the name and date of birth of the proposed ward, and shall state that such appointment is necessary or convenient.

(c) The petition shall set forth, so far as is known to the petitioner, the names and addresses of all of the following:

- (1) The parents of the proposed ward.
- (2) The person having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward.
- (3) The relatives of the proposed ward within the second degree.
- (4) In the case of a guardianship of the estate, the spouse of the proposed ward.
- (5) Any person nominated as guardian for the proposed ward under Section 1500 or 1501.
- (d) If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.
- (e) The petition shall state, so far as is known to the petitioner, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed ward.
- (f) If the petitioner has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition shall disclose such pending proceeding.

[Amended by 1960 Cal. Stats. ch. 89]

Law Revision Commission Comment  
1979 Enactment

**Comment.** Subdivision (a) of Section 1510 continues the substance of the second sentence of subdivision (a) of former Section 1440 and a portion of the first paragraph of former Section 1570.

The "necessary or convenient" standard of subdivision (b) is taken from the first sentence of subdivision (a) of former Section 1440. The requirement that the petition specify the proposed guardian is new but continues former practice. See *Petition for Appointment of Guardian of Minor* (Form Approved by the Judicial Council of California, effective January 1, 1976).

Subdivision (c) is new and is drawn in part from the second sentence of former Section 1754 (conservatorship). This subdivision will facilitate compliance with the notice requirements of Section 1511. The subdivision generally continues former guardianship practice. The former practice is clarified to require a listing of both the person having legal custody and the person having the care of the proposed ward if they are different persons. The former practice is broadened to include relatives within the second degree who reside outside of California and the spouse of the minor. (Note that a guardian of the person may not be appointed for a married minor. See Section 1515.) See Petition for Appointment of Guardian of Minor (Form Approved by the Judicial Council of California, effective January 1, 1976). Paragraph (5) of subdivision (c) is new and reflects the addition of new provisions authorizing the nomination of a guardian. This paragraph supersedes a portion of the last sentence of former Section 1405.

Subdivision (d) is new and is based on a portion of former Section 1461.3. Subdivision (e) is new and is based on the penultimate sentence of former Section 1754 (conservatorship) and on former Section 1655 (Uniform Veterans' Guardianship Act).

Subdivision (f) is new but continues former guardianship practice. See Petition for Appointment of Guardian of Minor (Form Approved by the Judicial Council of California, effective January 1, 1976). See also former Section 1440(c)(2) (disclosure of any adoption petition by petitioner required in nonrelative guardianship petition).

Law Revision Commission Comment  
1980 Amendment

**Comment.** Section 1510 is amended to generalize and continue the substance of the portion of subdivision (b) of former Section 2903 that required a petition under the Uniform Veterans' Guardianship Act to set forth the name and age of the proposed ward, the amount of money then due to the proposed ward from the Veterans Administration, and the amount of probable future payments. The requirement of former Section 2903 that the petition show the place of residence of the proposed ward is superseded by subdivision (c) of Section 1510 which requires the petition to show the addresses of the proposed ward's parents, the person having legal custody of the proposed ward, and the person having the care of the proposed ward.

## CROSS-REFERENCES

Appointment of guardian to fill vacancy, § 2110  
 Appointment of legal counsel for proposed ward, § 1470  
 Independent exercise of powers, § 2592  
 Joint guardians for one ward, § 2105  
 Nonprofit charitable corporation as guardian, § 2104  
 Notice to  
     Director of Developmental Services, § 1461  
     Director of Mental Health, § 1461  
     Director of Social Services, § 1542  
     Veterans Administration, § 1461.5  
 One guardian for several wards, § 2106  
 Petition in case of certain nonrelative guardianships, §§ 1541-1542  
 Petition must be verified, § 1450  
 Temporary guardian, § 2250  
 Venue, §§ 2200-2216

**§ 1511. Notice of hearing**

1511. (a) Except as provided in subdivisions (f) and (g), at least 15 days before the hearing on the petition for the appointment of a guardian, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), (d), and (e) of this section. The notice shall be accompanied by a copy of the petition.

(b) Notice shall be served in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, or in such manner as may be authorized by the court, on all of the following (other than the petitioner or persons joining in the petition):

- (1) The proposed ward if 14 years of age or older.
- (2) The person having legal custody of the proposed ward.
- (3) The parents of the proposed ward.
- (4) Any person nominated as a guardian for the proposed ward under Section 1500 or 1501.

(c) Notice shall be given by mail sent to their addresses stated in the petition, or in such manner as may be authorized by the court, to all of the following (other than the petitioner or persons joining in the petition):

- (1) The spouse named in the petition.
- (2) The relatives named in the petition, except that if the petition is for the appointment of a guardian of the estate only the court may dispense with the giving of such notice to any one or more or all of such relatives.



(3) The person having the care of the proposed ward if other than the person having legal custody of the proposed ward.

(d) If notice is required by Section 1461 or Section 1542 to be given to the Director of Mental Health or the Director of Developmental Services or the Director of Social Services, notice shall be mailed as so required.

(e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(f) Unless the court orders otherwise, notice shall not be given to any of the following:

(1) The parents or other relatives of a proposed ward who has been relinquished to a licensed adoption agency.

(2) The parents of a proposed ward who has been judicially declared free from their custody and control.

(g) Notice need not be given to any person if the court so orders upon a determination of either of the following:

(1) The person cannot with reasonable diligence be given the notice.

(2) The giving of the notice would be contrary to the interest of justice.

(h) Before the appointment of a guardian is made, proof shall be made to the court that each person entitled to notice under this section either:

(1) Has been given notice as required by this section; or

(2) Has not been given notice as required by this section because such person cannot with reasonable diligence be given the notice or because the giving of notice to such person would be contrary to the interest of justice.

[Amended by 1960 Cal. Stats. ch. 89]

Legislative Committee Comment—Assembly

1979 Enactment

**Comment.** Section 1511 supersedes former Section 1441 and substantially broadens the notice required. Subdivisions (b) and (c) of Section 1511 (1) retain the former requirement of notice to the parents, (2) clarify the former requirement that notice be given to the person having the “care” of the proposed ward by requiring notice to the person having legal custody of the

proposed ward, and (3) add a requirement of notice to the proposed ward if 14 years of age or older, to the spouse of the proposed ward, and to any guardian nominated under Section 1500 or 1501. Notice is also required to be mailed to the person having the care of the proposed ward if that person is not the person having the legal custody of the proposed ward. The requirement of notice to a person nominated as guardian under Section 1500 or 1501 is designed to alert the nominee to the pending proceeding if the nominee is not the petitioner or a person joining in the petition. The former requirement of notice to "such relatives of the minor residing in the state as the court or judge deems proper" is expanded by subdivision (c) of Section 1511 to require notice to all relatives of the proposed ward within the second degree (see paragraph (3) of subdivision (c) of Section 1510) outside of as well as within California unless, in the case of a petition for a guardianship of the estate only, the court dispenses with such notice. Subdivisions (d) and (e) are included to alert the practitioner to the need to give notice to the Director of Mental Health, Director of Developmental Services, or Director of Social Services, and to the Veterans Administration in certain cases.

Subdivision (a) requires that notice be given at least 15 days before the hearing, and this time may not be shortened by the court. See Section 1462. If there is urgency, a temporary guardian may be appointed. See Section 2250.

Subdivision (f) continues the last sentence of former Section 1441, but authorizes the court to require that notice be given in the unusual case where such notice would be appropriate. The court had no comparable authority under the former provision.

Subdivisions (g) and (h) are based on the last portion of the second sentence of former Section 1441. The court can order that notice need not be given where the person to be given notice cannot be located in the exercise of reasonable diligence or where the giving of the notice would be contrary to the interest of justice. The court might determine that the giving of the notice would be contrary to the interest of justice, for example, if the parents or relatives of the proposed ward were in a hostile country (such as Vietnam) and the giving of the notice might be dangerous to them or where a mother had abandoned the proposed ward, remarried, established a new family, and indicated in writing that she wanted to receive no further communications concerning her child because she was concealing its existence from her new family. The provision for

proof of notice is generalized by subdivision (h) to apply to all notices required by Section 1511.

Law Revision Commission Comment  
1980 Amendment

**Comment.** Section 1511 is amended to revise the cross-reference in subdivision (e) in view of the repeal of former Section 2908.

CROSS-REFERENCES

Additional notice, § 1462  
Clerk sets petition for hearing, § 1451  
Continued or postponed hearing, notice, § 1463  
Definition, court, § 1418  
Extending time for notice, § 1462  
Mailing  
Manner of, § 1465  
Personal delivery in lieu of, § 1466  
When complete, § 1465  
Proof of giving of notice, § 1468  
Service by mail, when deemed complete, § 1467

**§ 1512. Amendment of petition to disclose newly discovered proceeding affecting custody**

1512. Within 10 days after the petitioner in the guardianship proceeding becomes aware of any proceeding not disclosed in the guardianship petition affecting the custody of the proposed ward (including any adoption, juvenile court, marriage dissolution, domestic relations, or other similar proceeding affecting the proposed ward), the petitioner shall amend the guardianship petition to disclose the other proceeding.

**Comment.** Section 1512 is new. The section is designed to alert the court to any other proceeding affecting the custody of the proposed ward that was not disclosed in the guardianship petition. The section supersedes the second paragraph of subdivision (c) of former Section 1440, which required a nonrelative petitioner for guardianship to amend the guardianship petition if the petitioner filed a petition for adoption of the minor of whom the petitioner was seeking guardianship.

**§ 1513. Investigation and report by court-designated officer**

1513. (a) The court investigator, probation officer, or domestic relations investigator in the county in which the

petition for appointment of a guardian is pending shall make an investigation of each case whenever requested by the court.

(b) The officer making the investigation shall file with the court a written confidential report. The report may be considered by the court and shall be made available only to the persons who have been served in the proceeding and the persons who have appeared in the proceeding or their attorneys. The report may be received in evidence upon stipulation of counsel for all such persons who are present at the hearing or, if such a person is present at the hearing but is not represented by counsel, upon consent of the person.

(c) When the court directs that an investigation and report be made under this section, the court shall make an inquiry into the financial condition of (1) the parent, parents, or other person charged with the support and maintenance of the proposed ward and (2) the estate of the proposed ward. If the court finds such parent, parents, or other person or the proposed ward's estate able, in whole or in part, to pay the expense of the investigation and report, the court may make an order requiring such parent, parents, or other person, or the guardian of the ward's estate when appointed, to repay to the county such part, or all, of such expenses of the investigation and report as, in the opinion of the court, is proper. The repayment shall be made to the county officer designated by the board of supervisors, who shall keep suitable accounts of such expenses and repayments and shall deposit the collections in the county treasury. An order may be made under this subdivision only after a hearing, held after such notice as the court may require, if a hearing is requested.

**Comment.** Subdivision (a) of Section 1513 continues the substance of former Section 1443 with two modifications:

(1) The former law has been expanded in Section 1513 to permit investigations by the court investigator and the domestic relations investigator. The court investigator makes other investigations under this division and it is appropriate that this officer be included among the persons authorized to make investigations under Section 1513. The addition of the domestic

relations investigator to Section 1513 is consistent with Civil Code Section 4602, which authorizes investigations to be made in child custody matters by the domestic relations investigator as well as by the probation officer.

(2) Section 1513 does not continue the provision of former law that precluded an investigation and report when a report was required under former Section 1440.1 (continued in Section 1543). This provision of former law was unduly rigid and has not been continued because it would preclude the court, for example, from obtaining a report under Section 1513 in a case where the agency obligated to file the report under Section 1543 has such an interest in the matter that the agency's report may not be fair and objective. Subdivision (c) of Section 1513 will tend to protect against any unnecessary investigation and report under Section 1513 in a case where a report is being made under Section 1543 because the petitioner in the guardianship proceeding will wish to avoid the expense of an unnecessary report.

Subdivisions (b) and (c) of Section 1513 are new and are adapted from comparable provisions of Civil Code Section 4602.

#### CROSS-REFERENCES

Appointment of legal counsel for proposed ward, § 1470

Definitions

Court, § 1418

Court investigator, § 1419

Report in case of certain nonrelative guardianships, § 1543

### § 1514. Appointment of guardian

1514. (a) Upon hearing of the petition, if it appears necessary or convenient, the court may appoint a guardian of the person or estate of the proposed ward or both.

(b) In appointing a guardian of the person, the court is governed by the provisions of Section 4600 of the Civil Code, relating to custody of a minor.

(c) The court shall appoint a guardian nominated under Section 1500 insofar as the nomination relates to the guardianship of the estate unless the court determines that the nominee is unsuitable.

(d) The court shall appoint the person nominated under Section 1501 as guardian of the property covered by the nomination unless the court determines that the nominee is unsuitable. If the person so appointed is appointed only

as guardian of the property covered by the nomination, the letters of guardianship shall so indicate.

(e) Subject to subdivisions (c) and (d), in appointing a guardian of the estate:

(1) The court is to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the proposed ward.

(2) If the proposed ward is of sufficient age to form an intelligent preference as to the person to be appointed as guardian, the court shall give consideration to that preference in determining the person to be so appointed.

**Comment.** Subdivision (a) of Section 1514 continues the substance of a portion of the first sentence of former Section 1405 and the substance of a portion of the first sentence of subdivision (a) of former Section 1440.

Subdivision (b) applies only to a guardian of the person of a minor. If a person is to be appointed as a guardian of both the person and of the estate, the requirement of subdivision (b) governs the appointment. Subdivision (b) incorporates by reference Section 4600 of the Civil Code, which applies to any proceeding where there is at issue the custody of a minor, including a guardianship proceeding. See, *e.g.*, *Guardianship of Marino*, 30 Cal. App.3d 952, 106 Cal. Rptr. 655 (1973).

Subdivisions (c) and (d)—which require the appointment of the person nominated under Section 1500 or 1501 as guardian of the property covered by the nomination unless the nominee is determined to be unsuitable—supersede the portion of the last sentence of former Section 1405 that related to confirmation of a testamentary guardian of the estate of a minor. Prior law was not clear whether appointment of a testamentary guardian of the estate was binding on the court or was merely persuasive. See 3 N. Condee, *Probate Court Practice* § 2029, at 151 (2d ed. 1964); Schlesinger, *Testamentary Guardianships for Minors and Incompetents*, in *California Will Drafting* § 10.10, at 312-13 (Cal. Cont. Ed. Bar 1965). Subdivision (b) permits appointment of a person nominated as the guardian of the person and estate of a minor in the court's discretion if the appointment of such person is permitted under the standard provided in Civil Code Section 4600; but, even though the person nominated as a guardian of the person and estate is not appointed as guardian of the person, the

court must nevertheless appoint the nominee as the guardian of the estate unless the court determines that the nominee is unsuitable.

Subdivision (e) provides the standards for appointing a guardian of the general estate of a minor. A guardian of the general estate may coexist with a guardian as to particular property nominated under Section 1501, with the latter controlling the property received from the person making the nomination. See Section 2109. However, no new guardian of the general estate may be appointed when an existing guardian of the general estate is serving unless the existing guardian is removed or the appointment is vacated. See *Guardianship of Kimball*, 80 Cal. App.2d 884, 182 P.2d 612 (1947). Subdivision (e) supersedes the first sentence of former Section 1406 insofar as it related to guardianship of the estate of a minor.

When a guardian nominated by will is granted additional powers by the will and is appointed by the court, the order of appointment shall include a grant of such powers to the guardian unless the court for good cause determines otherwise. See Section 2108.

Section 1514 substitutes the rule of Section 4600 and the general rule stated in subdivision (e) for the priorities and limitations stated in former Sections 1406-1409 and supersedes those sections.

Former Section 1406 permitted a minor over 14 years of age to nominate a guardian, but the court had considerable latitude in determining whether to approve the minor's nominee. See *Guardianship of Kentera*, 41 Cal.2d 639, 262 P.2d 317 (1953); *Guardianship of Rose*, 171 Cal. App.2d 677, 340 P.2d 1045 (1959). The former provision for nomination of a guardian by the minor is not continued, but Section 1510 permits a minor 14 years of age or older to petition as a party in a guardianship proceeding for the appointment of his or her own guardian and requires that the proposed guardian be specified in the petition. Civil Code Section 4600 requires the court to consider and give due weight to the minor's preference concerning the minor's custody. And subdivision (e) of Section 1514 requires the court to consider the minor's preference as to the person to be appointed as guardian of the estate.

If a guardian of the estate is nominated under Section 1500 or 1501, the provisions of subdivision (e) are subject to subdivisions (c) and (d), so that the court must appoint the nominee unless the court determines that the nominee is unsuitable. In such a case, the court is not bound by the requirements of subdivision

(e). The court may thus disregard the minor's preference, although nothing precludes the court from taking it into account in determining whether the nominee is unsuitable.

#### CROSS-REFERENCES

Appealable orders, § 2750

Appointment of guardian to fill vacancy, § 2110

Appointment of legal counsel for proposed ward, § 1470

Definition, court, § 1418

Director of Developmental Services as guardian, Health & Safety Code § 416

Joint guardians for one ward, § 2105

Nonprofit charitable corporation as guardian, § 2104

One guardian for several wards, § 2106

Order of appointment, additional conditions, §§ 2358, 2402

Public guardian, Welf. & Inst. Code § 8006

State Department of Mental Health as guardian, Welf. & Inst. Code § 7284

Trust company as guardian of estate, § 480

Veterans' Home as guardian of estate, Mil & Vet. Code § 1046

### § 1515. No guardian of person for married minor

1515. Notwithstanding any other provision of this part, no guardian of the person shall be appointed for a minor who is married or whose marriage has been dissolved. This section does not apply in the case of a minor whose marriage has been adjudged a nullity.

**Comment.** Section 1515 supersedes former Section 1433, which precluded appointment of a guardian of the person of a married minor solely by reason of minority. If a married minor or a minor whose marriage has been dissolved is in need of protective supervision of the person, a conservator of the person may be appointed under Part 3. If the marriage of a minor is dissolved or is adjudged a nullity, it has no effect on a conservatorship of the person if one has been established. See Section 1860(b). Nothing in Section 1515 precludes the appointment of a guardian of the estate of a married minor.

#### CROSS-REFERENCES

Termination of guardianship of person when minor marries, § 1600

## Article 3. Nonrelative Guardianships

### § 1540. Application of article

1540. This article does not apply in any of the following cases:

(a) Where the petition is for guardianship of the estate exclusively.



(b) Where the proposed guardian is a relative of the proposed ward.

(c) Where the proposed guardian is one nominated as a guardian of the proposed ward under Section 1500.

(d) Where the Director of Developmental Services is appointed guardian pursuant to Article 7.5 (commencing with Section 416) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

(e) Where the director of the department designated by the board of supervisors to provide social services is appointed guardian.

(f) Where the public guardian is appointed guardian.

[Amended by 1980 Cal. Stats. ch. 246]

Law Revision Commission Comment

1979 Enactment

**Comment.** Section 1540 is new. The section is drawn from portions of subdivision (c) of former Section 1440 and from former Section 1440.3.

**§ 1541. Additional contents of petition for guardianship**

1541. In addition to the other required contents of the petition for appointment of a guardian, the petition shall include both of the following:

(a) A statement by the proposed guardian that, upon request by an agency referred to in Section 1543 for information relating to the investigation referred to in that section, the proposed guardian will promptly submit the information required.

(b) A disclosure of any petition for adoption by the proposed guardian of the minor who is the subject to the guardianship petition regardless of when or where filed.

(c) A statement whether or not the home of the proposed guardian is licensed as a foster family home.

[Amended by 1980 Cal. Stats. ch. 246]

Law Revision Commission Comment

1979 Enactment

**Comment.** Section 1541 continues the substance of the second sentence of subdivision (c) of former Section 1440. For cases in which this article does not apply, see Section 1540.

CROSS-REFERENCES

Disclosure of proceedings affecting custody, §§ 1510(f), 1512

**§ 1542. Delivery of copy of petition to Director of Social Services**

1542. The petitioner shall mail a notice of the hearing and a copy of the petition to the Director of Social Services at the director's office in Sacramento at least 15 days before the hearing.

**Comment.** Section 1542 continues the substance of the first sentence of subdivision (c) of former Section 1440 except that (1) the requirement that notice of the hearing be given has been added, (2) the notice is given by mail rather than "served," (3) notice is given to the Director of Social Services rather than to the State Department of Health, and (4) the 15-day provision has been added. The provision of former Section 1440 requiring proof of service to be made to the court at the time of hearing has been omitted; this will permit proof of mailing to be filed with the court prior to the hearing. See Section 1468. For cases in which this article does not apply, see Section 1540.

**CROSS-REFERENCES**

Manner of mailing, § 1465

Personal delivery in lieu of mailing, § 1466

When mailing complete, § 1465

**§ 1543. Report on suitability of guardian**

1543. (a) If the petition as filed or as amended states that an adoption petition has been filed, a report with respect to the suitability of the proposed guardian for guardianship shall be filed with the court by the agency investigating the adoption. In other cases, the local agency designated by the board of supervisors to provide public social services shall file a report with the court with respect to the proposed guardian of the same character required to be made with regard to an applicant for foster family home licensure.

(b) The report filed with the court pursuant to this section is confidential. The report may be considered by the court and shall be made available only to the persons who have been served in the proceeding and the persons who have appeared in the proceeding or their attorneys. The report may be received in evidence upon stipulation of counsel for all such persons who are present at the hearing

or, if such person is present at the hearing but is not represented by counsel, upon consent of such person.

[Amended by 1980 Cal. Stats. ch. 246]

Law Revision Commission Comment

1979 Enactment

**Comment.** Subdivision (a) of Section 1543 is the same in substance as former Section 1440.1. See also Section 1513 (investigation by court investigator, probation officer, or domestic relations investigator). Subdivision (b) supersedes former Section 1440.2, is comparable to subdivision (b) of Section 1513, and is adapted from the comparable provision of Civil Code Section 4602. For cases in which this article does not apply, see Section 1540.

CROSS-REFERENCES

Definition, court, § 1418

## CHAPTER 2. TERMINATION

### § 1600. Majority, death, or marriage of ward

**1600.** (a) A guardianship of the person or estate or both terminates when the ward attains majority or dies.

(b) A guardianship of the person terminates when the ward marries.

**Comment.** Subdivision (a) of Section 1600 continues subdivisions (1) and (2) of former Section 1590, relating to termination of guardianship when the ward attains majority. The age of majority is 18. See Civil Code § 25. Subdivision (a) also codifies the rule that the death of the ward terminates the guardianship. See Section 1860 for a comparable provision. Subdivision (b) continues that portion of subdivision (1) of former Section 1590 relating to termination of the guardianship of the person when a minor marries.

The court retains jurisdiction of the guardianship proceeding despite the termination of the guardianship. See Section 2630. If the married minor is in need of protective supervision of the person, a petition for conservatorship of the person may be filed. See Section 1800. See also Section 1890(b) (filing petition for appointment of conservator during proposed conservatee's minority so that the appointment of a conservator may be made effective immediately upon the minor's becoming 18).

## CROSS-REFERENCES

## Allowance of

- Disbursements after termination of guardianship, § 2623
- Expenses for care of estate after death of ward, § 2623
- Care of estate after death of ward, § 2467
- Disposition of estate after death of ward, § 2631
- No guardian of person for married minor, § 1515
- Ward reaching majority may settle accounts with guardian, § 2627

**§ 1601. Termination by court order**

1601. Upon petition of the guardian, a parent, or the ward, the court may make an order terminating the guardianship if the court determines that it is no longer necessary that the ward have a guardian or that it is in the ward's best interest to terminate the guardianship. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

## Legislative Committee Comment—Assembly

Comment. Section 1601 continues the first portion of subdivision (3) of former Section 1590 except that (1) the manner of giving notice is specified and (2) a parent is added to the persons authorized to petition for termination of the guardianship. The standard for termination of the guardianship was not formerly specified in the statute. But see former Section 1580 (removal of guardian when it is "no longer necessary that the ward should be under guardianship"). The court retains jurisdiction of the guardianship proceeding despite termination of the guardianship. See Section 2630.

## CROSS-REFERENCES

- Allowance of disbursements after termination, § 2623
- Appealable orders, § 2750
- Appointment of legal counsel for ward, § 1470
- Definition, court, § 1418
- Notice to Veterans Administration, § 1461.5
- Proof of giving of notice, § 1468
- Request for special notice, § 2700
- Termination of proceeding upon
  - Exhaustion of estate, § 2626
  - Transfer of all assets to foreign guardian, § 2808

**PART 3. CONSERVATORSHIP**  
**CHAPTER 1. ESTABLISHMENT OF**  
**CONSERVATORSHIP**

**Article 1. Persons for Whom Conservator**  
**May Be Appointed**

**§ 1800. Conservatorships for adults or married minors**

1800. If the need therefor is established to the satisfaction of the court and the other requirements of this chapter are satisfied, the court may appoint:

(a) A conservator of the person or estate of an adult, or both.

(b) A conservator of the person of a minor who is married or whose marriage has been dissolved.

**Comment.** Section 1800 is new and makes clear that a conservatorship may be established only for adults and for minors who are married or whose marriage has been dissolved. In the case of a minor who is married or whose marriage has been dissolved, a conservator of the person may be appointed if the requirements of this chapter are satisfied; a guardian of the estate of the minor may be appointed where necessary or convenient (see Sections 1514, 1515). In the case of a minor whose marriage has been adjudged a nullity, guardianship and not conservatorship is the appropriate protective proceeding of the person. See Section 1515. However, if a conservatorship is established for a married minor and the marriage is later adjudged a nullity, the conservatorship does not terminate. See Section 1860 and Comment thereto.

**CROSS-REFERENCES**

Definition, court, § 1418

**§ 1801. Showing required for appointment generally**

1801. Subject to Section 1800:

(a) A conservator of the person may be appointed for a person who is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter.

(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

(c) A conservator of the person and estate may be appointed for a person described in subdivisions (a) and (b).

**Note.** Section 1801 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Comment.** Section 1801 continues the substance of a portion of former Section 1751.

**§ 1802. Appointment upon request of proposed conservatee**

1802. Subject to Section 1800, a conservator of the person or estate, or both, may be appointed for a person who voluntarily requests the appointment and who, to the satisfaction of the court, establishes good cause for the appointment.

**Comment.** Section 1802 continues the substance of a portion of former Section 1751.

**CROSS-REFERENCES**

Definition, court, § 1418

**§ 1803. Proposed conservatee an "absentee"**

1803. A conservator of the estate may be appointed for a person who is an absentee as defined in Section 1403.

**Comment.** Section 1803 continues a portion of former Section 1751. For special provisions applicable where the proposed conservatee is an absentee, see Article 4 (commencing with Section 1840).

**Article 2. Order of Preference for Appointment of Conservator**

**§ 1810. Nomination by proposed conservatee**

1810. If the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator in the petition or in a writing signed either before or after the petition is filed. The court shall appoint the nominee as conservator unless

the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee.

Legislative Committee Comment—Assembly

**Comment.** Section 1810 continues the substance of the second sentence of former Section 1752. Like former Section 1752, but unlike former Section 1463 (guardianship), Section 1810 does not require that the writing containing the nomination be executed in the same manner as a witnessed will. The only formal requirements for a nomination under Section 1810 are that the nomination be in writing and be signed by the proposed conservatee. The nomination may be made in a writing made long before the conservatorship proceedings are commenced; but, whenever made, the proposed conservatee must have had at the time the writing was executed sufficient capacity to form an intelligent preference. A nomination of a guardian made by an adult under prior law is deemed to be a nomination of a conservator. See Section 1488.

The proposed conservatee—whether or not the petitioner—may waive bond and, in such a case, the court may in its discretion dispense with the bond or reduce the amount of the bond. Section 2321.

CROSS-REFERENCES

Definition, court, § 1418

**§ 1811. Nomination by spouse or relative of proposed conservatee**

1811. (a) The spouse or an adult child, parent, brother, or sister of the proposed conservatee may nominate a conservator in the petition or at the hearing on the petition.

(b) The spouse or a parent of the proposed conservatee may nominate a conservator in a writing signed either before or after the petition is filed and such nomination remains effective notwithstanding the subsequent legal incapacity or death of the spouse or parent, except that a nomination by the spouse becomes void upon dissolution or an adjudication of nullity of their marriage.

**Comment.** Section 1811 is new. Subdivision (a) specifies the manner in which the nomination contemplated by former Section 1753 (continued in Section 1812) shall be made. Subdivision (b) goes beyond prior law, and gives a written nomination made by a spouse or parent posthumous effect analogous to a nomination of a guardian under Section 1500 or 1501. See Section 1502. Unlike a nominated guardian of the estate

which the court must appoint unless the nominee is "unsuitable" (Section 1514), or the nominee of the proposed conservatee which the court must appoint unless it is not in the best interests of the proposed conservatee (Section 1810), a nomination made under Section 1811 merely entitles the nominee to some preference for appointment. See Section 1812.

**§ 1812. Order of preference for appointment as conservator**

1812. (a) Subject to Sections 1810 and 1813, the selection of a conservator of the person or estate, or both, is solely in the discretion of the court and, in making the selection, the court is to be guided by what appears to be for the best interests of the proposed conservatee.

(b) Subject to Sections 1810 and 1813, of persons equally qualified in the opinion of the court to appointment as conservator of the person or estate or both, preference is to be given in the following order:

(1) The spouse of the proposed conservatee or the person nominated by the spouse pursuant to Section 1811.

(2) An adult child of the proposed conservatee or the person nominated by the child pursuant to Section 1811.

(3) A parent of the proposed conservatee or the person nominated by the parent pursuant to Section 1811.

(4) A brother or sister of the proposed conservatee or the person nominated by the brother or sister pursuant to Section 1811.

(5) Any other person or entity eligible for appointment as a conservator under this code or, if there is no such person or entity willing to act as a conservator, under the Welfare and Institutions Code.

(c) The preference for any nominee for appointment under paragraphs (2), (3), and (4) of subdivision (b) is subordinate to the preference for any other parent, child, brother, or sister in such class.

**Comment.** Section 1812 continues the substance of former Section 1753 and the first sentence of former Section 1752.

**CROSS-REFERENCES**

Appointment of conservator to fill vacancy, § 2110

Definition, court, § 1418

Department of Mental Health as conservator, Welf. & Inst. Code § 7294

Director of Developmental Services as conservator, Health & Safety Code § 416

Joint conservators, § 2105

Nonprofit charitable corporation as conservator, § 2104

One conservator for several conservatees, § 2106



Public guardian as conservator, Welf. & Inst. Code, § 8006

Trust company as conservator of estate, § 480

Veterans' Home as conservator of estate, Mil. & Vet. Code § 1046

### **§ 1813. Condition for appointment of absentee's spouse**

1813. The spouse of an absentee as defined in Section 1403 may not be appointed as conservator of the estate of the absentee unless the spouse alleges in the petition for appointment as conservator, and the court finds, that the spouse has not commenced any action or proceeding against the absentee for judicial or legal separation, divorce or dissolution of marriage, annulment, or adjudication of nullity of their marriage.

**Comment.** Section 1813 continues the substance of the second sentence of former Section 1754.5. See also Section 1841(b) (statement in petition).

#### **CROSS-REFERENCES**

Definition, court, § 1418

## **Article 3. Establishment of Conservatorship**

### **§ 1820. Filing of petition**

1820. (a) A petition for the appointment of a conservator may be filed by any of the following:

- (1) The proposed conservatee.
- (2) The spouse of the proposed conservatee.
- (3) A relative of the proposed conservatee.
- (4) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.
- (5) Any other interested person or friend of the proposed conservatee.

(b) If the proposed conservatee is a minor, the petition may be filed during his or her minority so that the appointment of a conservator may be made effective immediately upon the minor's attaining the age of majority. An existing guardian of the minor may be appointed as conservator under this part upon the minor's attaining the age of majority, whether or not the guardian's accounts have been settled.

(c) A creditor of the proposed conservatee may not file a petition for appointment of a conservator unless the

creditor is a person described in paragraph (2), (3), or (4) of subdivision (a).

Legislative Committee Comment—Assembly

**Comment.** Subdivision (a) of Section 1820 continues the substance of a portion of the first sentence of former Section 1754 except that under subdivision (c) a spouse or relative of the proposed conservatee or a specified public agency or official may now petition, whether or not such person is also a creditor. See also former Section 1570 (nonresident ward).

The first sentence of subdivision (b) is new and will permit the uninterrupted continuation of protective proceedings for a minor under guardianship who is approaching majority and will need a conservator. The second sentence of subdivision (b) is based on a portion of the first sentence of former Section 1704. Under subdivision (b), however, the power of the court to appoint an existing guardian as conservator upon the minor's reaching majority is not conditioned upon settlement of the guardian's accounts. Such settlement may take place after the guardian's appointment as conservator. See Section 2630.

CROSS-REFERENCES

Appointment of counsel for proposed conservatee, §§ 1471-1472

Notice to

Director of Mental Health, § 1461

Director of Developmental Services, § 1461

Veterans Administration, § 1461.5

Petition must be verified, § 1450

Venue, §§ 2200-2216

§ 1821. Contents of petition

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name and address of the proposed conservator and the name and address of the proposed conservatee, and shall state the reasons why the appointment is required.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse and of the relatives of the proposed conservatee within the second degree.

(c) If the petition is filed by one other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor of the proposed conservatee.

(d) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or

the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

[Amended by 1980 Cal. Stats. ch. 89]

**Note.** Section 1821 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Legislative Committee Comment—Assembly  
1979 Enactment**

**Comment.** Subdivision (a) of Section 1821 continues the substance of a portion of the first sentence of former Section 1754 but adds the requirement that the petition specify the proposed conservator and state the reasons for appointment. This addition is consistent with former practice. See *Petition for Appointment of Conservator* (Form Approved by the Judicial Council of California, effective July 1, 1977).

Subdivision (b) is the same in substance as the second sentence of former Section 1754. Subdivision (c) is new and conforms to the change in former law made in Section 1820 (creditor-relative permitted to file petition).

Subdivision (d) is drawn from a portion of former Section 1461.3 (guardianship) and is consistent with former practice in conservatorship proceedings. See *Petition for Appointment of*

Conservator (Form Approved by the Judicial Council of California, effective July 1, 1977). Subdivision (d) facilitates compliance with notice requirements. See Section 1822(c).

Subdivision (e) is new and is consistent with former practice. See Petition for Appointment of Conservator (Form Approved by the Judicial Council of California, effective July 1, 1977). Subdivision (e) facilitates compliance with notice requirements. See Section 1822(d).

Subdivision (f) is new. An application under this subdivision may include, for example, a request for an order authorizing independent exercise of powers (Section 2592) or an order relating to the legal capacity of the proposed conservatee (Sections 1870-1901).

Subdivision (g) is new. If the allegation provided for in this subdivision is made, it triggers an investigation and report by the court investigator (Section 1826) which may result in a determination by the court that the proposed conservatee need not attend the hearing (Section 1825).

Law Revision Commission Comment  
1980 Amendment

**Comment.** Section 1821 is amended to generalize and continue the substance of the portion of subdivision (b) of former Section 2903 that required a petition under the Uniform Veterans' Guardianship Act to set forth the name and place of residence of the proposed conservatee, and the amount of money then due to the proposed conservatee from the Veterans Administration and the amount of probable future payments.

CROSS-REFERENCES

Additional contents of petition for conservatorship of absentee, §§ 1813, 1841  
Independent exercise of powers, § 2592  
Joint conservators, § 2105  
Nonprofit charitable corporation as conservator, § 2104  
One conservator for several conservatees, § 2106  
Petition must be verified, § 1450

## § 1822. Notice of hearing

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), and (d) of this section. The notice shall be accompanied by a copy of the petition.

(b) Notice shall be mailed to the following persons (other than the petitioner or persons joining in the petition):

(1) The spouse, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

[Amended by 1980 Cal. Stats. ch. 89]

**Note.** Section 1822 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Law Revision Commission Comment**

**1979 Enactment**

**Comment.** Subdivision (a) of Section 1822, which requires that notice be mailed at least 15 days before the hearing, is drawn from former Section 1754. The requirement of former Section 1754 that the notice be of the "nature of the proceedings" is replaced by a requirement that a copy of the petition be mailed with the notice of the time and place of the hearing.

Subdivision (b) continues the substance of a portion of the fourth sentence of former Section 1754 but adds the provision that the mailing is to be sent to the addresses stated in the petition. See Section 1821(b).

Subdivisions (c) and (d) are based on the penultimate sentence of former Section 1754, which appears to have adopted a portion of former Section 1461.3 (guardianship) and notice provisions of the Uniform Veterans' Guardianship Act which is continued in Sections 2900-2918. See W. Johnstone & G. Zillgitt, *California Conservatorships* § 3.37, at 79 (Cal. Cont. Ed. Bar 1968). The provision for shortening the time for the notice which was found in former Section 1461.3 is not continued in Section 1822. If time is of the essence, a temporary conservatorship may be used. See Sections 2250-2258.

Law Revision Commission Comment  
1980 Enactment

**Comment.** Section 1822 is amended to revise the cross-reference in subdivision (d) in view of the repeal of former Section 2908.

CROSS-REFERENCES

Additional notice generally, § 1462

Additional notice where proposed conservatee is an absentee, § 1842

Clerk sets petition for hearing, § 1451

Extending time for notice, § 1462

**Mailing**

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

**§ 1823. Citation to proposed conservatee**

1823. (a) If the petition is filed by a person other than the proposed conservatee, the clerk shall issue a citation directed to the proposed conservatee setting forth the time and place of hearing.

(b) The citation shall include a statement of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1801 and shall state the substance of all of the following:

(1) The proposed conservatee may be adjudged unable to provide for personal needs or to manage financial resources and, by reason thereof, a conservator may be appointed for the person or estate or both.

(2) Such adjudication may affect the proposed conservatee's right to contract, to manage and control property, to give informed consent for medical treatment, and to fix a residence.

(3) The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration.

(4) The court or a court investigator will explain the nature, purpose, and effect of the proceeding to the proposed conservatee and will answer questions concerning the explanation.

(5) The proposed conservatee has the right to appear at the hearing and to oppose the petition.

(6) The proposed conservatee has the right to choose and be represented by legal counsel and has the right to have legal counsel appointed by the court if unable to retain legal counsel.

(7) The proposed conservatee has the right to a jury trial if desired.

**Note.** Section 1823 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Comment.** Section 1823 continues the substance of the second paragraph of former Section 1754 but adds the reference to informed consent for medical treatment. A citation is not required if the proposed conservatee is an "absentee." Section 1843.

#### CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472

Definitions

Court, § 1418

Court investigator, § 1419

#### § 1824. Service on proposed conservatee of citation and petition

1824. The citation and a copy of the petition shall be served on the proposed conservatee at least 15 days before the hearing. Service shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the proposed conservatee is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

**Note.** Section 1824 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Comment.** The first two sentences of Section 1824 are the same in substance as the first sentence of the third paragraph of former Section 1754 except that 15 days' notice is required rather than the 10 days' notice formerly required. The third sentence of Section 1824 is new.

No citation is required if the proposed conservatee is the petitioner. See Section 1823(a). If the proposed conservatee is an "absentee," no citation is required. Section 1843.

#### CROSS-REFERENCES

Definition, court, § 1418

Service by mail, when deemed complete, § 1467

### § 1825. Attendance of proposed conservatee at hearing

1825. (a) The proposed conservatee shall be produced at the hearing except in the following cases:

(1) Where the proposed conservatee is out of the state when served and is not the petitioner.

(2) Where the proposed conservatee is unable to attend the hearing by reason of medical inability.

(3) Where the court investigator has reported to the court that the proposed conservatee has expressly communicated that the proposed conservatee (i) is not willing to attend the hearing, (ii) does not wish to contest the establishment of the conservatorship, and (iii) does not object to the proposed conservator or prefer that another person act as conservator, and the court makes an order that the proposed conservatee need not attend the hearing.

(b) If the proposed conservatee is unable to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the proposed conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the proposed conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.



(c) Emotional or psychological instability is not good cause for the absence of the proposed conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee.

**Comment.** Section 1825 continues the substance of the first four sentences of the fourth paragraph of former Section 1754 with the addition of paragraph (3) of subdivision (a), which is new. An "absentee," as defined in Section 1403, need not be produced at the hearing. See Section 1844.

#### CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472

Definitions

Court, § 1418

Court investigator, § 1419

Investigation and report by court investigator, § 1826

### **§ 1826. Information to proposed conservatee by court investigator; investigation and report**

1826. If the petition alleges that the proposed conservatee is not willing to attend the hearing, or upon receipt of an affidavit or certificate attesting to the medical inability of the proposed conservatee to attend the hearing, the court investigator shall do all of the following:

(a) Interview the proposed conservatee personally.

(b) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(d) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(e) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(f) Determine whether the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(g) Determine whether the proposed conservatee is capable of completing an affidavit of voter registration.

(h) If the proposed conservatee has not retained legal counsel, determine whether the proposed conservatee desires the court to appoint legal counsel.

(i) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in any case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(j) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning both of the following:

(1) Representation by legal counsel.

(2) Whether the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(k) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (j) to all of the following:

(1) The attorney, if any, for the petitioner.

(2) The attorney, if any, for the proposed conservatee.

(3) Such other persons as the court orders.

Legislative Committee Comment—Senate

**Comment.** Section 1826 continues the substance of the fifth and sixth paragraphs of former Section 1754 with the addition of (1) a provision requiring an investigation and report if the petition alleges that the proposed conservatee is not willing to attend the hearing, and (2) a requirement that the court investigator determine and report to the court the express communications of the proposed conservatee referred to in subdivision (j) (2). These additions are necessary to implement paragraph (3) of subdivision (a) of Section 1825. Subdivision (g) is new and is drawn from former Section 1461.1

(guardianship). Subdivisions (h) and (i) are added; these provisions are necessary to implement subdivision (b) of Section 1471. Subdivision (k) is also new.

The determinations referred to in subdivisions (c), (d), and (e) are relevant to whether the proposed conservatee must be produced at the hearing. See Section 1825(a) (2), (3).

#### CROSS-REFERENCES

Biennial review of conservatorship, § 1851

Court investigator, § 1454

Definitions

Court, § 1418

Court investigator, § 1419

Disqualification of conservatee from voting, Elec. Code §§ 707.5-707.6

### § 1827. Law and procedure applicable to hearing

1827. The court shall hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded.

Legislative Committee Comment—Assembly

**Comment.** Section 1827 continues the substance of the second paragraph of former Section 1606.5 (guardianship of incompetent adult) and the second paragraph of former Section 2006 (conservatorship). Under Section 1827, the proposed conservatee is entitled to a jury trial on the question of the establishment of the conservatorship. However, the question of who is to be appointed as conservator is a matter to be determined by the court. See Sections 1452 and 1810-1813. Likewise, there is no right to a jury trial in connection with an order relating to the legal capacity of the conservatee. See Sections 1452, 1873, 1890, 1901, and 1910.

#### CROSS-REFERENCES

Appointment of legal counsel, §§ 1471-1472

Definition, court, § 1418

Medical certificate or affidavit, use of, §§ 1825, 2253

Persons who may support or oppose petition, § 1829

### § 1827.5. Assessment and report in case of proposed limited conservatee

**Note.** A new Section 1827.5 would be added by Assembly Bill 2898 of the 1980 session. At the time this publication was sent to the printer, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the new section added by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**§ 1828. Information to proposed conservatee by court**

1828. (a) Except as provided in subdivision (c), prior to the establishment of a conservatorship of the person or estate, or both, the court shall inform the proposed conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The establishment of a conservatorship is a legal adjudication of the conservatee's inability properly to provide for the conservatee's personal needs or to manage the conservatee's own financial resources, or both, depending on the allegations made and the determinations requested in the petition, and the effect of such an adjudication on the conservatee's basic rights.

(3) The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration.

(4) The identity of the proposed conservator.

(5) The nature and effect on the conservatee's basic rights of any order requested under Chapter 4 (commencing with Section 1870).

(6) The proposed conservatee has the right to oppose the proceeding, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(b) After the court so informs the proposed conservatee and prior to the establishment of the conservatorship, the court shall consult the proposed conservatee to determine the proposed conservatee's opinion concerning all of the following:

(1) The establishment of the conservatorship.

(2) The appointment of the proposed conservator.

(3) Any order requested under Chapter 4 (commencing with Section 1870).

(c) This section does not apply where both of the following conditions are satisfied:

(1) The proposed conservatee is absent from the hearing and is not required to attend the hearing under the provisions of subdivision (a) of Section 1825.

(2) Any showing required by Section 1825 has been made.

**Note.** Section 1828 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Comment.** Subdivisions (a) and (b) of Section 1828 continue the substance of a portion of the first paragraph of former Section 1754.1. Language has been added to recognize that the information given to the proposed conservatee should be relevant to the allegations made and the determinations requested in the petition and reference has been added to any order requested under Chapter 4 (commencing with Section 1870) (legal capacity of conservatee). Paragraph (3) of subdivision (a) is drawn from former Section 1461.5 (guardianship for incompetent adult). The last clause is added to paragraph (6) of subdivision (a) to ensure that the proposed conservatee is advised of the right to appointed counsel in appropriate cases.

Subdivision (c) expands the second paragraph of former Section 1754.1 which made the section inapplicable only if the proposed conservatee's inability to attend the hearing was "medically" certified. Subdivision (c) makes this section inapplicable in any case where the proposed conservatee is not required to attend the hearing.

Section 1828 does not continue the introductory clause of former Section 1754.1, which dispensed with the court giving the information to the proposed conservatee where the proposed conservatee is the petitioner. Under Section 1828, the proposed conservatee is given the information, whether or not the petitioner.

#### CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472  
Definition, court, § 1418  
Disqualification of conservatee from voting, Elec. Code §§ 707.5-707.6

### § 1828.5. Procedure on petition for limited conservatorship

**Note.** A new Section 1828.5 would be added by Assembly Bill 2898 of the 1980 session. At the time this publication was sent to the printer, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the new section added by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

### § 1829. Persons who may support or oppose petition

**1829.** The proposed conservatee, the spouse or any relative or friend of the proposed conservatee, or any other interested person may appear at the hearing to support or oppose the petition.

**Note.** Section 1829 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Comment.** Section 1829 continues the substance of the last sentence of former Section 1754 with the addition of the words "to support or" and the substitution of other "interested person" (defined in Section 1424) for any "officer or agency of this state or of the United States, or the authorized delegate thereof."

#### CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472  
 Definition, interested person, § 1424

### § 1830. Contents of order appointing conservator

**1830.** The order appointing the conservator shall contain, among other things, the names, addresses, and telephone numbers of:

- (a) The conservator.
- (b) The conservatee's attorney, if any.
- (c) The court investigator, if any.

**Note.** Section 1830 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill

would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Comment.** Section 1830 continues the substance of the last sentence of former Section 1801.

#### CROSS-REFERENCES

Appealable orders, § 2750

Definition, court investigator, § 1419

Order of appointment, additional conditions, §§ 2358, 2402

### **Article 4. Special Provisions Applicable Where Proposed Conservatee is An Absentee**

#### **§ 1840. Procedure for appointment of conservator for absentee**

1840. Except as otherwise provided in this article, a conservator for an absentee (Section 1403) shall be appointed as provided in Article 3 (commencing with Section 1820).

**Comment.** Section 1840 continues former law which applied the general provisions relating to appointment of a conservator to the appointment of a conservator for an absentee but also included some special provisions applicable where the proposed conservatee is an absentee. Because of the limited use of conservatorships for absentees, these special provisions have been removed from the general provisions relating to appointment of conservators and collected in this article.

#### CROSS-REFERENCES

Condition for appointment of spouse of absentee as conservator, § 1813

Conservator of estate may be appointed for absentee, § 1803

Termination of conservatorship of absentee, § 1864

#### **§ 1841. Additional contents of petition**

1841. In addition to the other required contents of the petition, if the proposed conservatee is an absentee:

(a) The petition, and any notice required by Section 1822 or any other law, shall set forth the last known military rank or grade and the social security account number of the proposed conservatee.

(b) The petition shall state whether the absentee's spouse has commenced any action or proceeding against

the absentee for judicial or legal separation, divorce or dissolution of marriage, annulment, or adjudication of nullity of their marriage.

**Comment.** Section 1841 continues that portion of the first and second sentences of former Section 1754.5 that related to the information required to be contained in the petition or in the notice except that, under Section 1841, the information concerning military rank and social security number is also required to be included in the petition and the allegation required by subdivision (b) is not limited to the case where the absentee's spouse is petitioner for appointment as conservator.

#### CROSS-REFERENCES

Condition for appointment of spouse of absentee as conservator, § 1813  
 Definition, absentee, § 1403

### § 1842. Notice of hearing

1842. In addition to the persons and entities to whom notice of hearing is required under Section 1822, if the proposed conservatee is an absentee, a copy of the petition and notice of the time and place of the hearing shall be mailed at least 15 days before the hearing to the secretary concerned or to the head of the United States department or agency concerned, as the case may be. In such case, notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the hearing will be held.

**Comment.** Section 1842 continues the substance of a portion of the fourth sentence and all of the fifth sentence of former Section 1754. The inconsistent requirement of former Section 1754.5 that the copy of the petition and notice be "delivered only by a method which would be sufficient for service of a summons in a civil action" is not continued.

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

#### Definitions

Absentee, § 1403

Secretary concerned, § 1440

#### Mailing

Manner of mailing, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468



**§ 1843. Citation to proposed conservatee not required**

1843. No citation is required under Section 1823 to the proposed conservatee if the proposed conservatee is an absentee.

**Comment.** Section 1843 continues the substance of the second sentence of the third paragraph of former Section 1754.

## CROSS-REFERENCES

Definition, absentee, § 1403

**§ 1844. Proof of status of proposed conservatee; attendance at hearing not required**

1844. (a) An official written report or record complying with Section 1283 of the Evidence Code that a proposed conservatee is an absentee shall be received as evidence of that fact and the court shall not determine the status of the proposed conservatee inconsistent with the status determined as shown by the written report or record.

(b) The inability of the proposed conservatee to attend the hearing is established by the official written report or record referred to in subdivision (a).

**Comment.** Subdivision (a) of Section 1844 continues the substance of the last sentence of former Section 1754.5. Subdivision (b) continues the substance of the last sentence of the fourth paragraph of former Section 1754.

## CROSS-REFERENCES

## Definitions

Absentee, § 1403

Court, § 1418

**CHAPTER 2. PERIODIC REVIEW  
OF CONSERVATORSHIP****§ 1850. Court review of conservatorship**

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter.

(b) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

**Comment.** Subdivision (a) of Section 1850 continues the substance of the first sentence of former Section 1851.1. Subdivision (b) is new and provides two exceptions to the application of the chapter. The first exception recognizes that the provisions of the chapter as a practical matter cannot apply where the conservatee is an absentee, and the second exception is consistent with Section 1825(a)(1).

#### CROSS-REFERENCES

Definition, court, § 1418

### § 1851. Visitation and findings by court investigator

1851. (a) When court review is required, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court.

**Note.** Section 1851 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this

bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Comment.** Section 1851 continues the substance of the second, third, and fourth sentences of former Section 1851.1 except that (1) the report is required not less than 15 days prior to the date of review rather than "within" 15 days of the date of review, (2) the court investigator is required to determine whether the terms of an order made under Chapter 4 (commencing with Section 1870) should be modified or the order revoked, and (3) the second sentence of subdivision (b) is new.

#### CROSS-REFERENCES

Compelling production of conservatee, § 1853

Court investigator, qualifications, § 1454

Court investigator's report concerning conservatee's capability of completing affidavit of voter registration, Elec. Code § 707.6

#### Definitions

Court, § 1418

Court investigator, § 1419

Disqualification of conservatee from voting, Elec. Code §§ 707.5-707.6

#### Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

### § 1852. Notification of counsel; representation of conservatee at hearing

1852. If the conservatee wishes to petition the court for termination of the conservatorship or for removal of the existing conservator or for the making, modification, or revocation of a court order under Chapter 4 (commencing with Section 1870) or for restoration of the right to register to vote, or if, based on information contained in the court investigator's report or obtained from any other source, the court determines that a trial or hearing for termination of the conservatorship or removal of the existing conservator is in the best interests of the conservatee, the court shall notify the attorney of record for the conservatee, if any, or shall appoint the public defender or private counsel under Section 1471, to file the petition and represent the

conservatee at the trial or hearing and, if such appointment is made, Section 1472 applies.

**Comment.** Section 1852 continues the substance of the third and fourth paragraphs of former Section 1851.1, with the addition of the reference to Chapter 4 (legal capacity of conservatee) and the language authorizing the court to act on information from whatever source it may be received. Section 1852 supplements subdivisions (a) and (b) of Section 1471.

#### CROSS-REFERENCES

Definition, court, § 1418

Representation of indigent by public defender, Gov't Code § 27706

### **§ 1853. Failure to locate conservatee; termination of conservatorship on failure to produce conservatee**

1853. (a) If the court investigator is unable to locate the conservatee, the court shall order the court investigator to serve notice upon the conservator of the person, or upon the conservator of the estate if there is no conservator of the person, in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as is ordered by the court, to make the conservatee available for the purposes of Section 1851 to the court investigator within 15 days of the receipt of such notice or to show cause why the conservatorship should not be terminated.

(b) If the conservatee is not made available within the time prescribed, unless good cause is shown for not doing so, the court shall make such a finding and shall enter judgment terminating the conservatorship and, in case of a conservatorship of the estate, shall order the conservator to file an accounting and to surrender the estate to the person legally entitled thereto. At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated upon the settlement and approval of the conservator's final account by the court.

(c) Termination of the conservatorship under this section does not preclude institution of new proceedings for the appointment of a conservator. Nothing in this section limits the power of a court to appoint a temporary conservator under Chapter 3 (commencing with Section 2250) of Part 4.

## Legislative Committee Comment—Assembly

**Comment.** Section 1853 supersedes the penultimate paragraph of former Section 1851.1.

The conservatorship is to be terminated only if the conservator fails to show “good cause” for not making the conservatee available. What constitutes good cause depends upon the circumstances of the particular case. For example, good cause would be shown where it was established that the conservatee had disappeared from his or her place of residence and a diligent search was in progress to find the conservatee or where the conservatee was out of state to receive necessary medical treatment. Unlike the former provision, Section 1853 provides for the manner of service and provides that the conservatee is to be made available to the court investigator for the purposes of Section 1851. Section 1853 also places the duty to produce the conservatee on the conservator of the person if there is a conservator of the person.

## CROSS-REFERENCES

Appointment to fill vacancy, § 2110

Definitions

Court, § 1418

Court investigator, § 1419

Representation of indigent by public defender, Gov't Code, § 27706

Service by mail, when deemed complete, § 1467

## CHAPTER 3. TERMINATION

## § 1860. When conservatorship terminates generally

1860. (a) A conservatorship continues until terminated by the death of the conservatee or by order of the court.

(b) If a conservatorship is established for the person of a married minor, the conservatorship does not terminate if the marriage is dissolved or is adjudged a nullity.

**Note.** Section 1860 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Comment.** Subdivision (a) of Section 1860 continues a portion of the first sentence of former Section 1755.

Subdivision (b) is new and provides that a conservatorship of the person does not terminate if the marriage of a minor is dissolved or adjudged a nullity. Although a conservatorship cannot be established under Section 1800 for a minor whose marriage has been adjudged a nullity (Section 1515 permits creation of a guardianship in such a case), subdivision (b) of Section 1860 permits a conservatorship of the person to continue if the marriage is adjudged a nullity after the conservatorship was established. Subdivision (b) avoids the need to establish a guardianship for the person of the married minor whose marriage is adjudged a nullity and then to establish another conservatorship of the person a short time later when the minor reaches majority. Subdivision (b) makes no reference to a conservatorship of the estate, since guardianship is the appropriate protective proceeding for the estate of a minor, whether married or unmarried. See the Comment to Section 1515.

The provision of former Section 1755 for termination of the conservatorship on the death of the conservator is not continued; death of the conservator merely terminates the relationship of conservator and conservatee but does not terminate the conservatorship proceeding. The court retains jurisdiction of the conservatorship proceeding despite termination of the relationship of conservator and conservatee. See Section 2630. *Cf.* Estate of Mims, 202 Cal. App.2d 332, 20 Cal. Rptr. 667 (1962) (guardianship).

#### CROSS-REFERENCES

##### Allowance for

Care of estate after conservatee's death, § 2623

Disbursements after termination of conservatorship, § 2623

Care of estate after death of conservatee, § 2467

Definition, court, § 1418

Disposition of estate after death of conservatee, § 2631

Termination of proceeding upon

Exhaustion of estate, § 2626

Transfer of all assets to foreign guardian or conservator, § 2808

### § 1860.5. Termination of limited conservatorship

**Note.** A new Section 1860.5 would be added by Assembly Bill 2898 of the 1980 session. At the time this publication was sent to the printer, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the new section added by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**§ 1861. Petition for termination of conservatorship**

1861. (a) A petition for the termination of the conservatorship may be filed by any of the following:

- (1) The conservator.
- (2) The conservatee.
- (3) The spouse or any interested person or relative or friend of the conservatee.

(b) The petition shall state facts showing that the conservatorship is no longer required.

**Comment.** Section 1861 continues the second and third sentences of former Section 1755. "The spouse or any interested person" are added to paragraph (3) of subdivision (a) but no doubt they were included under the language "any relative or friend of the conservatee" contained in former Section 1755.

**CROSS-REFERENCES**

Appointment of legal counsel for conservatee, §§ 1471-1472

Definition, interested person, § 1424

Department of Mental Health as conservator, Welf. & Inst. Code § 7284

Director of Developmental Services as conservator, Health & Safety Code § 416

Nonprofit charitable corporation as conservator, § 2104

Persons who may petition where conservatee is an absentee, § 1864

Petition must be verified, § 1450

Public guardian as conservator, Welf. & Inst. Code § 8006

Trust company as conservator of estate, § 480

**§ 1862. Notice of hearing**

1862. (a) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of the hearing shall be mailed to the persons specified in Section 1822.

(b) If the conservator is not the petitioner and has not joined in the petition, the conservator shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing.

(c) If the conservatee is not the petitioner and has not joined in the petition, the conservatee shall be served with a copy of the petition and a notice of the time and place of hearing at least 15 days prior to the hearing.

(d) Service under subdivisions (b) and (c) shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided

in Section 415.40 of the Code of Civil Procedure. If the conservator or conservatee cannot with reasonable diligence be served with a copy of the petition and notice of hearing, the court may dispense with such service.

**Comment.** Subdivision (a) of Section 1862 continues the substance of a portion of the fourth sentence of former Section 1755, which provided that notice of the hearing shall be given to the persons and in the manner provided for the appointment of a conservator.

Subdivisions (b) and (d) continue the substance of the fifth, sixth, and seventh sentences of former Section 1755 except that subdivision (b) requires 15 days' notice rather than five days as was the case under former Section 1755. This change makes subdivision (b) consistent with Section 1824.

It was not clear under the former law whether issuance and personal service of a citation on the conservatee was required when the hearing was on the termination of the conservatorship. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 7.10, at 266 (Cal. Cont. Ed. Bar 1968). Subdivision (c) requires that the conservatee be served with a copy of the petition and notice of hearing; issuance and service of a citation is not required.

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Definition, court, § 1418

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Notice to

Director of Mental Health, § 1461

Director of Developmental Services, § 1461

Veterans Administration, § 1461.5

Notice to persons requesting special notice, §§ 2700-2703

Proof of giving of notice, § 1468

Request for special notice, § 2700

Service by mail, when deemed complete, § 1467

### § 1863. Hearing and judgment

1863. (a) The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded. The conservator, the conservatee, or the spouse or any relative or friend of the conservatee or other interested person may appear and support or oppose the petition.



(b) If the court determines that the conservatorship is no longer required or that grounds for establishment of a conservatorship of the person or estate, or both, no longer exist, the court shall make such a finding and shall enter judgment terminating the conservatorship accordingly.

(c) At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated upon the settlement and approval of the conservator's final account by the court.

(d) Termination of conservatorship does not preclude institution of new proceedings for appointment of a conservator on the same or other grounds.

**Comment.** Section 1863 supersedes five of the last six sentences of former Section 1755. Under subdivision (a), the right to support the petition is added and the list of those who may appear and support or oppose the petition is broadened to include the conservatee and other interested persons. Subdivision (d) supersedes the last sentence of former Section 1755.5, broadening its application to all cases and not merely those where the conservatee was an absentee as defined in Section 1403.

#### CROSS-REFERENCES

Appealable orders, § 2750

Appointment of legal counsel for conservatee, §§ 1471-1472

Definitions

Court, § 1418

Interested person, § 1424

Jurisdiction of court after termination of conservatorship, § 2630

Termination of court order affecting legal capacity, § 1873

Termination of court order affecting capacity to consent to medical treatment, § 1897

### § 1864. Termination of conservatorship of absentee

1864. (a) In the case of the conservatorship of an absentee as defined in Section 1403, the petition to terminate the conservatorship may also be filed by any officer or agency of this state or of the United States or the authorized delegate thereof.

(b) If the petition states and the court determines that the absentee has returned to the controllable jurisdiction of the military department or civilian department or agency concerned, or is deceased, as determined under 37 United States Code, Section 556, or 5 United States Code, Section

5566, as the case may be, the court shall order the conservatorship terminated. An official written report or record of such military department or civilian department or agency that the absentee has returned to such controllable jurisdiction or is deceased shall be received as evidence of such fact.

**Comment.** Section 1864 continues the substance of the first paragraph of former Section 1755.5.

#### CROSS-REFERENCES

Definition, court, § 1418

### § 1865. Notification to county clerk of restoration of right to register to vote

1865. If the conservatee has been disqualified from voting pursuant to Section 707.5 or 707.6 of the Elections Code, upon termination of the conservatorship the court shall notify the county clerk of the county of residence of the former conservatee that the former conservatee's right to register to vote is restored.

**Comment.** Section 1865 continues the substance of the eleventh sentence of former Section 1755 and the last paragraph of former Section 1851.1.

#### CROSS-REFERENCES

Definition, court, § 1418

## CHAPTER 4. LEGAL CAPACITY OF CONSERVATEE

### Article 1. Capacity to Bind or Obligate Conservatorship Estate

#### § 1870. Transaction defined

1870. As used in this article, unless the context otherwise requires, "transaction" includes, but is not limited to, making a contract, sale, transfer, or conveyance, incurring a debt or encumbering property, making a gift, delegating a power, and waiving a right.

**Comment.** Section 1870 makes clear that as used in this article "transaction" includes any type of transaction. The right to make a will may not be limited under this article. See Section 1871(c).

**§ 1871. Rights not limited by this article**

1871. Nothing in this article shall be construed to deny a conservatee any of the following:

(a) The right to control an allowance provided under Section 2421.

(b) The right to control wages or salary to the extent provided in Section 2601.

(c) The right to make a will subject to the limitations of Chapter 1 (commencing with Section 20) of Division 1.

(d) The right to enter into transactions to the extent reasonable to provide the necessaries of life to the conservatee and the spouse and minor children of the conservatee.

**Legislative Committee Comment—Assembly**

**Comment.** Section 1871 lists certain rights of the conservatee that are not affected by the rules set forth in Section 1872.

Subdivision (a) recognizes that the conservatee has the sole control of the allowance paid to the conservatee under Section 2421. See Section 2421 (c).

Subdivision (b) recognizes that wages or salary of the conservatee are subject to the conservatee's control unless the court otherwise orders. See Section 2601.

Subdivision (c) codifies the rule of *Estate of Powers*, 81 Cal. App.2d 480, 184 P.2d 319 (1947). Appointment of a conservator is not a determination that the conservatee lacks testamentary capacity. Testamentary capacity is determined by a different standard, which depends upon soundness of mind. See Sections 20 and 21.

Subdivision (d) makes clear that this article does not limit the right of the conservatee to obtain for reasonable value necessaries of life for the conservatee and the conservatee's spouse and minor children. The subdivision is consistent with the requirement that the conservator pay debts incurred by the conservatee during conservatorship to provide the necessaries of life to the conservatee and the spouse and minor children of the conservatee to the extent the debt is reasonable. See Section 2430(a)(2). See also Civil Code § 38 ("person entirely without understanding" is liable for "the reasonable value of things furnished to him necessary for his support or the support of his family").

**CROSS-REFERENCES**

Definition, transaction, § 1870

## § 1872. Effect of conservatorship on legal capacity of conservatee

1872. Except as otherwise provided in this article, the appointment of a conservator of the estate is an adjudication that the conservatee lacks the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate.

**Note.** Section 1872 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

### Legislative Committee Comment—Assembly

**Comment.** Section 1872 is new. See also Civil Code § 40. Section 1872 continues the rule under prior law that appointment of a guardian for an adult constituted an adjudication of incapacity under Section 40 of the Civil Code and made void any contract entered into by the ward after such determination. *Hellman Commercial Trust & Sav. Bank v. Alden*, 206 Cal. 592, 604-05, 275 P. 794, 799-800 (1929). For a discussion of the effect on legal capacity of the appointment of a conservator under prior law, see *Board of Regents State Univs. v. Davis*, 14 Cal.3d 33, 533 P.2d 1047, 120 Cal. Rptr. 407 (1975). Section 1872 governs any type of transaction including, but not limited to, debts, gifts, sales, encumbrances, conveyances, delegations of powers, and waivers of rights. See Section 1870 (defining "transaction"). Making a will is not covered by Section 1872. See Section 1871(c). As to contracts and debts incurred for necessities, see Section 1871(d). As to the capacity of a conservatee with respect to community property, see Section 3012.

Other consequences of appointing a conservator are that court proceedings must be conducted through the conservator or a guardian ad litem (Code Civ. Proc. §§ 372, 416.70), that the office of trustee held by a conservatee is vacated (Civil Code § 2281(1)(c)), and that many rights may be exercised by the conservator rather than by the conservatee (e.g., right to vote shares of stock (Corp. Code § 702), right to disclaim testamentary and other interests (Prob. Code § 190.2)). This listing is intended as illustrative and not exclusive.

The limitation of Section 1872 does not apply to the extent that the court has so ordered under Section 1873. Section 1873 gives the court considerable flexibility in devising an order that authorizes the conservatee to enter into such transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate.

#### CROSS-REFERENCES

Definition, transaction, § 1870

Effect of conservatorship on capacity to marry, § 1900

### **§ 1873. Court order affecting legal capacity of conservatee**

1873. (a) In the order appointing the conservator or upon a petition filed under Section 1874, the court may by order authorize the conservatee, subject to Section 1876, to enter into such transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate.

(b) In an order made under this section, the court may include such limitations or conditions on the exercise of the authority granted to the conservatee as the court determines to be appropriate including, but not limited to, the following:

(1) A requirement that for specific types of transactions or for all transactions authorized by the order, the conservatee obtain prior approval of the transaction by the court or conservator before exercising the authority granted by the order.

(2) A provision that the conservator has the right to avoid any transaction made by the conservatee pursuant to the authority of the order if the transaction is not one into which a reasonably prudent person might enter.

(c) The court, in its discretion, may provide in the order that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order.

(d) An order under this section continues in effect until the earliest of the following times:

(1) The time specified in the order, if any.

(2) The time the order is modified or revoked.

(3) The time the conservatorship of the estate is terminated.

(e) An order under this section may be modified or revoked upon petition filed by the conservator, conservatee, the spouse of the conservatee, or any relative or friend of the conservatee, or any interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Note.** Section 1873 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Legislative Committee Comment—Assembly**

**Comment.** Section 1873 permits the court to give the conservatee the right to enter into transactions affecting the conservatorship estate which, but for the order, the conservatee would not have under Section 1872. The court might, for example, permit the conservatee to enter into specified types of transactions or transactions not exceeding specified amounts (such as contracts not in excess of \$500). *Cf.* Welf. & Inst. Code § 5357 (similar court authority in Lanterman-Petris-Short Act conservatorships). See also Section 1876 (exercise by conservatee subject to principles of law otherwise applicable).

Any rights given to the conservatee under Section 1873 do not affect the powers and duties of the conservator, other than the duty to carry out a transaction validly executed by the conservatee. See, *e.g.*, Section 2430. See also Section 2404 (court order for payment of debt, expense, or charge lawfully due and payable). The conservator has the management and control of the conservatorship estate, including the duty to marshal, take possession of, and inventory the conservatee's assets. See Section 2401 and Comment thereto. A person seeking to enforce a transaction under Section 1873 will ordinarily seek compliance by the conservator, who decides in the first instance whether the transaction satisfies the requirements of this section. The conservator, conservatee, or third person may obtain a court determination and instructions to the conservator if necessary in a particular case. Section 2403.

In determining whether a transaction is one "into which a reasonably prudent person might enter" under paragraph (2) of subdivision (b), the conservator and the court should take into consideration all the circumstances of the particular conservatee and the conservatorship estate. One important circumstance to be taken into consideration is the extent to which the transaction might impair the ability to provide for the support, maintenance, and education of the conservatee and the support, maintenance, and education of the persons the conservatee is legally obligated to support, maintain, or educate. See subdivision (b) of Section 2430 (payment of debts).

#### CROSS-REFERENCES

Court determination of conservatee's capacity to marry, § 1901

Court order concerning consent to medical treatment, § 1890

Court order disqualifying conservatee from voting, § 1910

#### Definitions

Court, § 1418

Interested person, § 1424

Transaction, § 1870

### § 1874. Petition, notice, and hearing

1874. (a) After a conservator has been appointed, a petition requesting an order under Section 1873 may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse or any relative or friend of the conservatee.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

#### Legislative Committee Comment—Assembly

**Comment.** Section 1874 provides for a petition and notice of hearing to obtain an order broadening the legal capacity of the conservatee if the order is sought after the appointment of the conservator.

#### CROSS-REFERENCES

Petition must be verified, § 1450

**§ 1875. Good faith purchaser or encumbrancer of real property**

1875. A transaction that affects real property of the conservatorship estate, entered into by a purchaser or encumbrancer in good faith and for a valuable consideration and without knowledge of the establishment of the conservatorship, is not affected by any provision of this article or any order made under this article unless a notice of the establishment of the conservatorship has been recorded prior to the transaction in the county in which the property is located.

Legislative Committee Comment—Assembly

**Comment.** Section 1875 is designed to protect innocent third parties who do not have notice of the existence of the conservatorship and the resulting incapacity of the conservatee. Nothing in Section 1875 validates a transaction that is invalid under Section 38 of the Civil Code or prevents rescission of a transaction under Section 39 of the Civil Code if the conservatee would lack legal capacity for the transaction absent the establishment of the conservatorship. See Section 1876 and Comment thereto. The sole effect of Section 1875 is to make the limitations on the conservatee's capacity that exist under Section 1872 or under an order made under Section 1873 inapplicable to the transaction if the notice of establishment of conservatorship has not been recorded. For a comparable provision applicable to community or homestead property, see Section 3074.

CROSS-REFERENCES

Definition, transaction, § 1870

**§ 1876. Applicability of other governing law**

1876. The provisions of this article relating to the legal capacity of a conservatee to bind or obligate the conservatorship estate, and the provisions of any order of the court broadening such capacity, do not displace but are supplemented by general principles of law and equity relating to transactions including, but not limited to, capacity to contract, joinder or consent requirements, estoppel, fraud, misrepresentation, duress, coercion, mistake, or other validating or invalidating cause.



## Legislative Committee Comment—Assembly

**Comment.** Section 1876 is included to ensure that the provisions of this article relating to the power of the conservatee to affect the conservatorship estate are not construed as the exclusive rules by which the validity of any transaction entered into by the conservatee is measured. For a comparable provision, see Com. Code § 1103 (supplementary general principles of law applicable). The ability of the conservatee to obligate the estate for such transactions as may be specified by court order pursuant to Section 1873, for example, is subject to the limitation that such a transaction may be void or voidable due to the lack of contractual capacity of the conservatee under Civil Code Section 38 or 39.

## CROSS-REFERENCES

Definition, court, § 1418

## Article 2. Capacity to Give Informed Consent for Medical Treatment

### § 1880. Capacity to give informed consent to medical treatment

1880. If the court determines that there is no form of medical treatment for which the conservatee has the capacity to give an informed consent, the court shall (1) adjudge that the conservatee lacks the capacity to give informed consent for medical treatment and (2) by order give the conservator of the person the powers specified in Section 2355. If an order is made under this section, the letters of conservatorship shall include a statement that the conservator has the powers specified in Section 2355.

**Comment.** Section 1880 is new. See Section 2355 and Comment thereto. Section 1880 applies only where the court determines that the conservatee does not have the capacity to give an informed consent to any form of medical treatment. If the conservatee has the capacity to give an informed consent to some forms of medical treatment but lacks the capacity to give informed consent to other forms of medical treatment, an order under Section 1880 is not appropriate. In such case, if medical treatment is required and the conservatee lacks capacity to give informed consent to that treatment, a court order must be obtained under Section 2357 authorizing the treatment.

## CROSS-REFERENCES

Definition, court, § 1418

**§ 1890. Time of making an order concerning capacity of conservatee to consent to medical treatment**

1890. An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator or may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

**Note.** Section 1890 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Legislative Committee Comment—Assembly**

**Comment.** Section 1890 permits orders under Section 1880 to be made at the time the conservatorship is established or at a subsequent time. There is no right to a jury trial in connection with an order under this article. See Section 1452.

**CROSS-REFERENCES**

Definition, court, § 1418

**§ 1891. Petition for order**

1891. (a) A petition may be filed under this article requesting that the court make an order under Section 1880 or that the court modify or revoke an order made under Section 1880. The petition shall state facts showing that the order requested is appropriate.

(b) The petition may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse or any relative or friend of the conservatee.

(c) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse and of the relatives of the conservatee within the second degree.

**Legislative Committee Comment—Assembly**

**Comment.** Sections 1891 to 1896 adapt the procedure for appointment of a conservator to the situation where an order

affecting the capacity of the conservatee to give informed consent to medical treatment is sought apart from the appointment of a conservator. Sections 1891 to 1896 do not, however, grant the right to a jury trial on the issue.

## CROSS-REFERENCES

Definition, court, § 1418

Petition must be verified, § 1450

## § 1892. Notice

1892. Notice of the hearing on the petition shall be as follows:

(a) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of the hearing shall be mailed to the spouse and relatives of the conservatee named in the petition (other than the petitioner or persons joining in the petition) at their addresses stated in the petition.

(b) If the conservator is not the petitioner and has not joined in the petition, the conservator shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing.

(c) If the conservatee is not the petitioner and has not joined in the petition, the conservatee shall be served with a copy of the petition and a notice of the time and place of hearing at least 15 days prior to the hearing.

(d) Service under subdivisions (b) and (c) shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

**Comment.** See Comment to Section 1891.

## CROSS-REFERENCES

Additional notice, § 1462

Clerk sets petition for hearing, § 1451

Continued or postponed hearing, notice, § 1463

Extending time for notice, § 1462

Form of notice, § 1464

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

Service by mail, when deemed complete, § 1467

Shortening time, § 1462

**§ 1893. Attendance of conservatee at hearing**

1893. The conservatee shall be produced at the hearing except in the following cases:

(a) Where the conservatee is out of state when served and is not the petitioner.

(b) Where the conservatee is unable to attend the hearing by reason of medical inability established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of the legal capacity of the conservatee. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(c) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee (1) is not willing to attend the hearing and (2) does not wish to contest the petition, and the court makes an order that the conservatee need not attend the hearing.

**Comment.** See Comment to Section 1891.

**CROSS-REFERENCES**

Court investigator, § 1454

Definitions

Court, § 1418

Court investigator, § 1419

**§ 1894. Information to conservatee by court investigator; investigation and report**

1894. If the petition alleges that the conservatee is not willing to attend the hearing or upon receipt of an affidavit or certificate attesting to the medical inability of the conservatee to attend the hearing, the court investigator shall do all of the following:

- (a) Interview the conservatee personally.
- (b) Inform the conservatee of the contents of the petition, of the nature, purpose, and effect of the proceeding, and of the right of the conservatee to oppose the petition, attend the hearing, and be represented by legal counsel.
- (c) Determine whether it appears that the conservatee is unable to attend the hearing and, if able to attend, whether the conservatee is willing to attend the hearing.
- (d) Determine whether the conservatee wishes to contest the petition.
- (e) Determine whether the conservatee wishes to be represented by legal counsel and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the conservatee wishes to retain.
- (f) If the conservatee has not retained counsel, determine whether the conservatee desires the court to appoint legal counsel.
- (g) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel.
- (h) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning both (1) representation by legal counsel and (2) whether the conservatee is not willing to attend the hearing and does not wish to contest the petition.

**Comment.** See Comment to Section 1891.

#### CROSS-REFERENCES

Court investigator, § 1454

Definitions

Court, § 1418

Court investigator, § 1419

### § 1895. Hearing

1895. (a) The conservatee, the spouse or any relative or friend of the conservatee, the conservator, or any other

interested person may appear at the hearing to support or oppose the petition.

(b) Except where the conservatee is absent from the hearing and is not required to attend the hearing under the provisions of Section 1893 and any showing required by Section 1893 has been made, the court shall, prior to granting the petition, inform the conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The nature and effect on the conservatee's basic rights of the order requested.

(3) The conservatee has the right to oppose the petition, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) After the court informs the conservatee of the matters listed in subdivision (b) and prior to granting the petition, the court shall consult the conservatee to determine the conservatee's opinion concerning the order requested in the petition.

**Comment.** See Comment to Section 1891.

#### CROSS-REFERENCES

Appointment of legal counsel, §§ 1471-1472

Definitions

Court, § 1418

Interested person, § 1424

### § 1896. Order

1896. (a) If the court determines that the order requested in the petition is proper, the court shall make the order.

(b) The court, in its discretion, may provide in the order that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order.

**Comment.** See Comment to Section 1891.

#### CROSS-REFERENCES

Definition, court, § 1418

**§ 1897. Duration of order**

1897. An order of the court under Section 1880 continues in effect until the earliest of the following times:

- (1) The time specified in the order, if any.
- (2) The time the order is modified or revoked.
- (3) The time the conservatorship is terminated.

Legislative Committee Comment—Assembly

**Comment.** Section 1897 is new. For authority to make an order limited in duration, see Section 1896. For modification or revocation of the order, see Section 1898. For termination of the conservatorship, see Chapter 3 (commencing with Section 1860).

## CROSS-REFERENCES

Definition, court, § 1418

**§ 1898. Modification or revocation of orders**

1898. An order of the court under Section 1880 may be modified or revoked upon a petition made, noticed, and heard by the court in the manner provided in this article.

Legislative Committee Comment—Assembly

**Comment.** Section 1898 makes clear that the court may modify or revoke an order relating to capacity of the conservatee to give informed consent to medical treatment.

## CROSS-REFERENCES

Definition, court, § 1418

### Article 3. Capacity of Conservatee to Marry

**§ 1900. Effect of appointment of conservator**

1900. The appointment of a conservator of the person or estate or both does not affect the capacity of the conservatee to marry.

Legislative Committee Comment—Assembly

**Comment.** Section 1900 is new. Under prior law, the court could adjudicate the conservatee to be incompetent to make binding contracts by providing in the order of appointment of a conservator that the conservatee was a person "for whom a guardian could be appointed." See Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, 1051 n.6, 1054, 120 Cal. Rptr. 407, 411 n.6, 414 (1975). If such an adjudication was made, the conservatee may also have lacked capacity to marry,

and any marriage attempted by the conservatee after such an adjudication may have been subject to annulment by the conservator. See *W. Johnstone & G. Zillgitt, California Conservatorships* §§ 1.28-1.29, at 14-16 (Cal. Cont. Ed. Bar 1968). Section 1900 eliminates the uncertainty under prior law by making clear that the appointment of a conservator under the Probate Code does not deprive the conservatee of the capacity to marry. *Cf. Conservatorship of Roulet*, 23 Cal.3d 219, 228, 590 P.2d 1, 6, 152 Cal. Rptr. 425, 430 (1979) (one found to be gravely disabled under Lanterman-Petris-Short Act faces "possible loss" of right to marry). Whether the conservatee has the capacity to marry is to be determined by the rules of law that would be applicable had no conservatorship been established. See also Section 1901 (court determination of conservatee's capacity to marry).

#### CROSS-REFERENCES

Action to test validity of marriage, Civil Code § 4212

Dissolution of marriage on grounds of insanity, Civil Code § 4510

Nullity of marriage, proceeding to obtain judgment of, Civil Code § 4426

### § 1901. Court determination of conservatee's capacity to marry

1901. (a) The court may by order determine whether the conservatee has the capacity to enter into a valid marriage, as provided in Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, at the time the order is made.

(b) A petition for an order under this section may be filed by the conservator of the person or estate or both, the conservatee, any relative or friend of the conservatee, or any interested person.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

#### Legislative Committee Comment—Assembly

**Comment.** Section 1901 is new. Under prior law, a conservator in doubt about the conservatee's capacity to marry could seek instructions from the court under former Section 1860. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 1.28, at 15 (Cal. Cont. Ed. Bar 1968). Section 1901 continues the authority of the court to determine the conservatee's capacity to marry and provides necessary procedural detail. As to



procedures available after the conservatee marries, see Civil Code §§ 4212 (action to test validity of marriage), 4400-4457 (proceeding to have marriage adjudged a nullity). Under Civil Code Section 4426, the conservator is authorized to commence annulment proceedings.

#### CROSS-REFERENCES

##### Definitions

Court, § 1418

Interested person, § 1424

## CHAPTER 5. DISQUALIFICATION FROM VOTING

### § 1910. Disqualification from voting

1910. If the court determines the conservatee is not capable of completing an affidavit of voter registration in accordance with Section 500 of the Elections Code, the court shall by order disqualify the conservatee from voting pursuant to Section 707.5 or 707.6 of the Elections Code.

Legislative Committee Comment—Assembly

**Comment.** Section 1910 continues the substance of a portion of the first sentence of former Section 1462.

#### CROSS-REFERENCES

Definition, court, § 1418

## PART 4. PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIP

### CHAPTER 1. GENERAL PROVISIONS

#### § 2100. Law governing guardianships and conservatorships

2100. Guardianships and conservatorships are governed by the provisions of this division. If no specific provision of this division is applicable, the provisions of Division 3 (commencing with Section 300) govern so far as they are applicable to like situations.

**Comment.** Section 2100 supersedes former Sections 1606 and 1702. The language conforms more closely to former Section 1702 than to former Section 1606. The language “except as provided in Section 1853 of this code” which was contained in former Section 1702 is not continued; this omission makes no substantive change since the effect of the former exception is continued by the language “[i]f no specific provision of this division is applicable.”

Section 1452 establishes a specific rule concerning when the right to jury trial exists under this division. See the Comment to that Section. Accordingly, Section 2100 does not incorporate those portions of Section 1230 which, arguably, provide for a broader right to jury trial. See also Section 1469 (Sections 1200 and 1201 not applicable to proceedings under this division).

When the provisions of Division 3 are applied to guardianship or conservatorship proceedings, a reference in those provisions to Section 1200 (notice) is deemed to be a reference to Chapter 3 (commencing with Section 1460) of Part 1 of this division, and Section 1201 does not apply to guardianship or conservatorship proceedings. See Section 1469.

#### **§ 2101. Relationship confidential and subject to law of trusts**

2101. The relationship of guardian and ward and conservator and conservatee is confidential and is subject to the law relating to trusts.

**Comment.** Section 2101 continues the substance of the fifth sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702. As to the duty to use ordinary care and diligence in managing the estate, see Section 2401 and the Comment to that section.

It should be noted that a guardian or conservator is subject to the principles of good faith and fair dealing applicable to a trustee; and, despite various provisions that permit the guardian or conservator to act without prior court authorization in the case of certain transactions, under some circumstances the guardian or conservator may nonetheless be required to obtain court authorization of such a transaction. See, *e.g.*, Civil Code § 2230 (transaction in which trustee has interest adverse to beneficiary). The guardian or conservator may be removed for having an interest adverse to the faithful performance of duties. See Section 2650. For provisions relating to trusts generally, see Civil Code Sections 2215–2289.

**§ 2102. Control by court**

2102. A guardian or conservator is subject to the regulation and control of the court in the performance of the duties of the office.

**Comment.** Section 2102 continues the substance of the last sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702.

**CROSS-REFERENCES**

Definition, court, § 1418

Instructions by court, §§ 2359, 2403

**§ 2103. Effect of court authorization, approval, or confirmation**

2103. (a) Unless reversed on appeal, a judgment, order, or decree made pursuant to this division is final and releases the guardian or conservator and the sureties from all claims of the ward or conservatee and of any persons affected thereby based upon any act or omission directly authorized, approved, or confirmed in the judgment, order, or decree. For the purposes of this section, "order" includes an order settling an account of the guardian or conservator, whether an intermediate or final account.

(b) This section does not apply where the judgment, order, or decree is obtained by fraud or conspiracy or by misrepresentation contained in the petition or account or in the judgment, order, or decree as to any material fact. For the purposes of this subdivision, misrepresentation includes but is not limited to, the omission of a material fact.

**Legislative Committee Comment—Assembly**

**Comment.** Section 2103 is based on former Section 2103 (conservatorship) except that new Section 2103 applies to inaction approved by the court as well as to action. See also *Conservatorship of Harvey*, 3 Cal.3d 646, 477 P.2d 742, 91 Cal. Rptr. 510 (1970) (protection extended to the conservator's attorney). New Section 2103 supersedes former Section 1557.2 (guardianship) which applied only to orders authorizing purchases of real estate or investments.

Section 2103 adopts the rule that—except in the cases described in subdivision (b)—the rule of finality applies to an order settling an intermediate account. This changes the rule of former guardianship law pursuant to which an order settling an

intermediate account could be reopened and reexamined under some circumstances at the behest of the ward. See, *e.g.*, *In re Estate of DiCarlo*, 3 Cal.2d 225, 44 P.2d 562 (1935); *Estate of Joslin*, 165 Cal. App.2d 330, 332 P.2d 151 (1958). The rule under former conservatorship law was unclear. *W. Johnstone & G. Zillgitt, California Conservatorships* § 2.19, at 39 (Cal. Cont. Ed. Bar 1968). Under subdivision (b), however, the guardian or conservator is not released from liability for transactions which are not fully disclosed to the court.

#### CROSS-REFERENCES

Appealable orders, § 2750

Instructions from or approval by court, §§ 2359, 2403

Reversal of order appointing guardian or conservator, effect of, § 2752

Suits against sureties, limitation period, § 2333

Suit to recover property sold, limitation period, § 2548

### § 2104. Nonprofit charitable corporation as guardian or conservator

2104. (a) A nonprofit charitable corporation may be appointed as a guardian or conservator of the person or estate, or both, if all of the following requirements are met:

(1) The corporation is incorporated in this state.

(2) The articles of incorporation specifically authorize the corporation to accept appointments as guardian or conservator, as the case may be.

(3) The corporation has been providing, at the time of appointment, care, counseling, or financial assistance to the proposed ward or conservatee under the supervision of a registered social worker certified by the Board of Behavioral Science Examiners of this state.

(b) The petition for appointment of a nonprofit charitable corporation described in this section as a guardian or conservator shall include in the caption the name of a responsible corporate officer who shall act for the corporation for the purposes of this division. If, for any reason, the officer so named ceases to act as the responsible corporate officer for the purposes of this division, the corporation shall file with the court a notice containing (1) the name of the successor responsible corporate officer and (2) the date the successor becomes the responsible corporate officer.

(c) If a nonprofit charitable corporation described in this section is appointed as a guardian or conservator:

(1) The corporation's compensation as guardian or conservator shall be allowed only for services actually rendered and shall not be based on the value of the estate.

(2) Any fee allowed for an attorney for such corporation shall be for services actually rendered and shall not be based on the value of the estate.

**Comment.** Subdivisions (a) and (b) of Section 2104 continue the substance of a portion of former Sections 1400 and 1701. Subdivision (c) continues the substance of the last paragraph of former Section 1907 and of the comparable limitations of subdivision (2) of former Section 1908 (conservatorship) and extends the same limitations to guardianships.

#### CROSS-REFERENCES

Bond, § 2325

Definition, court, § 1418

Testamentary disposition to nonprofit charitable corporation appointed as guardian or conservator, § 22.1

### § 2105. Joint guardians or conservators

2105. (a) The court, in its discretion, may appoint for a ward or conservatee:

(1) Two or more joint guardians or conservators of the person.

(2) Two or more joint guardians or conservators of the estate.

(3) Two or more joint guardians or conservators of the person and estate.

(b) When joint guardians or conservators are appointed:

(1) Each shall qualify in the same manner as a sole guardian or conservator.

(2) The act of a majority of the joint guardians or conservators is valid.

(c) If one of the joint guardians or conservators dies or is removed or resigns, the powers and duties continue in the remaining joint guardians or conservators until further appointment is made by the court.

(d) Where joint guardians or conservators have been appointed and one or more are absent from the state or legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining joint guardians or conservators to act as to all matters embraced within its order.

**Comment.** Subdivision (a) of Section 2105 continues the substance of a portion of the second sentence of former Section 1405 and the last sentence of former Section 1751.

Subdivision (b) supersedes the third sentence of former Section 1405. Under the former provision, one of several joint guardians was "governed and liable in all respects as a sole guardian." Under paragraph (1) of subdivision (b), each of several joint guardians or conservators shall "qualify" in the same manner as a sole guardian or conservator. See, *e.g.*, Sections 2300 (oath and bond required), 2326 (joint bond permitted). Paragraph (2) is based on the last sentence of Section 570 which appears to have been applied to guardianship and conservatorship proceedings by former Sections 1606 and 1702. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 5.84, at 225 (Cal. Cont. Ed. Bar 1968). Section 2105 does not deal with the question of when one of several joint guardians or conservators may be liable for the act of another of the joint guardians or conservators. However, under certain circumstances one joint guardian or conservator may be held liable for the act of another joint conservator. See *W. Johnstone & G. Zillgitt, supra* § 3.6, at 56. Mere dissent from the action proposed by the majority may be insufficient to insulate the dissenting guardian or conservator from liability since there may be a duty to disclose questionable actions of a joint guardian or conservator. *Cf. In re Estate of Osborn*, 87 Cal. 1, 25 P. 157 (1890) (co-executors). See also Section 2101 (law of trusts applies).

Subdivision (c) is drawn from former Sections 1591 and 1955 but has been expanded to cover the case where there is a removal or resignation as well as the case of a death. Subdivision (d) continues the substance of former Section 1956.

#### CROSS-REFERENCES

Definition, court, § 1418

### § 2106. One guardian or conservator for several wards or conservatees

2106. (a) The court, in its discretion, may appoint one guardian or conservator for several wards or conservatees.

(b) The appointment of one guardian or conservator for several wards or conservatees may be requested in the initial petition filed in the proceeding or may be requested subsequently upon a petition filed in the same proceeding and noticed and heard with respect to the newly proposed

ward or conservatee in the same manner as an initial petition for appointment of a guardian or conservator.

**Comment.** Subdivision (a) of Section 2106 makes clear that a proceeding may be for the appointment of one guardian for several wards or one conservator for several conservatees. This continues authority formerly found in subdivision (b) of former Section 1440 (guardians). No express authority was contained in the former conservatorship statute. Subdivision (b) of Section 2106 is new.

#### CROSS-REFERENCES

Definition, court, § 1418

Joint guardians or conservators, § 2105

Separate bonds or single bond where several wards or conservatees, § 2327

### § 2107. Powers and duties of guardian or conservator appointed in California for nonresident

2107. (a) Unless limited by court order, a guardian or conservator of the person of a nonresident has the same powers and duties as a guardian or conservator of the person of a resident while the nonresident is in this state.

(b) A guardian or conservator of the estate of a nonresident has, with respect to the estate of the nonresident within this state, the same powers and duties as a guardian or conservator of the estate of a resident. The responsibility of such a guardian or conservator with regard to inventory, accounting, and disposal of the estate is confined to such estate as comes into the hands of the guardian or conservator in this state.

**Comment.** Section 2107 prescribes the powers and duties of a guardian or conservator appointed in California for a nonresident. The section continues the substance of former Section 1571 except that the court is specifically authorized to limit the powers and duties of a guardian or conservator of the person of a nonresident. Thus, for example, if the appointment of a guardian or conservator of the person of a nonresident is made for a limited purpose such as to give consent for medical treatment, the court may make an express limitation of the powers and duties of the guardian or conservator to the accomplishment of that purpose.

Subdivision (a) states only the powers and duties while the ward or conservatee is in this state. Section 2107 does not deal with the question of the extent of the powers of the California

guardian or conservator of the person when the nonresident ward or conservatee is not within California. See generally *Mayer v. Willing*, 196 Cal. App.2d 379, 16 Cal. Rptr. 476 (1961); 39 Am. Jur.2d *Guardian and Ward* §§ 26, 219 (1968).

The provision in former Section 1571 that a guardian of the estate of a nonresident must give bond as provided for other guardians has been omitted from Section 2107 as unnecessary. The provisions of Chapter 4 (commencing with Section 2300) concerning bonds apply to guardians and conservators of nonresidents as well as of residents.

**§ 2108. Additional powers granted guardian nominated by will**

2108. (a) Except to the extent the court for good cause determines otherwise, if a guardian of the person is nominated by a will under Section 1500 and is appointed by the court, the guardian so appointed shall be granted in the order of appointment, to the extent provided in the will, the same authority with respect to the person of the ward as a parent having legal custody of a child and may exercise such authority without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as if such authority were exercised by a parent having legal custody of a child.

(b) Except to the extent the court for good cause determines otherwise and subject to Sections 2593, 2594, and 2595, if a guardian of the estate is nominated by a will under Section 1500 or a guardian for property is nominated by a will under Section 1501 and the guardian is appointed by the court, the guardian so appointed shall be granted in the order of appointment, to the extent provided in the will, the right to exercise any one or more of the powers listed in Section 2591 without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as if such authority were granted by order of the court under Section 2590. In the case of a guardian nominated by a will under Section 1501, such additional authority shall be limited to the property covered by the nomination.

(c) The terms of any order made under this section shall be included in the letters of guardianship.



**Comment.** Section 2108 supersedes that portion of former Section 1484 which provided that the powers of a testamentary guardian could be “legally modified, enlarged or changed by the will by which he was appointed.”

Subdivision (a) of Section 2108 permits the testator to give a guardian of the person nominated by will, unless the court for good cause otherwise determines, the same authority as a parent. The appointment of a guardian of the person nominated by a will is, of course, subject to the provisions of Section 4600 of the Civil Code relating to custody of a minor. See Section 1514(b). But, if the person nominated in the will is appointed by the court, subdivision (a) of Section 2108 applies.

Subdivision (b) permits the testator to give a guardian of the estate or of property authority to act without court authorization as provided in the provisions—listed in subdivision (b)—relating to the independent exercise of powers. The court is required to appoint a guardian of the estate (Section 1500) or of property (Section 1501) unless the person nominated is determined by the court to be “unsuitable.” See Section 1514(c), (d). If the person nominated in the will is appointed by the court, subdivision (b) of Section 2108 applies.

Where good cause is shown, the court may decline to make an order granting the guardian the powers provided in the will. It is unclear whether the court had this authority under former law. See former Section 1484 (powers and duties of testamentary guardian may be “legally modified, enlarged or changed by the will by which he was appointed”).

A court order made under Section 2108 may grant additional powers of the guardian only “to the extent provided in the will.” The will may grant only one or a few of the specific additional powers permissible under Section 2108 or may provide the broadest grant of additional powers possible under the section. Nothing in Section 2108 precludes the court from granting a guardian nominated in a will additional powers listed in Section 2591 under the independent exercise of powers provisions even though these additional powers were not granted in the will that nominated the guardian.

#### CROSS-REFERENCES

Bond of nominated guardian, § 2324

Definition, court, § 1418

Powers and duties of guardian of particular property, § 2109

**§ 2109. Powers and duties of guardian as to particular property; allocation of duties between guardians; instructions from court**

2109. (a) Subject to Section 2108, a guardian appointed under subdivision (d) of Section 1514 for particular property upon a nomination made under Section 1501 has, with respect to that property, the same powers and duties as a guardian of the estate. The responsibility of such a guardian with regard to inventory, accounting, and disposal of the estate is confined to the property covered by the nomination.

(b) When a guardian is appointed under subdivision (d) of Section 1514 for particular property upon a nomination made under Section 1501 and there is a guardian of the estate appointed under any other provision of Part 2 (commencing with Section 1500):

(1) The guardian appointed for the property covered by the nomination manages and controls that property and the guardian of the estate manages and controls the balance of the guardianship estate.

(2) Either guardian may petition under Section 2403 to the court in which the guardianship of the estate proceeding is pending for instructions concerning how the duties that are imposed by law upon the guardian of the estate are to be allocated between the two guardians.

**Comment.** Section 2109 is new. Subdivision (a) is analogous to subdivision (b) of Section 2107 (guardian of estate of nonresident). Paragraph (1) of subdivision (b) codifies the rule set forth in *Guardianship of Joaquin*, 168 Cal. App.2d 99, 335 P.2d 507 (1959). Paragraph (2) of subdivision (b) makes clear that the court in which the general guardianship of the estate proceeding is pending is authorized to provide instructions to the two guardians allocating between the two guardians the duties imposed by this division and other statutes on the guardian of the estate. This will permit the court to give instructions on such matters as which guardian will pay particular debts or how much each will contribute to the support of the ward.

**CROSS-REFERENCES**

Bond of nominated guardian, § 2324  
Powers of guardian nominated by will, § 2108

**§ 2110. Appointment to fill vacancy**

2110. When for any reason a vacancy occurs in the office of guardian or conservator, the court may appoint a successor, after notice and hearing as in the case of an original appointment.

**Comment.** Section 2110 continues the substance of former Section 1954 with the addition of "for any reason." Former Section 1582 covered an appointment in case of resignation or removal.

**CROSS-REFERENCES**

Definition, court, § 1418

**§ 2111. Transfer or conveyance of property pursuant to court order**

2111. (a) As used in this section, "transaction" means any of the following:

(1) A conveyance or lease of real property of the guardianship or conservatorship estate.

(2) The creation of a mortgage or deed of trust on real property of the guardianship or conservatorship estate.

(3) A transfer of personal property of the guardianship or conservatorship estate.

(4) The creation of a security interest or other lien in personal property of the guardianship or conservatorship estate.

(b) Whenever the court authorizes or directs a transaction, the transaction shall be carried out by the guardian or conservator of the estate in accordance with the terms of the order.

(c) A conveyance, lease, or mortgage of, or deed of trust on, real property executed by a guardian or conservator shall set forth therein that it is made by authority of the order authorizing or directing the transaction and shall give the date of the order. A certified copy of the order shall be recorded in the office of the county recorder in each county in which any portion of the real property is located.

(d) A transaction carried out by a guardian or conservator in accordance with an order authorizing or directing the transaction has the same effect as if the ward or conservatee had carried out the transaction while having legal capacity to do so.

## Legislative Committee Comment—Assembly

**Comment.** Section 2111 generalizes provisions applicable to executors or administrators that were incorporated by reference and made applicable to guardianship and conservatorship proceedings under prior law.

Subdivisions (a), (b), and (c) are drawn from portions of Sections 786 (sales of real property), 832-833 (borrowing money), and 843 (leases). These provisions were made applicable to guardianship and conservatorship proceedings by former Sections 1534 (sales), 1538 (borrowing money, leases), and 1852 (conservatorship). A similar provision was also found in former Section 1530a (compromises).

Subdivision (d) is drawn from portions of Sections 786 (sales of real property), 834 (borrowing money), 843 (leases), and 853 (conveyance to complete contract or to satisfy adverse claim). Like Section 853, but unlike Section 786 (conveyance passes all estate of decedent prior to sale) or former Section 1530a (guardian's conveyance pursuant to compromise passes ward's estate at time of conveyance), subdivision (d) permits the guardian or conservator to convey or transfer the title, right, or interest to the same extent as it might have been conveyed or transferred by a person having legal capacity for the transaction. Thus, for example, in a proceeding under Sections 2520-2528, the court might order the guardian or conservator to execute a quitclaim deed to remove a cloud on the petitioner's property or the court might direct a conveyance of real property to complete a contract and order the guardian or conservator to execute a grant deed which will pass after-acquired title. See generally 3 B. Witkin, *Summary of California Law Real Property* §§ 86, 160, at 1840, 1900-01 (8th ed. 1973).

## CROSS-REFERENCES

Conveyances to complete contract, § 2528

Dedication or conveyance of property or easement with or without consideration, § 2556

Exchanges of property, § 2557

Partition of property, conveyances pursuant to agreement, § 2463

Property claimed by another, § 2528

### § 2112. Application of federal Indian law

2112. With respect to a guardianship or conservatorship proceedings to which Title 25 of the United States Code (Indians) applies, the provisions of this division are subject to the provisions of Title 25 and, to the extent inconsistent with Title 25, are superseded by that title.

**Comment.** Section 2112 is new and recognizes that, with respect to Indians subject to federal supervision, there are a number of provisions of federal law which concern guardianship or conservatorship and may be inconsistent with the provisions of this division. See, *e.g.*, 25 U.S.C. §§ 379 (approval of Secretary of Interior required for certain conveyances), 954 (special rules applicable to guardian or conservator of member of Agua Caliente Band of Palm Springs, California).

## CHAPTER 2. JURISDICTION AND VENUE

### Article 1. Jurisdiction and Venue

#### § 2200. Jurisdiction in superior court

2200. The superior court has jurisdiction of guardianship and conservatorship proceedings.

**Comment.** Section 2200 continues portions of former Sections 1405 and 1440 (guardianship of minor), 1460 (guardianship of incompetent), and 2051 (conservatorship).

#### § 2201. Venue for residents

2201. The proper county for the commencement of a guardianship or conservatorship proceeding for a resident of this state is either of the following:

(a) The county in which the proposed ward or proposed conservatee resides.

(b) Such other county as may be in the best interests of the proposed ward or proposed conservatee.

#### Legislative Committee Comment—Assembly

**Comment.** Section 2201 supersedes portions of former Sections 1440(a) (county in which minor resides or is temporarily domiciled), 1460 (any county in which application for guardianship of incompetent is made), and 2051 (county in which proposed conservatee resides). Subdivision (b) is new and permits the court, for example, to determine that the venue is proper even though the place of residence is in dispute. See *Hillman v. Stults*, 263 Cal. App.2d 848, 871-72, 70 Cal. Rptr. 295, 309 (1968); *Guardianship of Smith*, 147 Cal. App.2d 686, 306 P.2d 86 (1957). This avoids the need to litigate the issue of residence if the court determines that continuance of the proceeding in the

county where filed is in the best interests of the ward or conservatee.

Section 2201 does not apply to a petition filed under Section 7284 of the Welfare and Institutions Code (State Department of Mental Health may petition in any county).

### § 2202. Venue for nonresidents

2202. (a) The proper county for the commencement of a proceeding for the guardianship or conservatorship of the person of a nonresident of this state is either of the following:

(1) The county in which the proposed ward or conservatee is temporarily living.

(2) Such other county as may be in the best interests of the proposed ward or proposed conservatee.

(b) The proper county for the institution of a proceeding for the guardianship or conservatorship of the estate for a nonresident of this state is any of the following:

(1) The county in which the proposed ward or proposed conservatee is temporarily living.

(2) Any county in which the proposed ward or proposed conservatee has property.

(3) Such other county as may be in the best interests of the proposed ward or proposed conservatee.

**Comment.** Section 2202 continues and clarifies the substance of portions of former Sections 1440(a) (guardian of minor), 1570 (guardian of nonresident minor or incompetent), and 2051 (conservatorship) but adds the provision in subdivisions (a) and (b) that venue is proper in "such other county as may be in the best interests of the proposed ward or proposed conservatee." The addition of this provision to subdivision (a) enables the court of the county where the property is located, for example, to determine that the venue is proper with respect to the person as well as the estate where a guardianship or conservatorship of the person is necessary in California.

### § 2203. Court having priority where proceedings instituted in several counties

2203. (a) If proceedings for the guardianship or conservatorship of the estate are instituted in more than one county, the guardianship or conservatorship of the

estate first granted, including a temporary guardianship or conservatorship of the estate, governs and extends to all the property of the ward or conservatee within this state and the other proceeding shall be dismissed.

(b) If proceedings for the guardianship or conservatorship of the person are instituted in more than one county, the guardianship or conservatorship of the person first granted, including a temporary guardianship or conservatorship of the person, governs and the other proceeding shall be dismissed.

(c) If a proceeding for the guardianship or conservatorship of the person is instituted in one county and a proceeding for the guardianship or conservatorship of the estate is instituted in a different county, the court first granting the guardianship or conservatorship, whether of the person or of the estate, may find that it is in the best interests of the ward or conservatee that the guardianship or conservatorship of both the person and the estate be maintained in that county or in such other county as the court shall determine. Thereupon, the guardianship or conservatorship proceeding in the court of the county found by the court to be in the best interests of the ward or conservatee shall govern and shall extend to all property of the ward or conservatee within this state, and the other proceeding shall be dismissed.

[Amended by 1980 Cal. Stats. ch. 246]

Law Revision Commission Comment

1979 Enactment

**Comment.** Subdivision (a) of Section 2203 continues the substance of the last sentence of former Section 1570 (guardianship) except that the provision has been extended to residents as well as nonresidents and the reference to a temporary guardianship or conservatorship is new. The phrase "and the other proceeding shall be dismissed" has been substituted for the language of the last sentence of former Section 1570 that the "court of no other county has jurisdiction." There was no provision under prior conservatorship law comparable to subdivision (a). Subdivision (b) is new and is adapted from subdivision (a).

## Article 2. Change of Venue

### § 2210. Definitions

2210. As used in this article:

(a) "Guardian or conservator" includes a proposed guardian or proposed conservator.

(b) "Ward or conservatee" includes a proposed ward or proposed conservatee.

**Comment.** Section 2210 makes clear that this article applies prior to the appointment of the guardian or conservator as well as after the appointment.

### § 2211. Authority to transfer proceeding

2211. The court in which a guardianship or conservatorship proceeding is pending may, upon petition therefor, transfer the proceeding to another county within this state.

**Comment.** Section 2211 continues the substance of portions of former Sections 1603 (guardianship) and 2051 and 2052 (conservatorship).

### § 2212. Who may petition for transfer

2212. The petition for transfer may be filed only by one or more of the following:

- (a) The guardian or conservator.
- (b) The ward or conservatee.
- (c) The spouse of the ward or conservatee.
- (d) A relative or friend of the ward or conservatee.
- (e) Any other interested person.

**Comment.** Section 2212 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship) but clarifies and may expand the class of persons who may petition for transfer. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 2.21, at 40 (Cal. Cont. Ed. Bar 1968). See also former Section 1603 (guardianship).

#### CROSS-REFERENCES

##### Definitions

Conservatee, § 2210

Conservator, § 2210

Guardian, § 2210

Interested person, § 1424

Ward, § 2210



### § 2213. Contents of petition

2213. The petition for transfer shall set forth all of the following:

(a) The county to which the proceeding is to be transferred.

(b) The name and address of the ward or conservatee.

(c) A brief description of the character, value, and location of the property of the ward or conservatee.

(d) The reasons for the transfer.

(e) The names and addresses, so far as they are known to the petitioner, of the spouse and of the relatives of the ward or conservatee within the second degree.

(f) The name and address of the guardian or conservator if other than the petitioner.

**Comment.** Section 2213 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship). See also former Section 1603 (guardianship).

#### CROSS-REFERENCES

##### Definitions

Conservatee, § 2210

Conservator, § 2210

Guardian, § 2210

Ward, § 2210

Petition must be verified, § 1450

### § 2214. Notice of hearing

2214. Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. In addition, the petitioner shall mail a notice of the time and place of the hearing and a copy of the petition to all persons required to be listed in the petition at least 15 days before the date set for the hearing.

**Comment.** Section 2214 continues the substance of the first two sentences of former Section 2053 (conservatorship) except that the time for mailing the notice is extended from 10 to 15 days and the provision of the first sentence of former Section 2053 relating to the clerk setting the petition for hearing is continued in Section 1451. See also former Section 1603 (guardianship).

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Notice to Director of Mental Health or Director of Developmental Services, § 1461

Proof of giving of notice, § 1468

Request for special notice, § 2700

### § 2215. Hearing and order

2215. (a) Any of the following persons may appear at the hearing to support or oppose the petition and may file written objections to the petition:

(1) Any person required to be listed in the petition.

(2) Any creditor of the ward or conservatee or of the estate.

(3) Any other interested person.

(b) If the court determines that the transfer requested in the petition will be for the best interests of the ward or conservatee, it shall make an order transferring the proceeding to the other county.

**Comment.** Section 2215 continues the substance of the third and fourth sentences of former Section 2053 (conservatorship) except that the language "at the hearing to support or oppose the petition" is added and "any other interested person" is also added. See also former Section 1603 (guardianship). Subdivision (a) permits any person required to be listed in the petition to support or oppose the petition. These persons are listed in Section 2213.

#### CROSS-REFERENCES

##### Definitions

Conservatee, § 2210

Court, § 1418

Interested person, § 1424

Ward, § 2210

### § 2216. Transfer

2216. (a) Upon the order of transfer, the clerk shall transmit to the clerk of the court to which the proceeding is transferred a certified or exemplified copy of the order, together with all papers in the proceeding on file with the clerk.

(b) The clerk of the court from which the removal is made shall receive no fee therefor but shall be paid out of the estate all expenses incurred by the clerk in the removal. The clerk of the court to which the proceeding is

transferred shall be entitled to such fees as are payable on the filing of a like original proceeding.

**Comment.** Subdivision (a) of Section 2216 continues the substance of the fifth sentence of former Section 2053 (conservatorship). Subdivision (b) continues the substance of former Section 2054 (conservatorship). See also former Section 1603 (guardianship).

### **CHAPTER 3. TEMPORARY GUARDIANS AND CONSERVATORS**

#### **§ 2250. Appointment**

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary guardian or temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed ward if 14 years of age or older or to the proposed conservatee. The appointment of the temporary guardian or temporary conservator may be made with or without notice to other persons as the court may require.

(d) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or conservator or such appointments

may be requested in separate petitions.

(e) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

**Comment.** Section 2250 continues the substance of former Section 1640 (special guardian) and the first paragraph of former Section 2201 (temporary conservator) with the addition of authority to appoint a temporary guardian of the person and the addition of the phrase "or other showing as it may require" in subdivision (b) and the requirement in subdivision (c) of notice to the proposed ward if over 14 or to the proposed conservatee unless the court otherwise orders. This permits the court to shorten the time of notice, dispense with notice entirely, order a different manner of giving notice, or make such other order as is appropriate in the circumstances. Subdivisions (d) and (e) are new.

#### CROSS-REFERENCES

Appointment of legal counsel for proposed ward or conservatee, § 1470

Definition, court, § 1418

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Temporary guardian or conservator pending appeal, § 2751

### § 2251. Issuance of letters

2251. A temporary guardian or temporary conservator shall be issued letters of temporary guardianship or conservatorship upon taking the oath and filing the bond as in the case of a guardian or conservator. The letters shall indicate the termination date of the temporary appointment.

**Comment.** Section 2251 continues the substance of former Sections 1641 (special guardian) and 2202 (temporary conservator) with the addition of the reference to the taking of the oath and the requirement that the termination date be stated in the letters. The letters are designated "letters of temporary conservatorship" rather than "temporary letters of conservatorship" as under former Section 2202. See also Section 2257 (termination date).

#### CROSS-REFERENCES

Additional powers to be stated in letters, § 2252

Oath and bond, § 2300

**§ 2252. Powers and duties**

2252. (a) Except as otherwise provided in subdivisions (b) and (c), a temporary guardian or temporary conservator has only the power and authority, and only the duties, of a guardian or conservator that are necessary to provide for the temporary care, maintenance, and support of the ward or conservatee and that are necessary to conserve and protect the property of the ward or conservatee from loss or injury.

(b) Unless the court otherwise orders:

(1) A temporary guardian of the person has the powers and duties specified in Section 2353 (medical treatment).

(2) A temporary conservator of the person has the powers and duties specified in Section 2354 (medical treatment).

(c) The temporary guardian or temporary conservator has such additional powers and duties as may be ordered by the court (1) in the order of appointment or (2) by subsequent order made with or without notice as the court may require.

(d) The terms of any order made under subdivision (b) or (c) shall be included in the letters of temporary guardianship or conservatorship.

(e) A temporary conservator shall not be permitted to sell or relinquish, on the conservatee's behalf, any lease or estate in real or personal property used as or within the conservatee's place of residence without the specific approval of the court. Such approval shall be granted only if the conservatee has been served with notice of the hearing, such notice to be personally delivered to the temporary conservatee unless the court for good cause otherwise orders, and only if the court finds that the conservatee will be unable to return to the residence and exercise dominion over it and that such action is necessary to avert irreparable harm to the conservatee. The temporary conservator shall not be permitted to sell or relinquish on the conservatee's behalf any estate or interest in other real or personal property without specific approval of the court, which may be granted only upon a finding that such action is necessary to avert irreparable harm to the

conservatee. A finding of irreparable harm as to real property may be based upon a reasonable showing that the real property is vacant, that it cannot reasonably be rented, and that it is impossible or impractical to obtain fire or liability insurance on the property.

**Comment.** Subdivisions (a) and (c) of Section 2252 continue the substance of former Sections 1642 (special guardian) and 2203 (temporary conservator).

Subdivision (b) makes clear that the temporary guardian or conservator has limited authority with respect to medical treatment for the ward or conservatee unless the court by order limits or expands the authority given by Section 2353 (guardian) or 2354 (conservator). The court might, for example, give the temporary conservator the powers and duties of a conservator under Section 2355 (medical treatment of conservatee adjudicated to lack capacity to give informed consent) where the circumstances of the particular case required such an order. See also Section 2357 (petition by temporary guardian or conservator for court authorization of medical treatment for ward or conservatee).

Subdivision (d) is new.

Subdivision (e) continues the substance of the second, third, fourth, and fifth sentences of the last paragraph of former Section 2201. The requirement of personal delivery of notice to the temporary conservatee unless the court otherwise orders has been substituted for the former requirement that notice is "to be served in the same manner as is provided for the service of the petition." The former references to proof by a "preponderance of the evidence" have been omitted as unnecessary.

#### CROSS-REFERENCES

Definition, court, § 1418

### § 2253. Change of conservatee's residence generally

2253. (a) If a temporary conservator of the person proposes to fix the residence of the conservatee at a place other than that where the conservatee resided prior to the commencement of the proceedings, such power shall be requested of the court in writing, unless such change of residence is required of the conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary

conservatorship has already been established, separately. The request shall specify in particular the place to which the temporary conservator proposes to move the conservatee, and the precise reasons why it is believed that the conservatee will suffer irreparable harm if such change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

(b) If the court so directs, the court investigator shall do all of the following:

(1) Interview the conservatee personally.  
(2) Inform the conservatee of the nature, purpose, and effect of the request made under subdivision (a), and of the right of the conservatee to oppose the request, attend the hearing, be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to obtain legal counsel.

(3) Determine whether the conservatee is unable to attend the hearing because of medical inability and, if able to attend, whether the conservatee is willing to attend the hearing.

(4) Determine whether the conservatee wishes to oppose the request.

(5) Determine whether the conservatee wishes to be represented by legal counsel at the hearing and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

(6) If the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court, determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee.

(7) Determine whether the proposed change of place of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

(8) Report to the court in writing, at least two days before the hearing, concerning all of the foregoing,

including the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to oppose the request.

(c) Within seven days of the date of filing of a temporary conservator's request to remove the conservatee from his or her previous place of residence, the court shall hold a hearing on the request.

(d) The conservatee shall be present at the hearing except in the following cases:

(1) Where the conservatee is unable to attend the hearing by reason of medical inability. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(2) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee is not willing to attend the hearing and does not wish to oppose the request, and the court makes an order that the conservatee need not attend the hearing.

(e) If the conservatee is unable to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.

(f) At the hearing, the conservatee has the right to be represented by counsel and the right to confront and cross-examine any witness presented by or on behalf of the temporary conservator and to present evidence on his or her own behalf.

(g) The court may approve the request to remove the conservatee from the previous place of residence only if the



court finds (1) that change of residence is required to prevent irreparable harm to the conservatee and (2) that no means less restrictive of the conservatee's liberty will suffice to prevent such harm. If an order is made authorizing the temporary conservator to remove the conservatee from the previous place of residence, the order shall specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator shall not be authorized to remove the conservatee from the State of California unless it is additionally shown that such removal is required to permit the performance of specified nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from the State of California without authorization of the court is guilty of a felony.

(h) Subject to subdivision (e) of Section 2252, the court shall also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence.

**Comment.** Section 2253 continues the substance of the second, third, and fourth paragraphs, and the first sentence of the fifth paragraph of former Section 2201 with the addition of subdivision (b), paragraph (2) of subdivision (d), and paragraph (e). The standard for inability to attend the hearing for medical reasons is conformed to the standard used for attendance at the hearing on the establishment of a conservatorship (Section 1825) and the requirement is added that medical inability to attend the hearing be established by a medical affidavit or certificate. This requirement is comparable to the requirement used for proof of medical inability to attend the hearing on the establishment of a conservatorship (Section 1825). The phrase "by a preponderance of the evidence" in former Section 2201 has been omitted as unnecessary. As to removal of the conservatee from residence in case of emergency or with the conservatee's consent for medical treatment, see Section 2254. It should be noted that a petition must be verified (Section 1450) and "petition" is defined in Section 1430 to include a "request" in the nature of a petition.

## CROSS-REFERENCES

Appointment of legal counsel for conservatee, §§ 1471-1472

Definitions

Court, § 1418

Court investigator, § 1419

**§ 2254. Removal of conservatee from residence in case of emergency or with conservatee's consent for medical treatment**

2254. (a) Notwithstanding Section 2253, a temporary conservator may remove a temporary conservatee from the temporary conservatee's place of residence without court authorization if an emergency exists. For the purposes of this section, an emergency exists if the temporary conservatee's place of residence is unfit for habitation or if the temporary conservator determines in good faith based upon medical advice that the case is an emergency case in which removal from the place of residence is required (1) to provide medical treatment needed to alleviate severe pain or (2) to diagnose or treat a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death.

(b) No later than one judicial day after the emergency removal of the temporary conservatee, the temporary conservator shall file a written request pursuant to Section 2253 for authorization to fix the residence of the temporary conservatee other than the temporary conservatee's previous place of residence.

(c) Nothing in this chapter prevents a temporary conservator from removing a temporary conservatee from the place of residence to a health facility for treatment without court authorization when the temporary conservatee has given informed consent to the removal.

(d) Nothing in this chapter prevents a temporary conservator from removing a temporary conservatee without court authorization from one health facility where the conservatee is receiving medical care to another health facility where the conservatee will receive medical care.

**Comment.** Subdivisions (a), (b), and (c) of Section 2254 continue the substance of former Section 2201.5, except that the term "emergency" is redefined to correspond to the definition used in Section 2354 (medical treatment of conservatee not

adjudicated to lack capacity to give informed consent).  
Subdivision (d) is new.

## CROSS-REFERENCES

Definition, court, § 1418

**§ 2255. Inventory and appraisal of estate**

2255. (a) Except as provided in subdivision (b), an inventory and appraisal of the estate shall be filed by the temporary guardian or temporary conservator of the estate as required by Article 2 (commencing with Section 2610) of Chapter 7.

(b) A temporary guardian or temporary conservator of the estate may inventory the estate in the final account, without the necessity for an appraisal of the estate, if the final account is filed within 90 days after the appointment of the temporary guardian or temporary conservator.

*Legislative Committee Comment—Assembly*

**Comment.** Section 2255 continues the substance of former Sections 1643 (special guardian) and 2204 (temporary conservator) except that “within 90 days after the appointment” has been substituted for the former time limit which was three months from the entry of the order of appointment. This change conforms Section 2255 to Section 2610. See also Section 2633 (termination of relationship before filing of inventory).

**§ 2256. Accounts**

2256. (a) Except as provided in subdivision (b), the temporary guardian or temporary conservator of the estate shall present his or her account to the court for settlement and allowance within 90 days after the appointment of a guardian or conservator of the estate or within such other time as the court may fix.

(b) If the temporary guardian or temporary conservator of the estate is appointed guardian or conservator of the estate, the guardian or conservator may account for the administration as temporary guardian or temporary conservator in his or her first regular account.

(c) Accounts are subject to Sections 2621 to 2626, inclusive, Sections 2630 to 2633, inclusive, and Sections 2640 to 2642, inclusive.

**Comment.** Section 2256 continues the substance of former Sections 1644 (special guardian) and 2205 (temporary conservator) with some expansion in subdivision (c) to reflect new provisions included in the provisions relating to accounts and the addition of a reference in subdivision (c) to Sections 2640–2642 relating to petitions for court orders fixing compensation for the guardian or conservator or attorney.

#### CROSS-REFERENCES

Appealable orders, § 2750  
Definition, court, § 1418

### § 2257. Termination

2257. (a) Except as provided in subdivision (b), the powers of a temporary guardian or temporary conservator terminate (except for the rendering of the account) at the earliest of the following times:

(1) The time the temporary guardian or conservator acquires notice that a guardian or conservator is appointed and qualified.

(2) Thirty days after the appointment of the temporary guardian or temporary conservator or such earlier time as the court may specify in the order of appointment.

(b) With or without notice as the court may require, the court may for good cause order that the time for the termination of the powers of the temporary guardian or temporary conservator be extended pending final determination by the court of the petition for appointment of a guardian or conservator or pending the final decision on appeal therefrom or for other cause. The order which extends the time for termination shall fix the time when the powers of the temporary guardian or temporary conservator terminate except for the rendering of the account.

**Comment.** Section 2257 continues the substance of former Sections 1645 (special guardian) and 2206 (temporary conservator) with the addition of the notice requirement to paragraph (1) of subdivision (a).

#### CROSS-REFERENCES

Appointment of temporary guardian or conservator pending appeal, § 2751  
Definition, court, § 1418  
Termination date to be stated in letters, § 2251

**§ 2258. Suspension, removal, resignation, and discharge**

2258. A temporary guardian or temporary conservator is subject to the provisions of this division governing the suspension, removal, resignation, and discharge of a guardian or conservator.

**Comment.** Section 2258 continues the substance of former Sections 1646 (special guardian) and 2207 (temporary conservatorship).

**CROSS-REFERENCES**

Removal or resignation of guardian or conservator, §§ 2650-2660

**CHAPTER 4. OATH, LETTERS, AND BOND****Article 1. Requirement of Oath and Bond****§ 2300. Oath and bond required before appointment effective**

2300. Before the appointment of a guardian or conservator is effective, the guardian or conservator shall:

(a) Take an oath to perform the duties of the office according to law, which oath shall be attached to or endorsed upon the letters of guardianship or conservatorship.

(b) File the required bond if a bond is required.

**Comment.** Section 2300 is based on the first portion of former Section 1480 and the second sentence of former Section 1801. The requirement that the oath be attached to or endorsed upon the letters is taken from former Section 1480 and is consistent with a similar requirement in Section 540 (executor or administrator); former Section 1801 required that the oath "be filed in the proceedings." Section 2300 continues former practice for both guardianships and conservatorships. See *Letters of Guardianship/Conservatorship (Form Approved by the Judicial Council of California, effective July 1, 1977)*.

**CROSS-REFERENCES**

Temporary guardian or conservator, § 2251

## Article 2. Letters

### § 2310. Issuance of letters

2310. The appointment, the taking of the oath, and the filing of the bond, if required, shall thereafter be evidenced by the issuance by the clerk of the court of letters of conservatorship or guardianship, as the case may be.

**Comment.** Section 2310 continues the substance of a portion of the third sentence of former Section 1801 and extends the provision to guardianships. The reference to the filing of the bond is taken from former Section 1481.

#### CROSS-REFERENCES

Appealable orders, § 2750

Definition, court, § 1418

Letters of temporary guardianship or conservatorship, § 2251

### § 2311. Form of letters

2311. Except as otherwise required by the order of appointment, the letters shall be in substantially the same form as letters of administration.

**Comment.** Section 2311 continues portions of former Sections 1481 and 1801 with the addition of the provision for departure from the usual form of letters where necessary to conform to the order of appointment.

#### CROSS-REFERENCES

Additional conditions on performance of duties

Guardian or conservator of estate, § 2402

Guardian or conservator of person, § 2358

Additional powers granted to guardian nominated by will, § 2108

Guardian as to particular property, § 1514(d)

Guardian or conservator of nonresident, § 2107

Independent exercise of powers, § 2594

Judicial Council may prescribe forms, § 1456

Letters of temporary guardianship or conservatorship, §§ 2251, 2252

Oath attached to or endorsed on letters, § 2300

Transitional provision, Judicial Council rules, § 1491

### § 2312. Notice to ward or conservatee

2312. Before letters of guardianship or conservatorship may be issued, a copy of the order of the court appointing the guardian or conservator shall be mailed to the ward if 14 years of age or older or to the conservatee.

**Comment.** Section 2312 continues the fourth sentence of former Section 1801, and extends the provision to a ward 14 years

of age or older. The former provision has been clarified by substituting "mailed" for "served by mail."

#### CROSS-REFERENCES

Definition, court, § 1418

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

### Article 3. Bonds of Guardians and Conservators

#### § 2320. General requirement of bond; amount

2320. (a) Except as otherwise provided by statute:

(1) Every guardian and conservator shall furnish a bond in the amount fixed by the court, conditioned upon the faithful execution of the duties of the office according to law, to protect the ward or conservatee and all persons interested in the guardianship or conservatorship estate.

(2) Unless the court increases or decreases the amount upon a showing of good cause, the amount of the bond shall be the lowest amount permitted under Section 541 for a bond given under that section by an authorized surety company.

(b) If the sureties on the bond are individual persons, the bond shall be one approved by the court and shall be for twice the amount required for a bond given by an authorized surety company.

**Comment.** Section 2320 is based on the second and third sentences of former Section 1802 and a portion of former Section 1480. The amount of the bond is determined by reference to Section 541 (bond of executors or administrators) except that the court may increase or decrease the amount of the bond that would otherwise be required upon a showing of good cause. Section 2320 substitutes a uniform rule for the conflicting rules provided in former Sections 1480 (bond not less than amount equivalent to that specified in Section 541) and 1802 (amount of bond not to exceed amount specified in Section 541). The cost of a surety bond is an allowable expense of the guardian or conservator. See Section 2623(a).

One of the exceptions that qualifies Section 2320 is found in Section 2328 which permits reduction in the amount of the bond

when money, securities, or other property are deposited in a bank or trust company or invested in an account of an insured savings and loan association, subject to withdrawal only upon authorization of the court.

#### CROSS-REFERENCES

Additional conditions in order of appointment, liability of surety, §§ 2358, 2402  
 Approval of bond of individual sureties, §§ 545, 546  
 Bond of guardian or conservator of person only, § 2322  
 Bond of nominated guardian, § 2324  
 Bond of trust company appointed as guardian or conservator, § 481  
 Bond in case of small estate, § 2323  
 Definition, court, § 1418  
 Liability of guardian or conservator not limited to amount of bond, § 554  
 Liability on bond for failure timely to file inventory, § 2615  
 Nature of surety's liability, § 554  
 Waiver of bond by conservatee, § 2321

### § 2321. Waiver of bond by conservatee

2321. In a conservatorship proceeding, where the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its discretion may dispense with the requirement that a bond be filed or may permit the filing of a bond in an amount less than would otherwise be required under Section 2320.

#### Legislative Committee Comment—Assembly

**Comment.** Section 2321 continues the first sentence of former Section 1802 except that the former requirement that the conservatee “as petitioner” waive the bond has not been continued. Under Section 2321, the conservatee may waive the bond, for example, in a prior nomination of the conservator, in the petition, or at the court hearing. The provision of Section 2321 allowing the court to reduce rather than to dispense with bond is new.

#### CROSS-REFERENCES

Definition, court, § 1418

### § 2322. Guardian or conservator of person only

2322. One appointed only as guardian of the person or conservator of the person need not file a bond unless required by the court.

**Comment.** Section 2322 continues the fourth sentence of former Section 1802 and extends the same rule to the guardian of the person.

#### CROSS-REFERENCES

Definition, court, § 1418



**§ 2323. Small estate**

2323. (a) The court may dispense with the requirement of a bond if it appears likely that the estate will satisfy the conditions of subdivision (b) of Section 2628 for its duration.

(b) If at any time it appears that the estate does not satisfy the conditions of subdivision (b) of Section 2628, the court may require the filing of a bond.

**Legislative Committee Comment—Assembly**

**Comment.** Section 2323 is based on former Section 1480.3 but the former provision is expanded to cover the estate of a conservatee as well as the estate of a minor and to cover a small estate, regardless of whether consisting in its entirety of public benefit payments. See the Comment to Section 2628.

**CROSS-REFERENCES**

Definition, court, § 1418

**§ 2324. Nominated guardian**

2324. If the person making the nomination has waived the filing of the bond, a guardian nominated under Section 1500 or 1501 need not file a bond unless required by the court.

**Comment.** Section 2324 supersedes former Section 1485, which provided that a testamentary guardian need not file a bond unless required by the court. This principle is continued in Section 2324 with revisions necessary to reflect the substitution of a nomination concept for the former testamentary appointment system and the addition of a provision that the person making the nomination waive the filing of the bond.

**CROSS-REFERENCES**

Definition, court, § 1418

Nomination of guardian, §§ 1500-1502

**§ 2325. Bond of nonprofit charitable corporation**

2325. The surety on the bond of a nonprofit charitable corporation described in Section 2104 shall be an authorized surety company.

**Comment.** Section 2325 continues the substance of former Sections 1480.6 and 1802.5. The cost of the bond is an allowable expense. See Section 2623(a).

### § 2326. Joint guardians or conservators

2326. (a) If joint guardians or conservators are appointed, the court may order that separate bonds or a joint bond or a combination thereof be furnished.

(b) If a joint bond is furnished, the liability on the bond is joint and several.

**Comment.** Section 2326 is based on a portion of the second sentence of former Section 1405 and the last sentence of former Section 1802. Section 2326 makes clear that the liability on a joint bond is joint and several and is consistent with Section 544 (administrators and executors).

#### CROSS-REFERENCES

Definition, court, § 1418

Joint guardians or conservators, § 2105

### § 2327. Several wards or conservatees

2327. If the proceeding involves more than one ward or conservatee, the court may order separate bonds or a single bond or a combination thereof.

**Comment.** Section 2327 is based on the second sentence of subdivision (b) of Section 1440 and makes clear that, where the proceeding involves several wards or several conservatees, the court, in its discretion, may order a separate bond for each ward or conservatee, a single bond to cover all the wards or conservatees, or a combination of such bonds.

#### CROSS-REFERENCES

Definition, court, § 1418

One guardian or conservator for several wards or conservatees, § 2106

### § 2328. Deposit of money or other property subject to court control

2328. (a) In any proceeding to determine the amount of the bond of the guardian or conservator (whether at the time of appointment or subsequently), if the estate includes money, securities, or personal property which has been or will be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state, or money which has been or will be invested in an account in an insured savings and loan association, upon condition that the money, securities, or other property, including any

earnings thereon, will not be withdrawn except on authorization of the court, the court, in its discretion, with or without notice, may so order and may do either of the following:

(1) Exclude such money, securities, and other property in determining the amount of the required bond or reduce the amount of the bond to be required in respect to such money, securities, or other property to such an amount as the court determines is reasonable.

(2) If a bond has already been furnished or the amount fixed, reduce the amount to such an amount as the court determines is reasonable.

(b) The petitioner for letters, or the proposed guardian or conservator in advance of appointment of a guardian or conservator, may do any one or more of the following:

(1) Deliver to a bank in this state or a trust company authorized to transact a trust business in this state, money, securities, or personal property in such person's possession.

(2) Deliver to an insured savings and loan association money in such person's possession.

(3) Allow a bank in this state or a trust company authorized to transact a trust business in this state to retain such money, securities, and personal property already in its possession.

(4) Allow an insured savings and loan association to retain any such money already invested with it.

(c) In the cases described in subdivision (b), the petitioner or proposed guardian or conservator shall obtain and file with the court a written receipt including the agreement of the bank, trust company, or insured savings and loan association that the money, securities, or other property, including any earnings thereon, shall not be allowed to be withdrawn except upon authorization of the court.

(d) In receiving and retaining money, securities, or other property under subdivisions (b) and (c), the bank, trust company, or insured savings and loan association shall be protected to the same extent as though it had received the money, securities, or other property from a person to whom letters had been issued.

**Comment.** Section 2328 continues the substance of former Section 1405.1 except that Section 2328 includes personal property in addition to money and securities. In this respect, Section 2328 continues the substance of former Section 1804 (conservators) but omits wording which arguably referred to Financial Code Section 1586 for procedure when the deposit affects the amount of the bond. New provisions are added to make clear that an order may be made under Section 2328 with or without notice and that earnings on deposited money may be withdrawn only upon authorization of the court. Under Section 2328, the guardian or conservator is permitted, for example, to deposit jewelry or other personal property of the ward or conservatee with a trust company, subject to withdrawal only on order of court, and have the bond reduced accordingly. For related sections, see Fin. Code §§ 764, 765, 1586, and 6408.5. See also Section 2453 (bank and savings accounts), Section 2454 (deposit of personal property with trust company), and Section 2456 (accounts and deposits withdrawable only on court order). Securities deposited with a trust company under Section 2328 may be deposited in a securities depository. See Section 2455 (b).

#### CROSS-REFERENCES

##### Definitions

Account in an insured savings and loan association, § 1406  
Court, § 1418

### § 2329. Reduction of amount of bond

2329. (a) A guardian or conservator may apply to the court for reduction in the amount of the bond. The application shall be made by filing a petition setting forth the condition of the estate.

(b) Notice of hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. Upon the hearing, the court may reduce the amount of the bond to such amount as the court in its discretion determines is proper under the circumstances; but, except upon a showing of good cause, the amount of the bond shall not be reduced below the amount determined pursuant to Section 2320.

(c) The guardian or conservator may furnish new sureties who may be the same sureties as on the previous bond and who shall qualify for the reduced amount.

(d) Nothing in this section limits the authority of the

court to reduce the amount of the bond with or without notice under Section 2328.

**Comment.** Section 2329 continues the substance of former Sections 1483.1 and 1803, but the limitation on the amount to which the bond can be reduced is revised to conform to the requirements of Section 2320. Subdivision (d) is new. It makes clear the relationship of Section 2329 and Section 2328; the court may reduce the amount of the bond under Section 2328 without compliance with Section 2329.

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Definition, court, § 1418

Petition must be verified, § 1450

Proof of giving of notice, § 1468

### § 2330. Additional bond on real property transactions

2330. Upon the confirmation of the sale of any real property of an estate, or upon the authorization of any mortgage or deed of trust with respect to real property of an estate by which money is to be raised, the guardian or conservator shall furnish such additional bond as is required by the court in order to make the sum of the bonds furnished by the guardian or conservator equal to the amount determined pursuant to Section 2320, taking into account the proceeds of the sale or mortgage or deed of trust.

**Comment.** Section 2330 continues the substance of former Section 1534a (guardians), which also applied to conservators by virtue of former Section 1852, except that the additional bond is required “upon” confirmation rather than before confirmation.

#### CROSS-REFERENCES

Definition, court, § 1418

### § 2331. Deposit in place of surety bond

2331. (a) A guardian or conservator may, instead of furnishing the required surety bond, file with the clerk of the court a cash bond, or an assigned interest in an account in a bank in this state or in an insured savings and loan association, or deposit with the clerk bearer or endorsed bonds of the United States or of the State of California, in the sum required for a surety bond given by an authorized surety company.

(b) The security furnished under subdivision (a) is subject to increase or decrease as provided with respect to the surety bond, shall be conditioned the same as required of the surety bond, and is returnable to the guardian or conservator on the termination of the service of the guardian or conservator or on later substitution of a surety bond or other adequate security.

**Comment.** Section 2331 continues former Sections 1480.5 and 1803.5. The requirement that the bank be "in this state" is new and is consistent with Section 2328. The language allowing return of the deposited security on later substitution of a surety bond or other adequate security has been added.

#### CROSS-REFERENCES

##### Definitions

Account in an insured savings and loan association, § 1406  
Court, § 1418

### § 2332. Filing and preservation of bond

2332. Every bond given by a guardian or conservator shall be filed and preserved in the office of the clerk of the court.

**Comment.** Section 2332 is the same in substance as a portion of former Sections 1486 and 1805. For requirements as to entries in register of actions and presumptive effect of such entries, see Section 545, incorporated by the general reference provisions of Section 2100.

#### CROSS-REFERENCES

Definition, court, § 1418

### § 2333. Suit against sureties on bond; limitation period

2333. (a) In case of a breach of a condition of the bond, an action may be brought against the sureties on the bond for the use and benefit of the ward or conservatee or of any person interested in the estate.

(b) Except as provided in subdivision (c), no action may be maintained against the sureties on the bond unless commenced within three years from the discharge or removal of the guardian or conservator or within three years from the date the order surcharging the guardian or conservator becomes final, whichever is later.

(c) If at the time of the discharge or removal of the guardian or conservator or when the order of surcharge becomes final any person entitled to bring the action is under any legal disability to sue, such person may commence the action within three years after the disability is removed.

**Comment.** Subdivision (a) of Section 2333 continues a portion of former Sections 1486 and 1805. Subdivisions (b) and (c) are based on former Section 1487 with the addition of wording as to "surcharge" from former Section 1806. Subdivision (b) adopts the three-year period under former Section 1487 rather than the two-year period under former Section 1806. Subdivision (c) adopts the three-year period under former Section 1487 rather than the one-year period under former Section 1806.

#### CROSS-REFERENCES

Effect on liability of court authorization or approval, § 2103

Liability of guardian or conservator not limited to amount of bond, § 554

Nature of surety's liability, § 554

Suit to recover property sold by guardian or conservator, limitation period, § 2548

### § 2334. Insufficiency of sureties; order for further security or new bond

2334. (a) The ward or conservatee, or the spouse or any relative or friend of the ward or conservatee, or any interested person may apply to the court for an order that the guardian or conservator be required to furnish further security. The application shall be made by a petition showing that the sureties on the bond furnished by the guardian or conservator have become, or are becoming, insolvent, or that they have removed or are about to remove from the state, or that from any other cause the bond is insufficient.

(b) If it comes to the knowledge of the court that the bond of a guardian or conservator is from any cause insufficient, the court may on its own motion, without any application, make an order requiring the guardian or conservator to furnish further security.

(c) If the court is satisfied from the petition or from its own information that the matter requires investigation, the court shall issue a citation to the guardian or conservator

directing the guardian or conservator to appear before the court at a designated time and place to show cause why further security should not be required. The citation shall be served on the guardian or conservator personally at least 15 days before the return day. If the guardian or conservator cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the guardian or conservator. On the return of the citation or at such other time as the court may fix, the court shall proceed to hear the matter, and if it satisfactorily appears that the security, from any cause, is insufficient, the court shall make an order requiring the guardian or conservator to give further security, or to file a new bond, within a reasonable time, not less than five days.

(d) If sufficient security or additional security is not given within the time fixed by the court's order, the court shall remove the guardian or conservator and revoke the letters of guardianship or conservatorship.

(e) When a petition is filed requesting an order under this section that a guardian or conservator be required to give further security, or to give a bond where no bond was originally required, and the petition alleges facts showing that the guardian or conservator is failing to use ordinary care and diligence in the management of the estate, the court, by order, may suspend the powers of the guardian or conservator until the matter can be heard and determined.

**Comment.** Section 2334 supersedes a portion of former Section 1483 (guardianship) which was general in terms. There were no express provisions in the former conservatorship statute on this subject.

Section 2334 is the same in substance as Sections 547-550 (executors and administrators) except that (1) the citation must be served 15 days rather than five days before the return date, (2) the court is directed to prescribe the manner of service if personal service cannot be made (see Code Civ. Proc. § 413.30), and (3) subdivision (e) requires an allegation of facts showing that the guardian or conservator is failing to use ordinary care and diligence in the management of the estate rather than an allegation that the property of the estate is being wasted as under Section 550.



## CROSS-REFERENCES

Accounts on removal of guardian or conservator, § 2630

Definition, court, § 1418

Petition must be verified, § 1450

Suspension of powers of guardian or conservator upon petition for removal, § 2654

**§ 2335. Substitution of surety**

2335. (a) A guardian or conservator who desires a substitution and discharge of a surety may file a petition with the court for that purpose together with an accounting. The court shall issue a citation to the existing surety directing the surety to appear before the court at a designated time and place to show cause why the surety should not be substituted and discharged. The citation shall be served on the surety personally at least 15 days before the return day. If the surety cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the surety.

(b) The court shall hear the matter on the return of the citation or at such other time as the court may appoint. If, upon the hearing, the accounting is approved and it appears to the court that the substitute surety is satisfactory and that no injury can result to the estate, the court may order a substitution of surety and discharge the existing surety from liability on the bond for any subsequent act, default, or misconduct of the guardian or conservator.

**Comment.** Section 2335 continues the substance of former Sections 1483.2 and 1483.3 except that (1) the citation must be served 15 days rather than five days before the return day and (2) the court is directed to prescribe the manner of service if personal service cannot be made (see Code Civ. Proc. § 413.30). There were no express provisions in the former conservatorship statute concerning substitution of a surety. Section 2335 supersedes a portion of former Section 1483.

## CROSS-REFERENCES

Definition, court, § 1418

Petition must be verified, § 1450

**§ 2336. Release of surety**

2336. (a) A surety may apply to the court for an order that the surety be discharged from liability on the bond for

any subsequent act, default, or misconduct of the guardian or conservator. The court shall issue a citation to the guardian or conservator directing the guardian or conservator to appear before the court at a designated time and place and give other security. The citation shall be served on the guardian or conservator personally at least 15 days before the return day. If the guardian or conservator cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the guardian or conservator.

(b) If the guardian or conservator fails to give new sureties to the satisfaction of the court on the return of the citation or within such reasonable time as the court shall allow, unless the surety making the application consents to a longer extension of time, the court shall remove the guardian or conservator and revoke the letters of guardianship or conservatorship.

(c) If new sureties are given to the satisfaction of the court, the court shall thereupon make an order that the surety who applied for the order shall not be liable on the bond for any subsequent act, default, or misconduct of the guardian or conservator.

**Comment.** Section 2336 continues the substance of former Sections 1488, 1489, and 1490 except that a new provision is added that the citation be served personally at least 15 days before the return day or, if personal service cannot be made, in such manner as the court may order. There were no express provisions in the former conservatorship statute concerning release of a surety.

#### CROSS-REFERENCES

Application must be verified, §§ 1430, 1450  
Definition, court, § 1418

## CHAPTER 5. POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE PERSON

### § 2350. Definitions

2350. As used in this chapter:

- (a) "Conservator" means the conservator of the person.
- (b) "Guardian" means the guardian of the person.

**Comment.** Section 2350 is new. This chapter deals with powers and duties of a guardian or conservator of the person, and the definitions provided by Section 2350 permit a shorthand reference to such a guardian or conservator in the various sections of this chapter. If one person is appointed as the conservator of the person and estate or as the guardian of the person and estate, that person has the powers and duties conferred by this chapter.

**§ 2351. Care, custody, control, and education**

2351. (a) Subject to subdivision (b), the guardian or conservator has the care, custody, and control of, and has charge of the education of, the ward or conservatee.

(b) Where the court determines that it is appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit the powers and duties that the conservator would otherwise have under subdivision (a) by an order stating:

(1) The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee; or

(2) The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have under subdivision (a).

(c) An order under this section (1) may be included in the order appointing a conservator of the person or (2) may be made, modified, or revoked upon a petition subsequently filed, notice of the hearing on such petition having been given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Note.** Section 2351 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

## Legislative Committee Comment—Assembly

**Comment.** The provision of subdivision (a) of Section 2351 for care, custody, and control continues provisions found in the first sentence of former Sections 1500 (guardianship) and 1851 (conservatorship), respectively. The words “and control” were contained in former Section 1851 but not in former Section 1500. The generalization of these words to apply to guardianships as well as to conservatorships makes no substantive change. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 5.3, at 152-53 (Cal. Cont. Ed. Bar 1968).

The provision of subdivision (a) concerning the education of the ward or conservatee extends to conservators the provision of the second sentence of former Section 1500 which applied only to guardians. This extension makes clear that a conservator of the person is authorized to provide for the education of a married minor subject to conservatorship as well as of a conservatee over the age of 18.

Subdivisions (b) and (c) are new and give the court flexibility to fashion an order appropriate to the circumstances of the particular conservatee. Subdivision (b) has been added because the broad power given the conservator under subdivision (a) often will be more than is required, for example, where the conservator is appointed on a voluntary petition of a developmentally disabled adult and because subdivision (b) gives the court authority that may be useful in other types of cases where a voluntary or involuntary conservatorship is established. Under subdivision (b), for example, the court has discretion to make an order allowing the conservatee to fix his or her own residence or to make decisions concerning his or her own education.

## CROSS-REFERENCES

Additional powers of guardian nominated by will, § 2108

Capacity of conservatee to marry, §§ 1900, 1901

## Definitions

Conservator, § 2350

Guardian, § 2350

Effect of court authorization, approval, or confirmation, § 2103

Nonresident ward or conservatee, § 2107

## Removal of guardian or conservator for

Best interests of ward or conservatee, § 2650(i)

Continued failure or incapacity to perform duties, § 2650(c)

Conviction of a felony, § 2650(d)

Failure to comply with Section 2356, § 2650(g)

Gross immorality, § 2650(e)

### § 2351.5. Powers of limited conservator

**Note.** A new Section 2351.5 would be added by Assembly Bill 2898 of the 1980 session. At the time this publication was sent to the printer, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the new section added by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

### § 2352. Residence of ward or conservatee

**2352.** (a) The guardian or conservator may fix the residence of the ward or conservatee at:

(1) Any place within this state without the permission of the court.

(2) A place not within this state if permission of the court is first obtained.

(b) An order under paragraph (2) of subdivision (a) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or such longer or shorter period as is specified in the order.

(c) The guardian or conservator shall promptly mail to the court notice of all changes in the residence of the ward or conservatee.

(d) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to fix his or her own residence.

#### Legislative Committee Comment—Assembly

**Comment.** Subdivision (a) of Section 2352 continues the substance of the third sentence of former Section 1500 and the last portion of the first sentence of former Section 1851. Subdivision (b) is new. Subdivision (c) supersedes subdivision (c) of former Section 1500 and subdivision (b) of former Section 1851. The word "residence" replaces the phrase "residence and domicile" which appeared in the former provisions. For the purposes of Section 2352, "residence" means domicile. The exception provided in subdivision (d) is new and conforms to subdivision (b) of Section 2351.

## CROSS-REFERENCES

Additional powers of guardian nominated by will, § 2108

Appealable orders, § 2750

## Definitions

Conservator, § 2350

Court, § 1418

Guardian, § 2350

Request for special notice, § 2700

### § 2353. Medical treatment of ward

2353. (a) Subject to subdivision (b), the guardian has the same right as a parent having legal custody of a child to give consent to medical treatment performed upon the ward and to require the ward to receive medical treatment.

(b) Except as provided in subdivision (c), if the ward is 14 years of age or older, no surgery shall be performed upon the ward without either (1) the consent of both the ward and the guardian or (2) a court order obtained pursuant to Section 2357 specifically authorizing such treatment.

(c) The guardian may consent to surgery to be performed upon the ward, and may require the ward to receive such surgery, in any case where the guardian determines in good faith based upon medical advice that the case is an emergency case in which the ward faces loss of life or serious bodily injury if the surgery is not performed. In such a case, the consent of the guardian alone is sufficient and no person is liable because the surgery is performed upon the ward without the ward's consent.

(d) Nothing in this section requires the consent of the guardian for medical or surgical treatment for the ward in any case where the ward alone may consent to such treatment under other provisions of law.

#### Legislative Committee Comment—Assembly

**Comment.** Section 2353 is new and is designed to provide clear guidelines as to the authority of the guardian to consent to and to require the ward to receive medical treatment.

Subdivisions (b) and (c) are drawn from a somewhat similar provision found in Section 5358 of the Welfare and Institutions Code (Lanterman-Petris-Short Act). See also *In re Roger S.*, 19 Cal.3d 921, 931, 569 P.2d 1286, 1292, 141 Cal. Rptr. 298, 304 (1977) (minor over 14 has independent right to assert protections of due process clause).

The immunity from liability provided by the second sentence of subdivision (c) does not extend to malpractice; the immunity goes only to the failure to obtain consent of the patient (the ward) to the surgery.

Subdivision (d) makes clear that Section 2353 does not override such provisions as Civil Code Sections 25.5 (blood donation by minor), 25.7 (minor on active duty with armed services), 34.5 (surgical care related to prevention or treatment of pregnancy), 34.6 (minor living apart from parent or guardian), 34.7 (surgical care related to diagnosis or treatment of contagious disease), 34.8 (surgical care related to diagnosis or treatment of rape victim), 34.9 (surgical care related to diagnosis and treatment of victim of sexual assault). Also, nothing in Section 2353 or elsewhere in this chapter overrides state quarantine regulations. See, *e.g.*, Health & Safety Code §§ 3050-3053.

Section 2353 does not deal with the question of what constitutes informed consent for the purpose of medical treatment. Concerning informed consent, see the Comment to Section 2354.

Unless the court otherwise orders, a temporary guardian of the person has the powers and duties conferred by Section 2353. See Section 2252.

#### CROSS-REFERENCES

Additional powers of guardian nominated by will, § 2108

Consent by

Director of regional center, Welf. & Inst. Code § 4655

Medical director of state hospital, Welf. & Inst. Code § 7518

Definition, guardian, § 2350

Effect of court authorization or approval, § 2103

### § 2354. Medical treatment of conservatee not adjudicated to lack capacity to give informed consent

2354. (a) If the conservatee has not been adjudicated to lack the capacity to give informed consent for medical treatment, the conservatee may consent to his or her medical treatment. The conservator may also give consent to such medical treatment, but the consent of the conservator is not required if the conservatee has the capacity to give informed consent to the medical treatment, and the consent of the conservator alone is not sufficient under this subdivision if the conservatee objects to the medical treatment.

(b) The conservator may require the conservatee to receive medical treatment, whether or not the conservatee

consents to such treatment, if a court order specifically authorizing such medical treatment has been obtained pursuant to Section 2357.

(c) The conservator may consent to medical treatment to be performed upon the conservatee, and may require the conservatee to receive such medical treatment, in any case where the conservator determines in good faith based upon medical advice that the case is an emergency case in which the medical treatment is required because (1) such treatment is required for the alleviation of severe pain or (2) the conservatee has a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death. In such a case, the consent of the conservator alone is sufficient and no person is liable because the medical treatment is performed upon the conservatee without the conservatee's consent.

**Comment.** Section 2354 is new and is designed to provide clear guidelines where the conservatee has not been adjudicated to lack the capacity to give informed consent for medical treatment. See Section 1880 (adjudication of lack of capacity to give informed consent for medical treatment).

Under subdivision (a), if the conservatee consents to the medical treatment (which includes surgery), there is no restriction imposed by this division on providing the medical treatment to the conservatee. Accordingly, medical personnel may safely rely upon the conservatee's informed consent so long as the conservatee has not been adjudicated to lack capacity to give informed consent for medical treatment. This section does not deal with the question of what constitutes informed consent for the purpose of medical treatment. In connection with what constitutes informed consent, see *Cobbs v. Grant*, 8 Cal.3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (1972). If the medical practitioner is unwilling to rely on the consent of the conservatee, the practitioner may also require the consent of the conservator. If the medical practitioner is willing to rely on the consent of the conservatee alone, the conservator who wishes to forestall the treatment must seek an adjudication under Section 1880 that the conservatee lacks capacity to give informed consent for medical treatment. If the medical practitioner also requires the consent of the conservator, but the conservator refuses consent, the conservatee or other interested person may petition the court for



an order requiring the conservator to consent. See Section 2357 (i).

The consent of the conservator alone is sufficient consent for medical treatment if the conservatee does not object to the treatment. Accordingly, if the conservatee is in such a condition that he or she is unable to give consent, the consent of the conservator is sufficient since consent of the conservatee is not required under subdivision (a)—all that is required is that the conservatee does not object.

Subdivisions (b) and (c) are drawn from Section 5358 of the Welfare and Institutions Code (Lanterman-Petris-Short Act). These subdivisions will help to eliminate the uncertainty that existed under prior law. See 60 Ops. Cal. Att'y Gen. 375 (1977). The immunity from liability provided by the second sentence of subdivision (c) does not extend to malpractice; the immunity goes only to the failure to obtain the consent of the patient (the conservatee).

Unless the court otherwise orders, a temporary conservator of the person has the powers and duties conferred by Section 2354. See Section 2252.

Section 2354 does not deal with the payment of the expenses of medical treatment; determining the reasonableness of such expenses and paying them is the responsibility of the conservator of the estate. See Section 2430.

Where involuntary civil mental health treatment is involved, proceedings may be had only under the Lanterman-Petris-Short Act, and not under this division. See Section 2356 (a). See also Section 2356 (b)-(e) (experimental drugs, convulsive treatment, sterilization, Natural Death Act).

#### CROSS-REFERENCES

##### Consent by

Director of regional center, Welf. & Inst. Code § 4655

Medical director of state hospital, Welf. & Inst. Code § 7518

Definition, conservator, § 2350

Effect of court authorization or approval, § 2103

### § 2355. Medical treatment of conservatee adjudicated to lack capacity to give informed consent

2355. (a) If the conservatee has been adjudicated to lack the capacity to give informed consent for medical treatment, the conservator has the exclusive authority to give consent for such medical treatment to be performed on the conservatee as the conservator in good faith based on medical advice determines to be necessary and the

conservator may require the conservatee to receive such medical treatment, whether or not the conservatee objects. In any such case, the consent of the conservator alone is sufficient and no person is liable because the medical treatment is performed upon the conservatee without the conservatee's consent.

(b) If prior to the establishment of the conservatorship the conservatee was an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing, the treatment required by the conservator under the provisions of this section shall be by an accredited practitioner of that religion.

**Comment.** Section 2355 is new. Subdivision (a) makes clear that, when the conservatee has been adjudicated to lack capacity to give informed consent to medical treatment (Section 1880), this power rests exclusively with the conservator. The adjudication of lack of capacity referred to in Section 2355 may be included in the order of appointment of the conservator or may be made upon a subsequently filed petition. See Section 1890.

The immunity provided by the last sentence of subdivision (a) does not extend to malpractice; the immunity goes only to the failure to obtain the consent of the patient (the conservatee). Section 2355 does not deal with the question of what constitutes informed consent. Concerning informed consent, see the Comment to Section 2354. If the conservator fails to consent to or to obtain medical treatment for the conservatee, the court, upon petition of the conservatee or an interested person, may order the conservator to consent to or to obtain such treatment. See Section 2357(i).

Subdivision (b) provides recognition of the religious beliefs of the conservatee prior to conservatorship insofar as those beliefs relate to medical treatment. The subdivision does not limit the authority of the court under Section 2357.

Where involuntary civil mental health treatment is involved, proceedings may be had only under the Lanterman-Petris-Short Act, and not under this division. See Section 2536(a). See also Section 2536(b)-(e) (experimental drugs, convulsive treatment, sterilization, Natural Death Act).

#### CROSS-REFERENCES

##### Consent by

Director of regional center, Welf. & Inst. Code § 4655

Medical director of state hospital, Welf. & Inst. Code § 7518

Definition, conservator, § 2350

Effect of court authorization or approval, § 2103

Instructions from court, § 2359

### **§ 2356. Limitations on application of chapter**

2356. (a) No ward or conservatee shall be placed in a mental health treatment facility under the provisions of this division against the will of the ward or conservatee. Involuntary civil mental health treatment for a ward or conservatee shall be obtained only pursuant to Chapter 2 (commencing with Section 5150) or Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Nothing in this subdivision precludes the placing of a ward in a state hospital under the provisions of Section 6000 of the Welfare and Institutions Code upon application of the guardian as provided in that section. The Director of Mental Health shall adopt and issue regulations defining "mental health treatment facility" for the purposes of this subdivision.

(b) No experimental drug as defined in Section 26668 of the Health and Safety Code may be prescribed for or administered to a ward or conservatee under the provisions of this division. Such an experimental drug may be prescribed for or administered to a ward or conservatee only as provided in Article 4 (commencing with Section 26668) of Chapter 6 of Division 21 of the Health and Safety Code.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on a ward or conservatee under the provisions of this division. Such convulsive treatment may be performed on a ward or conservatee only as provided in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code.

(d) No ward or conservatee may be sterilized under the provisions of this division.

(e) The provisions of this chapter are subject to any valid and effective directive of the conservatee under Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code (Natural Death Act).

**Comment.** Subdivision (a) of Section 2356 continues the substance of the second paragraph of former Sections 1500 and 1851, respectively, and extends the prohibition to include minors. *Cf. In re Roger S.*, 19 Cal.3d 921, 569 P.2d 1286, 141 Cal. Rptr. 298 (1977) (minor over 14 has independent right to assert protections of due process clause).

Subdivisions (b)-(d) are new and make clear that the provisions of other codes relating to highly intrusive forms of medical treatment are the only provisions under which such treatment may be authorized for a ward or conservatee, thus assuring that the procedural safeguards contained in those provisions will be applied. Subdivision (d) is consistent with *Guardianship of Tulley*, 83 Cal. App.3d 698, 146 Cal. Rptr. 266 (1978), and *Guardianship of Kemp*, 43 Cal. App.3d 758, 118 Cal. Rptr. 64 (1974). Subdivision (e) is new.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2350

Guardian, § 2350

Medical experiments, required consent, Health & Safety Code § 24175

Removal of conservator for failure to comply with Section 2356, § 2650(g)

### § 2357. Court ordered medical treatment

2357. (a) As used in this section:

(1) "Guardian or conservator" includes a temporary guardian of the person or a temporary conservator of the person.

(2) "Ward or conservatee" includes a person for whom a temporary guardian of the person or temporary conservator of the person has been appointed.

(b) If the ward or conservatee requires medical treatment for an existing or continuing medical condition which is not authorized to be performed upon the ward or conservatee under Section 2252, 2353, 2354, or 2355, and the ward or conservatee is unable to give an informed consent to such medical treatment, the guardian or conservator may petition the court under this section for an order authorizing such medical treatment and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to such medical treatment.

(c) The petition shall state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(1) The nature of the medical condition of the ward or conservatee which requires treatment.

(2) The recommended course of medical treatment which is considered to be medically appropriate.

(3) The threat to the health of the ward or conservatee if authorization to consent to the recommended course of treatment is delayed or denied by the court.

(4) The predictable or probable outcome of the recommended course of treatment.

(5) The medically available alternatives, if any, to the course of treatment recommended.

(6) The efforts made to obtain an informed consent from the ward or conservatee.

(d) Upon the filing of the petition, the court shall notify the attorney of record for the ward or conservatee, if any, or shall appoint the public defender or private counsel under Section 1471, to consult with and represent the ward or conservatee at the hearing on the petition and, if such appointment is made, Section 1472 applies.

(e) The hearing on the petition may be held pursuant to an order of the court prescribing the notice to be given of the hearing. The order shall specify the period of notice of the hearing and the period so fixed shall take into account (1) the existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court and (2) the desirability, where the condition of the ward or conservatee permits, of giving adequate notice to all interested persons.

(f) A copy of the notice of hearing or of the order prescribing notice of hearing, and a copy of the petition, shall be personally served or mailed, as prescribed in the order, on all of the following:

(1) The ward or conservatee.

(2) The attorney of record for the ward or conservatee, if any, or the attorney appointed by the court to represent the ward or conservatee at the hearing.

(3) Such other persons, if any, as the court in its discretion may require in the order, which may include the spouse of the ward or conservatee and any known relatives of the ward or conservatee within the second degree.

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the ward or conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or consent to, or obtain and consent to, specified medical treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 2357 is new. The section serves the same purpose as Section 5358.2 of the Welfare and Institutions Code (Lanterman-Petris-Short Act); but Section 2357 provides for notice to interested persons, for the appointment of counsel to represent the ward or conservatee where necessary, for the presentation to the court of medical affidavits showing the need for the medical treatment, and for findings by the court before an order authorizing the treatment is made.

Subdivision (i) has no counterpart in the Welfare and Institutions Code section. This subdivision covers the situation where the ward or conservatee or some interested person

believes the ward or conservatee needs medical treatment which the guardian or conservator is unwilling to obtain or has failed to obtain.

As to the powers and duties concerning medical treatment generally, see Sections 2252 (temporary guardian or conservator), 2353 (guardian), 2354–2355 (conservator). See also Section 2356 (limitations on application of chapter).

#### CROSS-REFERENCES

Additional powers of guardian nominated by will, § 2108

Clerk sets petition for hearing, § 1451

#### Definitions

Conservator, § 2350

Court, § 1418

Guardian, § 2350

Interested person, § 1424

Effect of court authorization, § 2103

Petition must be verified, § 1450

Proof of giving of notice, § 1468

### § 2358. Additional conditions in order of appointment

2358. When a guardian or conservator is appointed, the court may, with the consent of the guardian or conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care, treatment, education, and welfare of the ward or conservatee. Any such conditions shall be included in the letters of guardianship or conservatorship. The performance of such conditions is a part of the duties of the guardian or conservator for the faithful performance of which the guardian or conservator and the sureties on the bond are responsible.

**Comment.** Section 2358 continues the portion of former Section 1512 which applied to a guardian of the person of a minor and broadens its application to include a conservator of the person. The requirement that the conditions be included in the letters is new. In the case of a guardian or conservator of the person, the requirement of a bond is discretionary with the court. See Section 2322.

#### CROSS-REFERENCES

Additional powers of guardian nominated by will, § 2108

#### Definitions

Conservator, § 2350

Court, § 1418

Guardian, § 2350

Liability of guardian or conservator not limited to amount of bond, § 554

Nature of surety's liability, § 554

### § 2359. Instructions from or confirmation by court

2359. (a) Upon petition of the guardian or conservator or ward or conservatee or other interested person, the court may authorize and instruct the guardian or conservator or approve and confirm the acts of the guardian or conservator.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 2359 is based on the portion of former Section 1860 (instructions to or confirmation of acts of conservator) insofar as that section related to the care and protection of the conservatee. See also former Section 1516, which was limited to instructing the guardian of the estate. Section 2359 makes clear that the court may instruct and confirm acts with respect to supervision of the person as well as with respect to management of the estate (Section 2403). Section 2359 also extends to guardians of the person the former conservatorship provision of Section 1860 which authorized the court not only to authorize or instruct in advance but also to approve or confirm actions already taken.

#### CROSS-REFERENCES

Appealable orders, § 2750

Clerk sets petition for hearing, § 1451

Definitions

Conservator, § 2350

Court, § 1418

Guardian, § 2350

Interested person, § 1424

Effect of court authorization, approval, or confirmation, § 2103

Notice to Director of Mental Health or Director of Developmental Services, § 1461

Petition must be verified, § 1450

Proof of giving of notice, § 1468

## CHAPTER 6. POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE ESTATE

### Article 1. Definitions and General Provisions

#### § 2400. Definitions

2400. As used in this chapter:

- (a) "Conservator" means the conservator of the estate.
- (b) "Guardian" means the guardian of the estate.



**Note.** Section 2400 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Law Revision Commission Comment**

**Comment.** Section 2400 is new. This chapter deals with powers and duties of a guardian or conservator of the estate, and the definitions provided by Section 2400 permit a shorthand reference to such a guardian or conservator in the various sections of this chapter. If one person is appointed as the conservator of the person and estate or as the guardian of the person and estate, that person has the powers and duties conferred by this chapter.

**§ 2401. Duty to manage estate using ordinary care and diligence**

2401. (a) The guardian or conservator has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

(1) Shall exercise a power to the extent that ordinary care and diligence requires that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

**Note.** Section 2401 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Legislative Committee Comment—Assembly**

**Comment.** Section 2401 supplements the provision of Section 2101 that the relationship of guardian and ward and conservator and conservatee is subject to the law relating to trusts. The standard stated in subdivision (a) of Section 2401 is consistent with trust principles but recognizes specifically that what is

ordinary care and diligence varies with the circumstances of each case. See Civil Code § 2259 (duty of trustee to use at least ordinary care and diligence in the execution of the trust). In determining what constitutes ordinary care and diligence a professional guardian or conservator (such as a trust company or the trust department of a bank) will be held to a greater standard of care based on its presumed expertise than a lay guardian or conservator. *Cf.* Estate of Beach, 15 Cal.3d 623, 542 P.2d 994, 125 Cal. Rptr. 570 (1975) (executor). Section 2401 applies to all powers and duties of the guardian or conservator, whether or not prior court authorization is required. But see Section 2103 (effect of court authorization or approval).

The duty of management and control stated in subdivision (a) requires that the conservator act diligently in marshaling, taking possession of, and making an inventory of the conservatee's assets. This obligation is imposed on the conservator whether or not the court makes an order under Section 1873 authorizing the conservatee to enter into certain kinds of transactions. As to community property, see Section 3051.

Subdivision (b) of Section 2401 makes clear that ordinary care and diligence may require that the guardian or conservator exercise a power. For example, the guardian or conservator may fail to exercise ordinary care and diligence under the circumstances of the particular estate if the guardian or conservator fails to secure insurance to cover the risk of loss of property of the estate. At the same time, subdivision (b) also makes clear that the extent to which a power should be exercised is limited to what is required by the exercise of ordinary care and diligence under all the circumstances. Thus, for example, in purchasing insurance covering the estate property, the guardian or conservator should not purchase an amount in excess of the amount that would be purchased using ordinary care and diligence in the management and control of the estate. See also the discussion in the Comment to Section 2451 (collection of debts).

Section 2401 supersedes the portion of the first sentence of former Section 1502 which required every guardian of an estate to manage it frugally and without waste.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Guardian, § 2400

Guardian nominated by will, § 2108

Liability of guardian or conservator not limited to amount of bond, § 554

- Nature of surety's liability, § 554
- Nonresident ward or conservatee, § 2107
- Petition for instructions or confirmation, § 2403
- Presentation of accounts of incompetent executor or administrator, § 932
- Removal of guardian or conservator for
  - Continued failure or incapacity to perform duties, § 2650(c)
  - Conviction of a felony, § 2650(d)
  - Failure to use ordinary care and diligence, § 2650(a)
  - Gross immorality, § 2650(e)
  - Insolvency or bankruptcy, § 2650(h)
- Review of sales, purchases, and other transactions upon accounting, § 2625
- Venue in action against guardian or conservator, Code Civ. Proc. § 395.1

## § 2402. Additional conditions in order of appointment

2402. When a guardian or conservator is appointed, the court may, with the consent of the guardian or conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care and custody of the property of the ward or conservatee. Any such conditions shall be included in the letters of guardianship or conservatorship. The performance of such conditions is a part of the duties of the guardian or conservator for the faithful performance of which the guardian or conservator and the sureties on the bond are responsible.

**Comment.** Section 2402 continues the portion of former Section 1512 which applied to a guardian of the estate of a minor and broadens its application to include a conservator of the estate and adds the requirement that the conditions be included in the letters.

### CROSS-REFERENCES

- Additional powers of guardian nominated by will, § 2108
- Definitions
  - Conservator, § 2400
  - Court, § 1418
  - Guardian, § 2400
- Liability of guardian or conservator not limited to amount of bond, § 554
- Nature of surety's liability, § 554

## § 2403. Instructions from or confirmation by court

2403. (a) Upon petition of the guardian or conservator, the ward or conservatee, a creditor, or other interested person, the court may authorize and instruct the guardian or conservator, or approve and confirm the acts of the guardian or conservator, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or

payment of costs, fees, or expenses in connection therewith.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 2403 is based on former Sections 1516 (instructions to guardian of estate) and 1860 (instructions to or confirmation of acts of conservator). The word "investment" is added in subdivision (a). Section 2403 supersedes the last portion of the first sentence of former Section 1557 which relates to investments. Section 2403 extends to guardians the provision of former Section 1860 which authorized the court not only to instruct the conservator in advance but also to confirm actions already taken. See *Place v. Trent*, 27 Cal. App.3d 526, 103 Cal. Rptr. 841 (1972). The provision of former Section 1516 (instructions to guardian) that limited the use of the instruction procedure to cases where no other or different procedure was provided by statute has not been continued. Such a provision was unduly rigid and, moreover, is not appropriate in view of the broader scope of Section 2403 (based on former Section 1860 which permitted not only instructions and authorization in advance but also subsequent approval and confirmation). As to the compensation of the guardian or conservator and the attorney in connection with obtaining authorization or instructions on a matter not requiring court authorization, see the Comment to Section 2640.

#### CROSS-REFERENCES

Appealable orders, § 2750

Clerk sets petition for hearing, § 1451

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Interested person, § 1424

Nonliability of guardian or conservator who complies with court order, § 2103

Notice to Director of Mental Health or Director of Developmental Services, § 1461

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice, § 2700

#### § 2404. Order compelling guardian or conservator to pay support or debts

2404. (a) If the guardian or conservator fails, neglects, or refuses to furnish comfortable and suitable support, maintenance, or education for the ward or conservatee as required by this division, or to pay a debt, expense, or

charge lawfully due and payable by the ward or conservatee or the estate as provided in this division, the court shall, upon petition or upon its own motion, order the guardian or conservator to do so from the estate.

(b) The petition may be filed by the ward or conservatee or by the creditor or any other interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 2404 continues the substance of former Section 1859 with the addition of the reference to "education" (which appeared in former Section 1503) and supersedes former Section 1503.

#### CROSS-REFERENCES

Appealable orders, § 2750

Clerk sets petition for hearing, § 1451

Conveyance of property claimed to belong to another, §§ 2520-2528

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Interested person, § 1424

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice, § 2700

Summary determination of disputes, § 2405

### § 2405. Submitting disputed claim to commissioner, judge pro tempore, or probate judge for summary determination

2405. If the guardian or conservator doubts the correctness of any claim against the ward or conservatee or the estate or rejects a claim against the ward or conservatee or the estate, the guardian or conservator may do either of the following:

(a) Enter into an agreement in writing with the claimant to refer the matter in controversy to a commissioner or referee who is regularly attached to the court and designated in the agreement or to a judge pro tempore designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The commissioner or referee shall

have the powers of a judge pro tempore. The designated person shall proceed promptly to hear and determine the matter in controversy by summary procedure, without any pleadings, discovery, or jury trial. The designated person shall make and file a decision in writing in which the facts found and conclusions of law shall be separately stated, and cause a copy thereof to be mailed promptly to the parties. Judgment shall be entered on the decision and shall be as valid and effective as if it had been rendered by a judge of the court in a suit against the guardian or conservator commenced by ordinary process.

(b) Enter into an agreement in writing with the claimant that a judge sitting in probate, pursuant to the agreement and with the written consent of the judge, both filed with the clerk, may hear and determine the matter in controversy pursuant to the procedure provided in subdivision (a).

**Note.** Section 2405 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Comment.** Section 2405 is the same in substance as paragraph (2) of Section 718 (summary determination of controversies concerning claims against decedent's estate) with slight modifications to adapt this portion of Section 718 for use in guardianships and conservatorships. Section 2405 has no provision comparable to paragraph (1) of Section 718 since paragraph (1) is particularly designed for use in connection with a decedent's estate.

Section 2405 is designed to reduce the cost of administration of estates and ease the court's workload by encouraging the settlement of claims against estates by summary reference proceedings rather than by litigation. See *Review of Selected 1968 Code Legislation*, at 226-27 (Cal. Cont. Ed. Bar 1968) (commenting on the addition of paragraph (2) to Section 718). Because of the binding effect of the decision of the commissioner, referee, judge pro tempore, or probate judge under Section 2405, an agreement to submit a controversy under the section requires approval of the court in which the guardianship or

conservatorship proceeding is pending. See Section 1418 (defining "court").

#### CROSS-REFERENCES

Compromise of claims and actions, §§ 2500-2507

Conveyance or transfer of property claimed to belong to ward or conservatee or other person, §§ 2520-2528

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Independent exercise of powers, § 2591(p)

Order compelling payment of debts, § 2404

Submitting dispute to arbitration, § 2406

### § 2406. Submitting dispute to arbitration

2406. The guardian or conservator may enter into an agreement in writing with a person having a disputed claim against the ward or conservatee or the estate, or with a person against whom the ward or conservatee or the estate has a disputed claim, to submit the matter in controversy to arbitration under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, but no such agreement is effective unless it has first been approved by the court and a copy of the approved agreement has been filed in the guardianship or conservatorship proceeding.

**Comment.** Section 2406 is new and makes clear that the guardian or conservator may use arbitration to resolve a controversy. Because of the binding effect of the decision of the arbitrator, an agreement to submit a controversy to arbitration under this section requires approval of the court in which the guardianship or conservatorship proceeding is pending. See Section 1418 (defining "court").

#### CROSS-REFERENCES

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Independent exercise of powers, § 2591(p)

### § 2407. Application of chapter to community and homestead property

2407. This chapter applies to property owned by husband and wife as community property, or owned by

husband and wife or either of them which is subject to a homestead, only to the extent authorized by Part 6 (commencing with Section 3000).

**Comment.** Section 2407 continues the substance of former Section 1529.

## **Article 2. Support and Maintenance of Ward or Conservatee and Dependents**

### **§ 2420. Support, maintenance, and education**

2420. (a) Subject to Section 2422, the guardian or conservator shall apply the income from the estate, so far as necessary, to the comfortable and suitable support, maintenance, and education of the ward or conservatee (including care, treatment, and support of a ward or conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) and of those legally entitled to support, maintenance, or education from the ward or conservatee, taking into account the value of the estate and the condition of life of the persons required to be furnished such support, maintenance, or education.

(b) If the income from the estate is insufficient for the purpose described in subdivision (a), the guardian or conservator may sell or give a security interest in or other lien on any personal property of the estate, or sell or mortgage or give a deed of trust on any real property of the estate, as provided in this part.

(c) When the amount paid by the guardian or conservator for the purpose described in subdivision (a) satisfies the standard set out in that subdivision, and the payments are supported by proper vouchers or other proof satisfactory to the court, the guardian or conservator shall be allowed credit for such payments when the accounts of the guardian or conservator are settled.

(d) Nothing in this section requires the guardian or conservator to obtain court authorization before making the payments authorized by this section, but nothing in this section dispenses with the need to obtain any court



authorization otherwise required for a particular transaction.

(e) Nothing in this section precludes the guardian or conservator from seeking court authorization or instructions or approval and confirmation pursuant to Section 2403.

**Comment.** Subdivisions (a) and (b) of Section 2420 continue the substance of a portion of the first sentence of former Section 1502, but in subdivision (a) "education" is added and "those legally entitled to support" (contained in former Section 1855) is substituted for the reference in former Section 1502 to the ward's family. The reference to the care, treatment, and support of the ward or conservatee who is a patient in a state hospital has been added to subdivision (a) conform Section 2420 to Section 2541. See the Comment to Section 2541. Subdivisions (a) and (b) supersede former Section 1855. As to subdivision (b), see Sections 2541 and 2551 (sale or encumbrance of property). Subdivision (c) continues the substance of the second sentence of former Section 1502 except that the provision is broadened by the reference to subdivision (a) to include payments for the support, maintenance, or education of persons legally entitled to support, maintenance, or education from the ward or conservatee.

Section 2420 does not require that the guardian or conservator obtain court authorization to make payments for the purposes specified in subdivision (a). See subdivision (d). However many guardians and conservators seek court authorization in advance (as authorized under Section 2403) for the expenditure of a monthly sum for the support and maintenance of the ward or conservatee and any dependents. It has been pointed out that the guardian or conservator is more likely to have payments allowed when authority is sought in advance than when the same payments are sought to be justified after they have been incurred. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 5.9, at 156 (Cal. Cont. Ed. Bar 1968). Subdivision (e) makes clear that the guardian or conservator is authorized to obtain advance authority for payments and to seek any other court authorizations, instructions, approvals, or confirmations that the circumstances require.

#### CROSS-REFERENCES

Appealable orders, § 2750

Advances from funds of guardian or conservator, § 2466

Borrowing money and giving security, § 2551

## Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Duty to support and maintain ward or conservatee in state hospital, Welf. &amp; Inst. Code §§ 7275, 7279

Effect of court authorization or approval, § 2103

Order authorizing support from estate where third party liable for support, § 2422

Payment of expenses of last illness and funeral, § 2631

Review on settlement of accounts, § 2625

Sale of estate property, § 2541

**§ 2421. Allowance for ward or conservatee**

2421. (a) Upon petition of the guardian or conservator or the ward or conservatee, the court may authorize the guardian or conservator to pay to the ward or conservatee out of the estate a reasonable allowance for the personal use of the ward or conservatee. The allowance shall be in such amount as the court may determine to be for the best interests of the ward or conservatee.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The guardian or conservator is not required to account for such allowance other than to establish that it has been paid to the ward or conservatee. The funds so paid are subject to the sole control of the ward or conservatee.

**Comment.** Section 2421 continues the substance of former Section 1861 (conservatorship) and generalizes the provisions to apply to guardianships as well. The former law is expanded to permit a petition by the ward or conservatee. If the court makes an order under Section 2421, the allowance paid to the ward or conservatee is subject to the sole control of the ward or conservatee. See generally W. Johnstone & G. Zillgitt, California Conservatorships § 5.18, at 166 (Cal. Cont. Ed. Bar 1968).

## CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

## Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice, § 2700

Wages of ward or conservatee, § 2601

**§ 2422. Order authorizing support notwithstanding third party liable**

**2422.** (a) Upon petition of the guardian or conservator, the ward or conservatee, or any other interested person, the court may for good cause order the ward or conservatee to be wholly or partially supported, maintained, or educated out of the estate notwithstanding the existence of a third party legally obligated to provide such support, maintenance, or education. Such order may be made for a limited period of time. If not so limited, it continues in effect until modified or revoked.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Subdivision (a) of Section 2422 continues the substance of former Section 1857 and supersedes former Sections 1504 and 1505. The reference to education of the ward or conservatee is drawn from former Section 1504. Subdivision (b) is new. To accomplish the purposes of this section, the guardian or conservator may use the income of the estate and, if necessary, may sell or encumber property of the estate. See Sections 2420, 2541.

**CROSS-REFERENCES**

Appealable orders, § 2750

Clerk sets petition for hearing, § 1451

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Interested person, § 1424

Effect of court authorization or approval, § 2103

Notice to Veterans Administration, § 1461.5

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice, § 2700

**§ 2423. Payment of surplus income to relatives of conservatee**

**2423.** (a) On petition of the conservator, the conservatee, the spouse of the conservatee, or a relative within the second degree of the conservatee, the court may by order authorize or direct the conservator to pay and distribute surplus income of the estate or any part of such surplus income (not used for the support, maintenance, and education of the conservatee and of those legally entitled to

support, maintenance, or education from the conservatee) to the spouse of the conservatee and to such relatives within the second degree of the conservatee whom the conservatee would, in the judgment of the court, have aided but for the existence of the conservatorship. The court in ordering payments under this section may impose conditions if the court determines that the conservatee would have imposed such conditions if the conservatee had the capacity to act.

(b) The granting of the order and the amounts and proportions of the payments are discretionary with the court, but the court shall consider all of the following:

(1) The amount of surplus income available after adequate provision has been made for the comfortable and proper support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee.

(2) The circumstances and condition of life to which the conservatee and the spouse and such relatives have been accustomed.

(3) The amount which the conservatee would in the judgment of the court have allowed the spouse and such relatives but for the existence of the conservatorship.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Legislative Committee Comment—Assembly**

**Comment.** Section 2423 continues the substance of former Sections 1558 and 1856 except that “next of kin” has been changed to the spouse and relatives within the second degree. The meaning of the former terminology was ambiguous. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 5.33, at 181 (Cal. Cont. Ed. Bar 1968). The right to file a petition is extended to include the conservatee, and the reference to the education of the conservatee is added to conform to Section 2420. Section 2423 also makes clear that income is not “surplus” if needed for those legally entitled to support from the conservatee.

Unlike other powers and duties in this chapter, the provisions of Section 2423 apply only to conservatorships and not to guardianships.

The second sentence of subdivision (a)—authorizing the court in making allowances to impose conditions if the court finds that

the conservatee would have imposed them if the conservatee had the capacity to act—continues prior case law. See *Guardianship of Hudelson*, 18 Cal.2d 401, 115 P.2d 805 (1941). See also Sections 2580-2585 (substituted judgment) which permit gifts to persons other than the spouse and relatives and gifts of principal as well as income.

#### CROSS-REFERENCES

Appealable orders, § 2750  
 Clerk sets petition for hearing, § 1451  
 Definitions  
   Conservator, § 2400  
   Court, § 1418  
   Guardian, § 2400  
 Effect of court authorization or approval, § 2103  
 Notice to  
   Director of Mental Health, § 1461  
   Director of Developmental Services, § 1461  
   Veterans Administration, § 1461.5  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700

### Article 3. Payment of Debts and Expenses

#### § 2430. Payment of debts and expenses generally

2430. (a) Subject to subdivisions (b) and (c), the guardian or conservator shall pay the following from any principal and income of the estate:

(1) The debts incurred by the ward or conservatee before creation of the guardianship or conservatorship, giving priority to the debts described in Section 2431 to the extent required by that section.

(2) The debts incurred by the ward or conservatee during the guardianship or conservatorship to provide the necessities of life to the ward or conservatee, and to the spouse and minor children of the ward or conservatee, to the extent the debt is reasonable. The guardian or conservator may deduct the amount of any payments for such debts from any allowance otherwise payable to the ward or conservatee.

(3) In the case of a conservatorship, any other debt incurred by the conservatee during the conservatorship only if the debt satisfies the requirements of any order made under Chapter 4 (commencing with Section 1870) of Part 3.

(4) The reasonable expenses incurred in the collection, care, and administration of the estate, but court authorization is required for payment of compensation to any of the following:

(i) The guardian or conservator of the person or estate or both.

(ii) An attorney for the guardian or conservator of the person or estate or both.

(iii) An attorney for the ward or conservatee.

(iv) An attorney for the estate.

(b) The payments provided for by paragraph (3) of subdivision (a) are not required to be made to the extent such payments would impair the ability to provide necessities of life to the conservatee and the spouse and minor children of the conservatee.

(c) The guardian or conservator may petition the court under Section 2403 for instructions when there is doubt whether a debt should be paid under this section.

Legislative Committee Comment—Assembly

**Comment.** Section 2430 is adapted from portions of former Sections 1501, 1501a, and 1858. The priorities given under paragraphs (1) and (2) of subdivision (a) to debts incurred before creation of the guardianship or conservatorship and to debts for necessities incurred after such creation are derived from former Section 1858.

Paragraph (1) does not include the requirement of former Section 1501 that the debts of the ward be "just." The meaning of "just" in this context was not clear. *Compare* Estate of Cross, 51 Cal. App.3d 80, 86, 123 Cal. Rptr. 825, 829 (1975) ("justly due" as used in Probate Code Section 929 means unquestionably owing), *with* W. Johnstone & G. Zillgitt, California Conservatorships § 5.22, at 171 (Cal. Cont. Ed. Bar 1968) ("lawfully due and payable" as used in Probate Code Section 1859 appears to have more restricted meaning than "justly due and payable"). The reference to "debts incurred by the ward or conservatee" refers to legally enforceable debts.

The requirement of paragraph (2) that debts incurred for necessities incurred after creation be paid "to the extent the debt is reasonable" is new. Thus, the guardian or conservator may refuse to pay a debt for necessities to the extent the debt is unreasonable in amount.

Paragraph (3) is based on the third sentence of former Section 1858 but recognizes the new provisions dealing with the conservatee's power to contract. See Sections 1872 and 1873.

Paragraph (4) supersedes the last portion of the second sentence of former Section 1858. This provision is generalized to apply to guardianships as well as to conservatorships. The requirement of court authorization for payment of compensation is new and is consistent with former Sections 1556 and 1556.1. See generally Sections 2640-2642 (order fixing compensation for guardian, conservator, or attorney), 2643 (order authorizing periodic payments of compensation to guardian, conservator, or attorney).

Subdivision (b) is based on the last portion of the first sentence of former Section 1858. See also former Section 1501a (last sentence).

Subdivision (c) continues the substance of the fourth sentence of former Section 1858 (conservatorship) and extends this provision to guardianships as well as conservatorships. As to the compensation of the guardian or conservator and the attorney when court instructions are sought, see the Comment to Section 2640.

#### CROSS-REFERENCES

- Allowance for ward or conservatee, § 2421
- Compensation and expenses of guardian or conservator or attorney, § 2623
- Conveyance of property claimed to belong to another, §§ 2520-2528
- Death of ward or conservatee, expenses of last illness and funeral, § 2631
- Definitions
  - Conservator, § 2400
  - Court, § 1418
  - Guardian, § 2400
- Effect of court authorization or approval, § 2103
- Independent exercise of powers, § 2591(p)-(q)
- Order compelling payment of debts, § 2404
- Request for special notice, § 2700
- Review on settlement of accounts, § 2625
- Submitting matters to
  - Arbitration, § 2406
  - Summary determination, § 2405
- Support, maintenance, and education of ward, conservatee, and dependents, § 2420

#### § 2431. Priority for wage claims

2431. (a) Subject to subdivision (d), the guardian or conservator may petition the court under Section 2403 for instructions when there is doubt whether a wage claim should be paid under this section.

(b) The guardian or conservator shall promptly pay wage claims for work done or services rendered for the

ward or conservatee within 30 days prior to the date the petition for appointment of the guardian or conservator was filed. The payments made pursuant to this subdivision shall not exceed six hundred dollars (\$600) to each claimant. If there is insufficient money to pay all the claims described in this subdivision up to six hundred dollars (\$600), the money available shall be distributed among such claimants in proportion to the amount of their respective claims.

(c) After the payments referred to in subdivision (b) have been made, the guardian or conservator shall pay wage claims for work done or services rendered for the ward or conservatee within 90 days prior to the date the petition for appointment of the guardian or conservator was filed, excluding the claims described in subdivision (b). The payments made pursuant to this subdivision shall not exceed six hundred dollars (\$600) to each claimant. If there is insufficient money to pay all the claims described in this subdivision up to six hundred dollars (\$600), the money available shall be distributed among such claimants in proportion to the amounts of their respective claims.

(d) The guardian or conservator may require sworn claims to be presented. If there is reasonable cause to believe that the claim is not valid, the guardian or conservator may refuse to pay the claim in whole or in part but shall pay any part thereof that is not disputed without prejudice to the claimant's rights as to the balance of the claim. The guardian or conservator shall withhold sufficient money to cover the disputed portion until the claimant has had a reasonable opportunity to establish the validity of the claim by bringing an action, either in the claimant's own name or through an assignee, against the guardian or conservator.

(e) If the guardian or conservator neglects or refuses to pay all or any portion of a claim which is not in dispute, the court shall order the guardian or conservator to do so upon the informal application of any wage claimant or the assignee or representative of such claimant.

**Legislative Committee Comment—Assembly**

**Comment.** Section 2431 is based on former Section 1501a. The section is restated to clarify the provisions concerning priority



and proration of payments. The balance of the wage claim not given priority under Section 2431 would be payable under subdivision (a) (1) of Section 2430. Nothing in Section 2431 requires the guardian or conservator to obtain court authorization before making the payments required by the section.

#### CROSS-REFERENCES

Application must be verified, §§ 1430, 1450

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Independent exercise of powers, § 2591 (p)-(q)

Instructions from the court, § 2403

Order compelling payment of debts, § 2404

Request for special notice, § 2700

Submitting disputed claim for summary determination, § 2405

### Article 4. Estate Management Powers Generally

#### § 2450. Extent of court supervision

2450. (a) Unless this article specifically provides a proceeding to obtain court authorization or requires court authorization, the powers and duties set forth in this article may be exercised or performed by the guardian or conservator without court authorization, instruction, approval, or confirmation. Nothing in this subdivision precludes the guardian or conservator from seeking court authorization, instructions, approval, or confirmation pursuant to Section 2403.

(b) Upon petition of the ward or conservatee, a creditor, or any other interested person, or upon the court's own motion, the court may limit the authority of the guardian or conservator under subdivision (a) as to a particular power or duty or as to particular powers or duties. Notice of the hearing on a petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 2450 is new. Under prior law, it was not always clear whether the guardian or conservator could act without prior court authorization when the particular provision was silent on the matter. Section 2450 makes clear that, unless the particular provision requires court authorization, or the court requires such authorization with respect to the particular power

or duty under subdivision (b), the powers and duties specified in this article do not require court authorization. However, the exercise of all the powers in this article and the performance of all the duties in this article remain subject to the duty of the guardian or conservator to exercise ordinary care and diligence in the management of the estate. See Section 2401 and Comment thereto. See also Section 2403 permitting the guardian or conservator to seek court authorization, instructions, approval, or confirmation for particular transactions. Compare Section 591.2 (court supervision under Independent Administration of Estates Act). Subdivision (b) also permits the court to impose other restrictions and conditions on the exercise of the powers and duties under this article.

The second sentence of subdivision (a) makes clear that a guardian or conservator may seek court authorization and instructions even though court authorization is not required before exercising a power. Examples of cases where such instructions might be sought can be found in the Comments to Sections 2451 and 2457. In a case where the guardian or conservator is doubtful as to the proper action to take, the guardian or conservator may wish to obtain authorization under Section 2403 before acting or failing to act rather than run the risk that the court will find on the settlement of the accounts that the guardian or conservator failed to use ordinary care and diligence in managing the estate. As to the compensation of the guardian or conservator and the attorney in connection with obtaining instructions concerning the exercise of a power where court authorization is not required by statute, see the Comment to Section 2640. See also Section 2103 (effect of court authorization or approval).

The court may add to the list of powers exercisable by the guardian or conservator without court authorization. See Article 11 (commencing with Section 2590) (independent exercise of powers).

Some powers prescribed in other articles of this chapter are also exercisable without prior court authorization. See, *e.g.*, Sections 2420 (support, maintenance, and education of ward or conservatee and dependents), 2430 (payment of debts), 2431 (wage claims), 2500 (compromises), 2544 (sale of listed stocks and bonds), 2545 (certain sales of tangible personal property), 2555 (certain leases), 2574 (investing in listed securities).

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Compromise of claims and actions, §§ 2500-2507

Conveyance or transfer of property claimed to belong to ward or conservatee or another,

§§ 2520-2528

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Interested person, § 1424

Election of guardian or conservator of surviving spouse concerning administration of community property in probate, §§ 202, 650

Extension, renewal, or modification of obligations, §§ 2500-2507

Independent exercise of powers, § 2591

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice, § 2700

Review on settlement of accounts, § 2625

Submitting matters to

Arbitration, § 2406

Summary determination, § 2405

### § 2451. Collection of debts and benefits

2451. The guardian or conservator may collect debts and benefits due to the ward or conservatee and the estate.

**Comment.** Section 2451 continues the substance of the first portion of the second sentence of former Section 1501 except that the word "must" has been changed to "may." Nonetheless, the guardian or conservator remains subject to the duty to use ordinary care and diligence in managing the estate (Section 2401) and this duty ordinarily will require that the guardian or conservator take appropriate action to collect a debt or benefit. Where the potential recovery is less than the cost of taking action that might result in recovery of a debt, Section 2451 does not impose a duty on the guardian or conservator to act. In cases where there is a question concerning the propriety of initiating a lawsuit to collect the debt, the guardian or conservator should obtain instructions from the court under Section 2403 before commencing the action. The word "benefits" is added to Section 2451 to make clear that the provision includes collection of benefits under such laws as the federal Social Security Act or public assistance laws and benefits under private plans. The power granted by Section 2451 may be exercised without court authorization. See Section 2450.

#### CROSS-REFERENCES

Abandonment of valueless property, § 2465

Acceptance of deed in lieu of foreclosure, § 2464

Compromise of claims and actions and extension or renewal of obligations, §§ 2500-2507

Contingent fee contract with attorney, § 2644

Definitions

Conservator, § 2400

Guardian, § 2400

Independent exercise of powers, §§ 2590-2591

Representation in actions and proceedings, § 2462

Review on settlement of accounts, § 2625

Submitting matters to

Arbitration, § 2406

Summary determination, § 2405

### § 2452. Checks, warrants, and drafts

2452. (a) The guardian or conservator may endorse and cash or deposit any checks, warrants, or drafts payable to the ward or conservatee which constitute property of the estate.

(b) If it appears likely that the estate will satisfy the conditions of subdivision (b) of Section 2628, the court may order that the guardian or conservator be the designated payee for public assistance payments received pursuant to Part 3 (commencing with Section 11000) or Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code.

[Repealed and Added by 1980 Cal. Stats. ch. 246]

**Comment.** Section 2452 is new. In some instances, the check may not be property of the estate and hence is not covered by the power granted by this section. See, *e.g.*, Sections 2421 (allowance for ward or conservatee), 2601 (wages of ward or conservatee). The power granted by Section 2452 may be exercised without court authorization. See Section 2450.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Guardian, § 2400

### § 2453. Bank and savings accounts

2453. The guardian or conservator may deposit money belonging to the estate in a bank in this state or in a trust company authorized to transact a trust business in this state or may invest such money in an account in an insured savings and loan association or in shares of an insured credit union. The money may be withdrawn without order of court.

**Comment.** Section 2453 provides independent authority for the deposit or investment of money without court authorization. See Section 2450 (prior court authorization not required). See also Sections 2456 (accounts and deposits withdrawable only on

court order), 2328 (deposit of money or property subject to court control taken into account in determining amount of bond) and sections referred to in Comment to Section 2328. Section 2453 continues the substance of a portion of former Section 1513, but Section 2453 has been phrased to make clear that it provides independent authority without court authorization to make deposits in bank and savings accounts. The references to other provisions authorizing deposits that were found in former Section 1513 have been omitted as not relevant to a deposit made under Section 2453. The provision of former Section 1513 has not been continued which discharged the guardian or conservator from any further care or responsibility for the money while on deposit. The omission of this provision makes applicable the general requirement of use of ordinary care and diligence (Section 2401).

#### CROSS-REFERENCES

##### Definitions

Account in an insured savings and loan association, § 1406

Conservator, § 2400

Guardian, § 2400

Shares of an insured credit union, § 1443

#### § 2454. Deposit of personal property with trust company

2454. The guardian or conservator may deposit personal property of the estate with a trust company authorized to transact a trust business in this state as provided in Section 2328 or as provided by the Banking Law, Division 1 (commencing with Section 99) of the Financial Code. Unless otherwise provided by court order, the personal property may be withdrawn without order of court.

**Comment.** Section 2454 is the same in substance as former Section 1514 except that a reference to Section 2328 (deposit subject to court control) has been added. The procedure to be followed by the guardian or conservator in exercising the power under Section 2454 is provided in the statutory provisions to which reference is made in the section. See the Comment to Section 2328. See also Section 2456 (deposits withdrawable only on court order).

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Guardian, § 2400

**§ 2455. Deposit of securities in securities depository**

2455. (a) Securities which constitute all or part of the estate may be deposited in a securities depository as defined in Section 30004 of the Financial Code which is either licensed under Chapter 2 (commencing with Section 30200) of Division 14 of the Financial Code or is exempted from such licensing by Section 30005 or 30006 of the Financial Code.

(b) If the securities have been deposited with a trust company pursuant to Section 2328 or Section 2454, the trust company may deposit the securities in a securities depository as provided in subdivision (a).

(c) The securities depository may hold securities deposited with it in the manner authorized by Section 775 of the Financial Code.

**Comment.** Section 2455 continues the substance of former Sections 1514.5 and 1520. The power granted by Section 2455 may be exercised without court authorization. See Section 2450.

**§ 2456. Accounts and deposits withdrawable only on court order**

2456. Upon application of the guardian or conservator, the court may, with or without notice, order that:

(a) All or a portion of the money of the estate be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state or be invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) All or a portion of the personal property of the estate be deposited with a trust company authorized to transact a trust business in this state, subject to withdrawal only upon authorization of the court.

**Comment.** Section 2456 is based on authority implied under former Sections 1405.1 and 1513 except that Section 2456 includes personal property in addition to money (former Sections 1405.1 and 1513) and securities (former Section 1405.1).

**CROSS-REFERENCES****Definitions**

Account in an insured savings and loan association, § 1406

Conservator, § 2400  
 Guardian, § 2400  
 Shares of an insured credit union, § 1443  
 Single-premium deferred annuity, § 1446  
 Deposit of money, generally, § 2453  
 Deposit of personal property, generally, § 2454  
 Reduction in amount of bond, § 2328  
 Request for special notice, § 2700

### § 2457. Maintaining home of ward or conservatee and dependents

2457. The guardian or conservator may maintain in good condition and repair the home or other dwelling of either or both of the following:

- (a) The ward or conservatee.
- (b) The persons legally entitled to such maintenance and repair from the ward or conservatee.

**Comment.** Section 2457 is new and makes specific a power implied in the duties of the guardian or conservator to provide for the support and maintenance of the ward or conservatee and dependents. The power may be exercised without court authorization. See Section 2450. The power to add improvements is not included under this section. If there is doubt as to whether the particular project is permitted under this section, the guardian or conservator should seek court authorization under Section 2403. As to when a power should or should not be exercised, see Section 2401(b) and the Comment thereto.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400  
 Guardian, § 2400  
 Order compelling guardian or conservator to furnish support and maintenance, § 2404  
 Purchase of home for ward, conservatee, or dependents, § 2571  
 Review on settlement of accounts, § 2625  
 Support and maintenance generally, § 2420

### § 2458. Voting rights with respect to corporate shares or memberships or property

2458. With respect to any shares of stock of a domestic or foreign corporation held in the estate, any membership in a nonprofit corporation held by the estate, or any other property held in the estate, a guardian or conservator may do any or all of the following:

- (a) Vote in person, and give proxies to exercise, any voting rights with respect to such shares or memberships or property.

(b) Waive notice of any meeting or give consent to the holding of any meeting.

(c) Authorize, ratify, approve, or confirm any action which could be taken by shareholders, members, or property owners.

**Comment.** Section 2458 continues the substance of former Section 1517 except that the section is broadened to authorize action with respect to memberships in nonprofit corporations and to add “ratify, approve, or confirm” to subdivision (c). See also Corp. Code §§ 702(a) (guardian or conservator may vote shares), 705(a) (person entitled to vote shares may give proxy). The word “meeting” in subdivision (b) includes a meeting of shareholders, members, or property owners but is not so limited. Subdivision (c) permits authorization of action taken at a defectively noticed meeting by approval of the minutes of the meeting if such approval satisfies the requirements of the Corporations Code or other applicable law. The powers under Section 2458 may be exercised without court authorization. See Section 2450. As to when a power should or should not be exercised, see Section 2401(b) and the Comment thereto.

The court may grant the right to exercise additional powers without prior court authorization under Article 11 (commencing with Section 2590) (independent exercise of powers). These additional powers include the power to exercise stock rights and stock options and the power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property. See Section 2591. If the authority for independent exercise of such powers has not been granted, the guardian or conservator should obtain court authorization under an applicable provision or under Section 2403 (instructions) before exercising the powers. See also Sections 2557 (exchange of stocks, bonds, or securities for different stocks, bonds, or securities), 2544 (sales of listed stocks, bonds, and securities and United States obligations), 2574 (investments in United States and State of California obligations and listed stocks, bonds, and securities).

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Guardian, § 2400



**§ 2459. Life insurance; medical, retirement, and other plans and benefits**

2459. (a) The guardian or conservator may obtain, continue, renew, modify, terminate, or otherwise deal in any of the following for the purpose of providing protection to the ward or conservatee or a person legally entitled to support from the ward or conservatee:

(1) Medical, hospital, and other health care policies, plans, or benefits.

(2) Disability policies, plans, or benefits.

(b) The conservator may continue in force any of the following in which the conservatee, or a person legally entitled to support, maintenance, or education from the conservatee, has or will have an interest:

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

(2) Annuity policies, plans, or benefits.

(3) Mutual fund and other dividend reinvestment plans.

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

(c) The right 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, or to take similar actions under any of the policies, plans, or benefits described in subdivision (b) may be exercised by the conservator only after authorization or direction by order of the court. To obtain such an order, the conservator or other interested person shall petition under Article 10 (commencing with Section 2580).

(d) Notwithstanding subdivision (c), unless the court otherwise orders, the conservator without authorization of the court may borrow on the loan value of an insurance policy to pay the current premiums to keep the policy in force if the conservatee followed that practice prior to the establishment of the conservatorship.

(e) The guardian may give the consent provided in Section 10112 of the Insurance Code without authorization of the court, but the guardian may use funds of the guardianship estate to effect or maintain in force a contract entered into by the ward under Section 10112 of the Insurance Code only after authorization by order of the

court. To obtain such an order, the guardian, the ward, or any other interested person shall file a petition showing that it is in the best interest of the ward or of the guardianship estate to do so. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(f) Nothing in this section limits the power of the guardian or conservator to make investments as otherwise authorized by this division.

**Comment.** Subdivision (a) of Section 2459 gives the guardian or conservator specific authority to deal freely with medical, hospital, and other health care policies, plans, or benefits and with disability policies, plans, and benefits. These policies, plans, and benefits are an alternative method of meeting expenses that may be charged against the estate. The authority under this subdivision can be exercised without court authorization. See Section 2450.

Subdivision (b) gives the conservator much more limited power with respect to life insurance, annuity policies, mutual funds, retirement and employee welfare plans, and the like. The authority under subdivision (b), which can be exercised without court authorization (Section 2450), is limited to continuing the plans in force. Subdivision (d) permits the conservator to borrow on the loan value of an insurance policy to pay the current premiums on the policy to keep the policy in force without court authorization if the conservatee followed that practice prior to the establishment of the conservatorship. However, absent a showing of such past practice, court authorization would be required to borrow on the loan value of the insurance policy to pay the current premiums. See subdivision (c).

The provision of subdivision (e) that the guardian may, with court authorization, use guardianship funds to effect or continue an insurance contract of the ward made under Section 10112 of the Insurance Code continues the substance of former Section 1518. The remainder of subdivision (e) is new. Under Section 10112 of the Insurance Code, a minor may, with written consent of a parent or guardian, contract for a life, disability, or annuity policy for the benefit of a limited class of persons.

The authority of the guardian or conservator under Section 2459 can be limited by specific court orders (Section 2450), and subdivision (c) requires court authorization under the provisions relating to substituted judgment for actions that would affect the

expectancies of beneficiaries of insurance policies or other benefit plans.

As to when a power should or should not be exercised, see Section 2401(b) and the Comment thereto.

There was no express provision in former law comparable to Section 2459, except the limited reference in former Section 1518 (continued in subdivision (e)) and a reference to necessary insurance for the proper protection of the estate in the additional powers which the court could grant under former Section 1853 (conservators).

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Duty to use ordinary care and diligence, § 2401

Instructions from the court, § 2403

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice of petition, § 2700

Review on settlement of accounts, § 2625

### § 2460. Liability and casualty insurance

2460. The guardian or conservator may insure:

(a) Property of the estate against loss or damage.

(b) The ward or conservatee, the guardian or conservator, and all or any part of the estate against liability to third persons.

**Comment.** Section 2460 expressly states the power of the guardian or conservator to secure liability and casualty insurance without first obtaining authorization from the court. See Section 2450 (authorization of court not required). Former law referred to this subject only in connection with the listing of additional powers which the court could grant under former Section 1853. In practice, however, the responsibility to insure against certain kinds of risks was recognized. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 4.3, at 110, § 4.7, at 111, § 5.22, at 171 (Cal. Cont. Ed. Bar 1968). As to when a power should or should not be exercised, see Section 2401(b) and Comment thereto.

#### CROSS-REFERENCES

#### Definitions

Conservator, § 2400

Guardian, § 2400

Review on settlement of accounts, § 2625

### § 2461. Taxes and tax returns

2461. (a) The guardian or conservator may prepare, execute, and file tax returns for the ward or conservatee and for the estate and may exercise options and elections and claim exemptions for the ward or conservatee and for the estate under the applicable tax laws.

(b) Notwithstanding Section 2502, the guardian or conservator may pay, contest, and compromise taxes, penalties, and assessments upon the property of the estate and income and other taxes payable or claimed to be payable by the ward or conservatee or the estate.

**Comment.** Section 2461 is new. There was no express provision in former law on this subject, although an additional power that the court could grant under former Section 1853 included the power to pay or compromise claims for taxes. Court authorization or approval is not required to exercise the powers under Section 2461. See Section 2450. As to when a power should or should not be exercised, see Section 2401(b) and Comment thereto.

Subdivision (b) is not subject to the limitation on compromises provided in Section 2502 (compromise in excess of \$25,000 requires court approval). Under subdivision (b), the guardian or conservator may without court authorization make a compromise of taxes, penalties, and assessments in excess of \$25,000 and pay to the taxing authorities the amount required to be paid under the compromise.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Guardian, § 2400

Designation of agent for service for tax law purposes, Code Civ. Proc. § 1018

Duty to make personal income tax return, Rev. & Tax. Code § 18403

Instructions from the court, § 2403

Property tax refund, action to recover, Rev. & Tax. Code § 5140

### § 2462. Representation in actions and proceedings

2462. Subject to Section 2463, unless another person is appointed for that purpose, the guardian or conservator may:

(a) Institute and maintain actions and proceedings for the benefit of the ward or conservatee or the estate.

(b) Defend actions and proceedings against the ward or conservatee or the estate.

(c) File a petition commencing a case under Title 11 of the United States Code (Bankruptcy) on behalf of the ward or conservatee.

**Comment.** Section 2462 continues the substance of the last sentence of former Section 1501 but is phrased in language drawn from former Section 1853. The reference to Section 2463 has been added for clarity since Section 2463 requires court authorization before an action for partition is commenced. Court authorization is not required to exercise the powers under Section 2462. See Section 2450.

Section 2462 states the general principle that the conservator is authorized to bring or defend actions on behalf of the conservatee. See also Code Civ. Proc. § 372 and *In re Marriage of Higgason*, 10 Cal.3d 476, 484, 516 P.2d 289, 294, 110 Cal. Rptr. 897, 902 (1973) (minor or conservatee must appear by representative). See also Section 1208 (duty of guardian or conservator to represent ward or conservatee in probate estate proceeding). As to when a power should or should not be exercised, see Section 2401 (b) and Comment thereto. See also the Comment to Section 2451.

#### CROSS-REFERENCES

- Abandonment of valueless property, § 2465
- Acceptance of deed in lieu of foreclosure, § 2464
- Actions to reestablish destroyed land records, Code Civ. Proc. § 751.21
- Advances by guardian or conservator, § 2466
- Compromise of claims and actions, §§ 2500-2507
- Contingent fee contracts, § 2644
- Conveyance of property claimed to belong to ward or conservatee or other person, §§ 2520-2528
- Conveyance or transfer of property generally, § 2111
- Court approval of minor's contract for attorney's fees, § 3302
- Definitions
  - Conservator, § 2400
  - Guardian, § 2400
- Designation of agent for service for tax law purposes, Code Civ. Proc. § 1018
- Dissolution of marriage on grounds of insanity, Civil Code § 4510
- Election of guardian or conservator of surviving spouse concerning administration of community property in probate, §§ 202, 650
- Independent exercise of powers, § 2591
- Instructions from the court, § 2403
- Nullity of marriage, proceeding to obtain judgment of, Civil Code § 4426
- Review on settlement of accounts, § 2625
- Service on guardian or conservator in estate proceeding, § 1208
- Submitting matters to
  - Arbitration, § 2406
  - Summary determination, § 2405
- Waiver of process, notice, or order to show cause in probate estate proceeding, § 1208

### § 2463. Partition actions

2463. (a) The guardian or conservator may commence and prosecute an action for partition of real or personal property, or both, if the court has first made an order authorizing the guardian or conservator to do so. The court may make such an order *ex parte* on a petition filed by the guardian or conservator.

(b) The guardian or conservator may consent and agree, without an action, to a partition of the property and to the part to be set off to the estate, and may execute deeds or conveyances to the owners of the remaining interests of the parts to which they may be respectively entitled, if the court has made an order under Article 5 (commencing with Section 2500) authorizing the guardian or conservator to do so.

(c) If the ward or conservatee, or the guardian or conservator as such, is made a defendant in a partition action, the guardian or conservator may defend the action without authorization of the court.

**Comment.** Section 2463 continues the substance of former Sections 1506, 1507, and 1508 except that a reference to Article 5 (compromise of claims and actions) has been substituted for the notice provision of former Section 1507.

#### CROSS-REFERENCES

Consent to appointment of referee in partition action, Code Civ. Proc. § 873.040

Conveyance of property generally, § 2111

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Independent exercise of powers, § 2591

Instructions from the court, § 2403

Petition must be verified, § 1450

Request for special notice, § 2700

### § 2464. Acceptance of deed in lieu of foreclosure or trustee's sale

2464. (a) If it is to the advantage of the estate to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust, the guardian or conservator may, after authorization by order of the court and upon such terms and conditions as may be imposed by the court, accept a deed conveying the property to the ward or conservatee.

(b) To obtain an order under this section, the guardian or conservator shall file a petition showing the advantage to the estate of accepting the deed. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 2464 continues the substance of former Section 1515.5.

#### CROSS-REFERENCES

Appealable orders, § 2750

Clerk sets petition for hearing, § 1451

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Independent exercise of powers, § 2591

Petition must be verified, § 1450

Proof of giving of notice, § 1468

### § 2465. Abandonment of valueless property

2465. The guardian or conservator may dispose of or abandon valueless property.

**Comment.** Section 2465 is based on a portion of former Section 1853 which authorized the court to give a conservator the power to abandon valueless property. The power under Section 2465 may be exercised without authorization of the court. See Section 2450. As to when a power should or should not be exercised, see Section 2401(b) and Comment thereto. If the property has value, its disposition without court authorization is not permitted under Section 2465; court authorization is required for its sale or other disposition unless the disposition falls within some other provision—such as Section 2545—permitting disposition without court authorization.

#### CROSS-REFERENCES

Definitions

Conservator, § 2400

Guardian, § 2400

Instructions from the court, § 2403

Review on settlement of accounts, § 2625

### § 2466. Advances by guardian or conservator

2466. The guardian or conservator may advance the guardian's or conservator's own funds for the benefit of the ward or conservatee or the estate and may reimburse such

advances out of the income and principal of the estate first available. With court authorization or approval, interest on the amount advanced may be allowed at the legal rate payable on judgments.

**Comment.** Section 2466 continues the substance of the last sentence of former Section 1858 which applied to conservators and extends its provisions to guardians. The addition of "the guardian's or conservator's own funds" is clarifying. The provision allowing interest at the legal rate on judgments with court authorization or approval is new. Except for the allowance of interest, court authorization is not required under Section 2466. See Section 2450.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Guardian, § 2400

Instructions from the court, § 2403

Review on settlement of accounts, § 2625

### § 2467. Care of estate pending delivery to personal representative

2467. (a) The guardian or conservator continues to have the duty of custody and conservation of the estate after the death of the ward or conservatee pending the delivery thereof to the personal representative of the ward's or conservatee's estate or other disposition according to law.

(b) The guardian or conservator has such powers as are granted to a guardian or conservator under this division as are necessary for the performance of the duty imposed by subdivision (a).

**Comment.** Subdivision (a) of Section 2467 is based on a portion of the first sentence of former Section 1755 (conservatorship) which is made generally applicable to both guardians and conservators. The phrase "or other disposition according to law" has been added. Subdivision (b) is new.

#### CROSS-REFERENCES

Death of ward or conservatee before filing inventory, § 2633

##### Definitions

Conservator, § 2400

Guardian, § 2400

Disposition of assets upon death of ward or conservatee, § 2631

Disposition of estate by public guardian, Welf. & Inst. Code § 8012

Payment of expenses of last illness and funeral, § 2631



Review on settlement of accounts, § 2625

Termination of conservatorship on death of conservatee, § 1860

Termination of guardianship on death of ward, § 1600

## **Article 5. Compromise of Claims and Actions; Extension, Renewal, or Modification of Obligations**

### **§ 2500. Authority to compromise claims and actions and to extend, renew, or modify obligations**

2500. (a) Subject to subdivisions (b) and (c), the guardian or conservator may do any or all of the following:

(1) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the ward or conservatee, the guardian or conservator, or the estate.

(2) Extend, renew, or in any manner modify the terms of an obligation owing to or running in favor of the ward or conservatee or the estate.

(b) Unless this article or some other applicable statute requires court approval, the power set forth in subdivision (a) may be exercised or performed by the guardian or conservator without court authorization, instruction, approval, or confirmation. Nothing in this subdivision precludes the guardian or conservator from seeking court authorization, instructions, approval, or confirmation pursuant to Section 2403.

(c) Upon petition of the ward or conservatee, a creditor, or any interested person, or upon the court's own motion, the court may limit the authority of the guardian or conservator under subdivision (a). Notice of the hearing on a petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** This article (Sections 2500–2507) is new. It replaces the somewhat brief treatment of the subject in the first four sentences of former Section 1530a and supersedes that portion of the section and a portion of former Section 1501. Former Section 1530a authorized the guardian to do the acts described in subdivision (a) of Section 2500 with court approval. This new article takes a middle ground approach; the general requirement of court approval is not continued (subdivision (b) of Section 2500) but certain matters—including those specified in Sections 2501–2504—continue to require court approval. See also Code Civ. Proc. § 372 (court approval required for compromise

or settlement of pending action or proceeding). Subdivisions (b) and (c) of Section 2500 are new and are comparable to Section 2450 (powers of estate management generally). As to when a power should or should not be exercised, see Section 2401 (b) and Comment thereto. See also Section 2101 and Comment to that section.

#### CROSS-REFERENCES

Abandonment of valueless property, § 2465  
 Acceptance of deed in lieu of foreclosure, § 2464  
 Clerk sets petition for hearing, § 1451  
 Conveyance of property claimed by another, §§ 2520-2528  
 Dedication or conveyance of real property or easement with or without consideration, § 2556  
 Definitions  
   Conservator, § 2400  
   Court, § 1418  
   Guardian, § 2400  
 Effect of court authorization or approval, § 2103  
 Independent exercise of powers, § 2591  
 Payment or delivery of property pursuant to compromise, §§ 3600-3602  
 Pending actions and proceedings, compromise or settlement, Code Civ. Proc. § 372  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Representation in actions or proceedings, §§ 2462, 2463  
 Request for special notice, § 2700  
 Review on settlement of accounts, § 2625  
 Statutes applicable to particular cases not affected, § 2507  
 Submitting matter to  
   Arbitration, § 2406  
   Summary determination, § 2405  
 Taxes, compromising, § 2461

#### § 2501. Matters relating to real property

2501. (a) Except as provided in subdivision (b), court approval is required for a compromise, settlement, extension, renewal, or modification which affects:

- (1) Title to real property.
- (2) An interest in real property or a lien or encumbrance on real property.
- (3) An option to purchase real property or an interest in real property.

(b) Subdivision (a) does not apply to an extension, renewal, or modification of a lease of real property having an unexpired term of two years or less where, under the lease as extended, renewed, and modified, (1) the rental does not exceed seven hundred fifty dollars (\$750) a month and the term does not exceed two years or (2) regardless of the amount of the rental, the lease is from month to month.

**Comment.** Section 2501 is new. See the Comment to Section 2500. Section 2501 requires court approval because title to real property is involved and a court order approving the particular transaction may be required in order to satisfy requirements for title insurance. Subdivision (b) provides an exception to the requirement of court approval. The subdivision is consistent with Section 2555 (leases permitted without court authorization).

#### CROSS-REFERENCES

Acceptance of deed in lieu of foreclosure, § 2464  
 Appealable orders, § 2750  
 Conveyance of property claimed by another, §§ 2520-2528  
 Conveyance to complete contract, §§ 2520-2528  
 Conveyances by guardian or conservator, § 2111  
 Court authorized to approve transaction or matter, § 2505  
 Dedication or conveyance of real property or easement with or without consideration, § 2556  
 Independent exercise of powers, § 2591  
 Leases permitted without court order, § 2555  
 Partition of property, compromise, § 2463  
 Petition for approval, § 2506  
 Request for special notice, § 2700  
 Statutes applicable to particular cases not affected, § 2507

#### § 2502. Compromise in excess of specified amounts

2502. Court approval is required for a compromise or settlement of a matter when the transaction requires the transfer or encumbrance of assets of the estate, or the creation of an unsecured liability of the estate, or both, in an amount or value in excess of twenty-five thousand dollars (\$25,000).

**Comment.** Section 2502 is new. See the Comment to Section 2500. Section 2502 permits compromises and settlements without court approval where the amount to be paid or charged against the estate is not more than \$25,000 unless court approval is otherwise required (as, for example, under Section 2501—matter affecting real property—or Section 372 of the Code of Civil Procedure—pending actions and proceedings). The section does not apply to a claim by the estate. Nor does the section apply to compromises of tax matters. See Section 2461.

#### CROSS-REFERENCES

Appealable orders, § 2750  
 Conveyance or transfer by guardian or conservator, § 2111  
 Court authorized to approve transaction or matter, § 2505  
 Independent exercise of powers, § 2591  
 Petition for approval, § 2506  
 Request for special notice, § 2700  
 Statutes applicable to particular cases not affected, § 2507

**§ 2503. Compromise of claim of ward or conservatee against guardian or conservator**

2503. Court approval is required for:

(a) A compromise or settlement of a claim by the ward or conservatee against the guardian or conservator, whether or not the claim arises out of the administration of the estate.

(b) An extension, renewal, or modification of the terms of a debt or similar obligation of the guardian or conservator owing to or running in favor of the ward or conservatee or the estate.

**Comment.** Section 2503 is new. See the Comment to Section 2500. Section 2503 requires court approval because the section involves matters that place the guardian or conservator in a position where there may be a conflict of interest. See also Section 2101 and the Comment to that section. *Cf.* Civil Code § 2230 (transaction in which trustee has interest adverse to beneficiary).

CROSS-REFERENCES

Appealable orders, § 2750

Court authorized to approve transaction or matter, § 2505

Definitions

Conservator, § 2400

Guardian, § 2400

Petition for approval, § 2506

Request for special notice, § 2700

Statutes applicable to particular cases not affected, § 2507

**§ 2504. Support, wrongful death, and personal injury claims**

2504. Court approval is required for the compromise or settlement of any of the following:

(a) A claim for the support, maintenance, or education of (1) the ward or conservatee, or (2) a person whom the ward or conservatee is legally obligated to support, maintain, or educate, against any other person (including but not limited to the spouse or parent of the ward or the spouse, parent, or adult child of the conservatee).

(b) A claim of the ward or conservatee for wrongful death.

(c) A claim of the ward or conservatee for physical or nonphysical harm to the person.

**Comment.** Section 2504 is new. See the Comment to Section 2500. Section 2504 requires court approval because a claim of the type covered by the section often is a potential major asset of the estate.

## CROSS-REFERENCES

Appealable orders, § 2750

Compromise of pending action or proceeding, Code Civ. Proc. § 372

Court authorized to approve transaction or matter, § 2505

## Definitions

Conservator, § 2400

Guardian, § 2400

Independent exercise of powers, § 2591

Petition for approval, § 2506

Request for special notice, § 2700

Statutes applicable to particular cases not affected, § 2507

**§ 2505. Court authorized to approve transaction or matter**

2505. (a) Subject to subdivision (c), when the claim or matter is the subject of a pending action or proceeding, the court approval required by this article shall be obtained from the court in which the action or proceeding is pending.

(b) When the claim or matter is not the subject of a pending action or proceeding, the court approval required by this article shall be obtained from one of the following:

(1) The court in which the guardianship or conservatorship proceeding is pending.

(2) The superior court of the county where the ward or conservatee or guardian or conservator resides at the time the petition for approval is filed.

(3) The superior court of any county where a suit on the claim or matter properly could be brought.

(c) When the claim or matter is the subject of a pending action or proceeding that is not brought in a court of this state, court approval required by this article shall be obtained from either of the following:

(1) The court in which the action or proceeding is pending.

(2) The court in which the guardianship or conservatorship proceeding is pending.

**Comment.** Section 2505, which is new, is included to make clear to which court application for approval is to be made. Subdivision (c) applies to cases in the federal courts and in sister

state courts or courts outside the United States.

**CROSS-REFERENCES**

Statutes applicable to particular cases not affected, § 2507

**§ 2506. Petition for approval of court in guardianship or conservatorship proceeding**

2506. Where approval of the court in which the guardianship or conservatorship proceeding is pending is required under this article, the guardian or conservator shall file a petition with the court showing the advantage of the compromise, settlement, extension, renewal, or modification to the ward or conservatee and the estate. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 2506 continues the substance of the third and fourth sentences of former Section 1530a. The requirement in former Section 1530a that the petition be verified is continued in Section 1450 and the requirement under the former section that the clerk set the petition for hearing is continued in Section 1451.

**CROSS-REFERENCES**

Proof of giving of notice, § 1468

Statutes applicable to particular cases not affected, § 2507

**§ 2507. When another statute is controlling**

2507. Notwithstanding Sections 2500 to 2506, inclusive:

(a) Whenever another statute requires, provides a procedure for, or dispenses with court approval of a compromise, settlement, extension, renewal, or modification, the provisions of that statute govern any case to which that statute applies.

(b) Whenever another statute provides that a compromise or settlement of an administrative proceeding is not valid unless approved in such proceeding, the approval shall be governed by that statute, and approval in the guardianship or conservatorship proceeding is not required.

**Comment.** Section 2507 is new. Subdivision (a) makes clear that this article has no effect on the provisions of Section 372 of the Code of Civil Procedure (compromise of pending action or proceeding) or another statute that may be applicable to a

particular case. Where approval of a compromise or settlement of an administrative proceeding is required in such proceeding for the compromise or settlement to be valid (see, for example, Section 5001 of the Labor Code concerning compromise of a worker's compensation proceeding), subdivision (b) requires that approval of the compromise or settlement be obtained in the administrative proceeding rather than in the guardianship or conservatorship proceeding.

## **Article 6. Conveyance or Transfer of Property Claimed to Belong to Ward or Conservatee or Other Person**

### **§ 2520. Petition for order**

2520. (a) The guardian or conservator or any claimant may file a petition requesting that the court make an order under this article in any of the following cases:

(1) Where the conservatee is bound by a contract in writing to convey real property or to transfer personal property, executed by the conservatee while competent or executed by the conservatee's predecessor in interest, and the contract is one that can be specifically enforced.

(2) Where the ward has succeeded to the interest of a person bound by a contract in writing to convey real property or to transfer personal property, and the contract is one that can be specifically enforced.

(3) Where the guardian or conservator or the ward or conservatee is in possession of, or holds title to, real or personal property, and the property or some interest therein is claimed to belong to another.

(4) Where the ward or conservatee has a claim to real or personal property title to or possession of which is held by another.

(b) The petition shall set forth facts upon which the claim is based.

**Comment.** Article 6 (commencing with Section 2520) supersedes former Sections 1537 and 1537.5. The article is drawn from Sections 850-853. Former Sections 1537, 1537.5, and 1852 made Sections 850-853 applicable, with the exceptions noted below, to guardianship and conservatorship proceedings.

Paragraphs (1) and (2) of subdivision (a) of Section 2520 are comparable to the first sentence of former Section 1537.

However, like Section 850, paragraphs (1) and (2) apply to specifically enforceable contracts to transfer personal property, thus expanding the scope of former Section 1537 which was limited to contracts to convey real property. Paragraph (3) is the same in substance as the first sentence of former Section 1537.5. Paragraph (4) is drawn from Section 851.5 and expands the application of former Section 1537.5 to include the situation where the ward or conservatee claims property held by another.

Subdivision (b) is the same in substance as a portion of the first sentence of Section 851 and a portion of the first sentence of Section 851.5.

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Petition must be verified, § 1450

Proof of giving of notice, § 1468

### § 2521. Notice of hearing

2521. (a) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(b) At least 30 days prior to the day of the hearing, the petitioner shall also cause notice of the hearing and a copy of the petition to be served in accordance with Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil Procedure on any person (other than the petitioner, guardian or conservator, or ward or conservatee) claiming an interest in, or having title to or possession of, the property.

**Comment.** Section 2521 is new and is drawn in part from Section 851.5 but is adapted for use in guardianship and conservatorship proceedings and does not include the posting and publication requirements of Section 851.5. Service on the guardian or conservator and the ward or conservatee is not required under subdivision (b) because notice is required to those persons under subdivision (a). See Section 1460. Former Sections 1537, 1537.5, and 1852 made the notice and service requirements of Sections 851 and 851.5 applicable to guardianship and conservatorship proceedings of the type provided for in this article.



## CROSS-REFERENCES

Proof of giving of notice, § 1468  
Request for special notice, § 2700

**§ 2522. Continuance for preparation for hearing**

2522. Any interested person may request time for filing a response to the petition, for discovery proceedings, or for other preparation for the hearing, and the court shall grant a continuance for a reasonable time for any of such purposes.

**Legislative Committee Comment—Assembly**

**Comment.** Sections 2522, 2523, and 2524 are the same in substance as the sixth, seventh, and eighth sentences of Section 851.5 (decendent's estate), but the provisions are expanded in Sections 2522, 2523, and 2524 to cover the case where an order is requested to authorize or require a conveyance or transfer to complete a contract. See Section 2520. Former Sections 1537.5 and 1852 made these provisions of Section 851.5 applicable to guardianship and conservatorship proceedings.

**§ 2523. Filing of notice of lis pendens**

2523. If the matter concerns real property, notice of the pendency of the proceeding may be filed pursuant to Section 409 of the Code of Civil Procedure.

**Comment.** See the Comment to Section 2522.

**§ 2524. Denial of petition if objection based on venue made**

2524. Any person having or claiming title to or an interest in the property which is the subject of the petition may, at or prior to the hearing, object to the hearing of the petition if the petition is filed in a court which is not the proper court under any other provision of law for the trial of a civil action seeking the same relief and, if such objection be established, the court shall not grant the petition.

**Comment.** See the Comment to Section 2522.

**§ 2525. Abatement of petition if civil action pending**

2525. If a civil action is pending with respect to the subject matter of a petition filed pursuant to this article and jurisdiction has been obtained in the court where the civil

action is pending, upon request of any party to the civil action, the court shall abate the petition until the conclusion of the civil action.

**Legislative Committee Comment—Assembly**

**Comment.** Section 2525 is the same in substance as the last sentence of Section 851.5 (decedent's estate) except that the language "upon request of any party to the civil action" has been added and the application of the provision is expanded to include the case where an order is requested to authorize or require a conveyance or transfer to complete a contract. See Section 2520. Former Sections 1537.5 and 1852 made the last sentence of Section 851.5 applicable to guardianship and conservatorship proceedings. See also *Richer v. Superior Court*, 63 Cal. App.3d 748, 134 Cal. Rptr. 52 (1976) (petition need not be abated where civil action has been filed for the purpose of delay).

**§ 2526. Denial of petition if matter should be determined by civil action**

**2526.** The court shall not grant a petition under this article if the court determines that the matter should be determined by a civil action.

**Comment.** Section 2526 is the same in substance as a provision of Section 852 (decedent's estate) but Section 2526 expands this provision to include a petition requesting an order authorizing or requiring a conveyance or transfer to complete a contract. Former Sections 1537.5 and 1852 made this provision of Section 852 applicable to guardianship and conservatorship proceedings.

**§ 2527. Order**

**2527.** Except as provided in Sections 2524, 2525, and 2526, if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the guardian or conservator or other person having title to or possession of the property to execute a conveyance or transfer to the person entitled thereto or granting other appropriate relief.

**Comment.** Section 2527 is the same in substance as a portion of the first sentence of Section 852. Former Sections 1537, 1537.5, and 1852 made this provision of Section 852 applicable to guardianship and conservatorship proceedings.

**CROSS-REFERENCES**

Appealable orders, § 2750

**§ 2528. Execution of conveyance or transfer; effect of order**

2528. (a) The guardian or conservator or other person ordered to execute a conveyance or transfer under Section 2527 shall execute the conveyance or transfer according to the terms of the order, and the court may enforce its execution by process.

(b) After entry of an order that the guardian or conservator or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

**Comment.** Section 2528 is the same in substance as a portion of the first sentence and the second sentence of Section 853. Former Sections 1537, 1537.5, and 1852 made Section 853 applicable to guardianship and conservatorship proceedings. The provision of Section 853 that the order is prima facie evidence of the correctness of the proceedings and of the fiduciary's authority to act pursuant to the order has been omitted from Section 2528 as unnecessary since that is the effect of orders generally in guardianship and conservatorship proceedings. See *Estate of Kay*, 30 Cal.2d 215, 220, 181 P.2d 1, 4 (1947); 7 B. Witkin, *Summary of California Law Wills and Probate* § 234, at 5742 (8th ed. 1974); Evid. Code §§ 639, 666.

**CROSS-REFERENCES**

Conveyance or transfer by guardian or conservator to refer to order, § 2111  
Effect of conveyance or transfer, § 2111  
Recording copy of order, § 2111

**Article 7. Sales****§ 2540. Extent of court supervision**

2540. Except as otherwise provided in Sections 2544 and 2545, sales of real or personal property of the estate under this article are subject to authorization, confirmation, or direction of the court, as provided in this article.

**Comment.** Section 2540 continues the substance of a portion of the last clause of former Section 1530.

## CROSS-REFERENCES

Appealable orders, § 2750  
 Definition, court, § 1418  
 Effect of court authorization or approval, § 2103  
 Exchanges of property, § 2557  
 Independent exercise of powers  
   Credit sales, § 2591  
   Options, § 2591(c)  
   Personal property generally, § 2591(d)  
   Real property generally, § 2591(d)  
 Notice to  
   Director of Mental Health, § 1461  
   Director of Developmental Services, § 1461  
   Veterans Administration, § 1461.5  
 Request for special notice, § 2700  
 Sale by temporary conservator, § 2252

### § 2541. Purposes for which sale may be made

2541. The guardian or conservator may sell real or personal property of the estate in any of the following cases:

(a) The income of the estate is insufficient for the comfortable and suitable support, maintenance, and education of the ward or conservatee (including care, treatment, and support of the ward or conservatee if a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) or of those legally entitled to support, maintenance, or education from the ward or conservatee.

(b) The personal property of the estate and the income from real property of the estate is insufficient to pay the debts referred to in Sections 2430 and 2431.

(c) It is for the advantage, benefit, and best interest of (1) the ward or conservatee, (2) the estate, or (3) the ward or conservatee and those legally entitled to support, maintenance, or education from the ward or conservatee.

**Comment.** Section 2541 continues the substance of that portion of former Section 1530 relating to sales, with the following revisions:

(1) A reference to those legally entitled to support has been substituted for the former reference to family members the ward is legally obligated to support.

(2) A reference to the ward or conservatee being a patient in a state hospital under the jurisdiction of the State Department of Mental Health or State Department of Developmental Services has been substituted for the former reference to the ward being "confined in a State hospital for the insane."

(3) A reference has been added to Sections 2430 (debts and expenses generally) and 2431 (wage claims) in subdivision (b).

(4) A sale under subdivision (c) (3) must be for the advantage, benefit, and best interest of both the ward or conservatee and those legally entitled to support, maintenance, or education whereas under former Section 1530 it was sufficient if it was for the advantage, benefit, and best interest of those legally entitled to support and maintenance.

#### CROSS-REFERENCES

Bond increase when real property sold, § 2330

Borrowing money and giving security to provide support, § 2551

#### Definitions

Conservator, § 2400

Guardian, § 2400

Disposition of proceeds of sale, § 2547

Review on settlement of accounts, § 2625

Sale by temporary conservator, § 2252

Sale or encumbrance of property when income is insufficient for support, § 2420

### § 2542. Terms of sales

2542. (a) All sales shall be for cash or for part cash and part deferred payments. Except as otherwise provided in Sections 2544 and 2545, the terms of sale are subject to the approval of the court.

(b) If real property is sold for part deferred payments:

(1) The guardian or conservator shall demand and receive from the purchaser a note and a mortgage or deed of trust on the property sold with such additional security as the court determines is necessary and sufficient to secure the prompt payment of the amounts so deferred and the interest thereon.

(2) The mortgage or deed of trust shall be subject only to encumbrances existing at date of sale and such other encumbrances as the court may approve.

(c) If real or personal property of the estate sold for part deferred payments consists of an undivided interest, a joint tenancy interest, or any other interest less than the entire ownership, and the owner or owners of the remaining interests in the property join in the sale, the note and deed of trust or mortgage may be made to the ward or conservatee and the other owner or owners.

#### Legislative Committee Comment—Assembly

**Comment.** Section 2542 continues the substance of former Section 1532 with the following changes: (1) A reference to

Sections 2544 and 2545 (sales not requiring court authorization) is added, (2) the former requirement that credit shall not exceed 20 years from the date of sale is omitted, and (3) the provision is omitted that required that the interest of the ward in the note and deed of trust or mortgage be in the same tenancy and in the same proportion as the interest of the ward in the property prior to sale. This latter provision has been omitted because it is often the case that cotenants have differing cost bases or other considerations which make it advantageous for one to sell for cash and another on deferred terms. In reviewing the transaction when it is submitted to the court for approval, the court will examine the transaction to ensure that it is fair to the ward or conservatee.

#### CROSS-REFERENCES

Bond increase when real property sold or encumbered, § 2330

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

### § 2543. Manner of sale

2543. (a) Sales may be at public auction or private sale, as the guardian or conservator deems best.

(b) Subject to Section 1469, unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or conservators, giving notice of sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by administrators, other than the Independent Administration of Estates Act, Article 2 (commencing with Section 591) of Chapter 8 of Division 3.

(c) The clerk of the court shall cause notice to be posted at the courthouse of the county where the proceedings described in subdivision (b) are pending only in the following cases:

(1) Where posting of notice of hearing is required on a petition for the confirmation of a sale of real or personal property of the estate.

(2) Where posting of notice of a sale governed by Section 772 (sales of personal property) is required or authorized.

(3) In any case where posting of notice is ordered by the court.

**Comment.** Section 2543 continues the substance of former Section 1534 except for (1) the express exclusion of the Independent Administration of Estates Act, (2) the addition of the reference to Section 1469 (Sections 1200 and 1201 not applicable to proceedings under this division), and (3) the addition of subdivision (c). The provisions of the Independent Administration of Estates Act are not appropriate for incorporation by reference.

Subdivision (b) of Section 2543 does not apply to sales under Section 2544 (listed stocks, bonds, and other securities and U.S. obligations) or 2545 (certain tangible personal property).

Subdivision (c) of Section 2543 states the rule as to when posting of notice at the courthouse is required. Subdivision (c) limits the application of the provisions adopted by reference in subdivision (b). Subdivision (c) is necessary because the general posting requirement of Section 1200 has not been continued in the guardianship-conservatorship law. See Sections 1460(c), 1469(a).

#### CROSS-REFERENCES

Additional bond on real property transactions, § 2330

Conveyances or transfers by guardians or conservators, § 2111

Definitions

Conservator, § 2400

Guardian, § 2400

Notice to

Director of Mental Health, § 1461

Director of Developmental Services, § 1461

Veterans Administration, § 1461.5

Request for special notice, § 2700

Sales by administrators, §§ 750-814

### § 2544. Listed stocks, bonds, and securities; United States obligations

2544. (a) Except as specifically limited by order of the court, subject to Section 2541, the guardian or conservator may sell any of the following without authorization, confirmation, or direction of the court:

(1) Direct obligations of the United States.

(2) Stocks, bonds, and other securities which are listed and subject to purchase and sale on an established stock or bond exchange in the United States.

(b) Sales under paragraph (2) of subdivision (a) shall be made on the established stock or bond exchange.

(c) Section 2543 does not apply to sales under this section.

**Comment.** Section 2544 is new and permits sales of United States government obligations and listed stocks, bonds, and other securities without court authorization, confirmation, or direction. As to when a power should or should not be exercised, see Section 2401 (b) and Comment thereto. A sale under Section 2544 is subject to review on settlement of the accounts of the guardian or conservator. See Section 2625.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Effect of court authorization or approval, § 2103

Investment in government obligations, listed stocks, and other securities, § 2574

#### § 2545. Sale or other disposition of tangible personal property

2545. (a) Subject to subdivisions (b) and (c) and to Section 2541, the guardian or conservator may sell or exchange tangible personal property of the estate without authorization, confirmation, or direction of the court.

(b) The aggregate of the sales or exchanges made during any calendar year under this section may not exceed five thousand dollars (\$5,000).

(c) A sale or exchange of personal effects or of furniture or furnishings used for personal, family, or household purposes may be made under this section only if:

(1) In the case of a guardianship, the ward is under the age of 14 or, if 14 years of age or over, consents to the sale or exchange.

(2) In the case of a conservatorship, the conservatee either (i) consents to the sale or exchange or (ii) the conservatee does not have legal capacity to give such consent.

(d) Failure of the guardian or conservator to observe the limitations of subdivision (b) or (c) does not invalidate the title of, or impose any liability upon, a third person who acts in good faith and without actual notice of the lack of authority of the guardian or conservator.



(e) Subdivision (b) of Section 2543 does not apply to sales under this section.

**Comment.** Section 2545 is new. It gives the guardian or conservator broader authority than exists in the case of a probate estate; Section 2545 applies whether or not the property is perishable or is property which may be disposed of without court order in a probate estate (see Section 770). The reference in subdivision (c) to furniture and furnishings does not include property in commercial use. Hence, consent is not required to sell furniture or furnishings in commercial use. Subdivision (d) protects innocent third persons if the guardian or conservator acts in excess of the authority granted by the section. Subdivision (e) permits sale in such manner as the guardian or conservator considers best under the circumstances.

Sales of tangible personal property that do not fall within Section 2545 are made under the general provisions of this article (Sections 2541-2543). Exchanges of tangible personal property that do not fall within Section 2545 are made under Section 2557. Sales made under Section 2545 are subject to review on settlement of the accounts of the guardian or conservator. See Section 2625.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Guardian, § 2400

Effect of court authorization or approval, § 2103

Sale by temporary conservator, § 2252

### § 2546. Mines and mining claims

2546. Agreements for the sale of, or for giving options to purchase, mining claims or real property worked as mines may be executed by the guardian or conservator only after authorization by order of the court. Except as provided in Section 1469, the proceedings to obtain such an order and the proceedings thereunder shall conform, as nearly as may be, to the provisions of this code concerning similar proceedings by administrators.

**Comment.** Section 2546 is the same in substance as a portion of former Section 1538 except for the addition of the reference to Section 1469 (Sections 1200 . . . not applicable to proceedings under this division).

## CROSS-REFERENCES

Appealable orders, § 2750

## Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

## Notice to

Director of Mental Health, § 1461

Director of Developmental Services, § 1461

Veterans Administration, § 1461.5

Request for special notice, § 2700

Sale of mining property by administrators, §§ 810-814

### § 2547. Disposition of proceeds of sale

2547. The guardian or conservator shall apply the proceeds of the sale to the purposes for which it was made, as far as necessary, and the residue, if any, shall be managed as the other assets of the estate.

**Comment.** Section 2547 supersedes former Section 1536.

## CROSS-REFERENCES

Additional bond on real property transactions, § 2330

## Definitions

Conservator, § 2400

Guardian, § 2400

Purposes for which sale may be made, § 2541

Review on settlement of accounts, § 2625

### § 2548. Limitation of action to recover property sold

2548. No action for the recovery of any property sold by a guardian or conservator may be maintained by the ward or conservatee or by any person claiming under the ward or conservatee unless commenced within the later of the following times:

(a) Three years after the termination of the guardianship or conservatorship.

(b) When a legal disability to sue exists by reason of minority or otherwise at the time the cause of action accrues, within three years after the removal thereof.

**Comment.** Section 2548 continues the substance of former Section 1539.

## CROSS-REFERENCES

## Definitions

Conservator, § 2400

Guardian, § 2400

Effect of court authorization or approval, § 2103

Suit against sureties on bond, limitation period, § 2333

## Article 8. Notes, Mortgages, Leases, Conveyances, and Exchanges

### § 2550. Court supervision

2550. Except as otherwise provided by statute, a guardian or conservator may borrow money, give security, lease, convey, or exchange property of the estate, or engage in any other transaction under this article only after authorization by order of the court. Such an order may be obtained in the manner provided in this article.

**Comment.** Section 2550 continues the substance of a portion of the last clause of former Section 1530. The court order authorizing the transaction may be obtained under this article or under some other applicable provision such as, for example, Section 2403 (authorization and instructions from court). For a provision permitting exchanges of certain tangible personal property without authorization of the court, see Section 2545.

#### CROSS-REFERENCES

Appealable orders, § 2750

Bond increase when real property encumbered, § 2330

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Effect of court authorization or approval, § 2103

Independent exercise of powers, § 2591

Request for special notice, § 2700

Sale by temporary conservator, § 2252

### § 2551. Borrowing money and giving security therefor

2551. (a) In any case described in Section 2541 or Section 2552, the guardian or conservator, after authorization by order of the court, may borrow money upon a note or notes, either unsecured or to be secured by a security interest or other lien on the personal property of the estate or any part thereof or to be secured by a mortgage or deed of trust on the real property of the estate or any part thereof. The guardian or conservator shall apply the money to the purpose or purposes specified in the order.

(b) To obtain an order under this section, the guardian or conservator, the ward or conservatee, or any other interested person may file a petition with the court. The petition shall state the purpose for which the order is

sought, the necessity for or advantage to accrue from the order, the amount of money proposed to be raised, the rate of interest to be paid, the length of time the note or notes are to run, and a general description of the property proposed to be mortgaged or subjected to a deed of trust or other lien. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The court shall hear the petition and any objection thereto and may require such additional proof of the fairness and feasibility of the transaction as the court determines is necessary. If the required showing is made, the court may make an order authorizing the transaction and may prescribe in the order the terms and conditions upon which the transaction shall be made, including but not limited to the following:

(1) Ordering that a lesser amount than that specified in the petition be borrowed.

(2) Prescribing the maximum rate of interest and the period of the loan.

(3) Requiring that the interest and the whole or any part of the principal be paid from time to time out of the estate or any part thereof.

(4) Requiring that the personal property used as security or any buildings on real property to be mortgaged or subjected to the deed of trust be insured for the further security of the lender and that the premiums be paid out of the estate.

(d) The note or notes and the mortgage or deed of trust, if any, shall be signed by the guardian or conservator as such and shall create no personal liability against the person so signing.

(e) Jurisdiction of the court to administer the estate of the ward or conservatee shall be effectual to vest the court with jurisdiction to make the order for the note or notes and for the security interest, lien, mortgage, or deed of trust, and such jurisdiction shall conclusively inure to the benefit of the owner of the security interest or lien, mortgagee named in the mortgage, or the trustee and beneficiary named in the deed of trust, and their heirs and assigns. No omission, error, or irregularity in the proceedings shall

impair or invalidate the proceedings or the note or notes, security interest, lien, mortgage, or deed of trust given in pursuance thereof.

(f) Upon any foreclosure or sale under a security interest, lien, mortgage, or deed of trust described in subdivision (a), if the proceeds of the sale of the encumbered property are insufficient to pay the note or notes, the security interest, lien, mortgage, or deed of trust, and the costs or expenses of sale, no judgment or claim for any deficiency shall be had or allowed against the ward or conservatee or the estate.

**Legislative Committee Comment—Assembly**

**Comment.** The first sentence of subdivision (a) of Section 2551 continues the substance of the first portion of former Section 1533, but a reference to Sections 2541 and 2552 has been substituted for “will benefit his ward” which appeared in former Section 1533 and the types of security that may be given have been made more specific. The second sentence of subdivision (a) is new and is comparable to Section 2547 (sales). Subdivisions (b), (c), (d), and (e) are drawn from portions of Sections 831, 832, 833, and 834, respectively. Sections 831-834 relate to borrowing money by executors or administrators, and were incorporated by reference and made applicable to guardianship and conservatorship proceedings by former Sections 1538 and 1852. Subdivision (f) continues the last sentence of former Section 1533.

**CROSS-REFERENCES**

Appealable orders, § 2750

Bond increase when real property encumbered, § 2330

Borrowing money by administrators, §§ 830-834

Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Independent exercise of powers, § 2591

Request for special notice, § 2700

**§ 2552. Refinancing or improving or repairing property**

2552. (a) The guardian or conservator may give a security interest or other lien upon the personal property of the estate or any part thereof or a mortgage or deed of trust upon the real property of the estate or any part thereof, after authorization by order of the court as provided in Section 2551, for any of the following purposes:

(1) To pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on property of the estate.

(2) To erect, alter, or repair buildings or other structures upon, or otherwise to improve, the property proposed to be mortgaged or subjected to a deed of trust, or some part thereof.

(b) If property of the estate consists of an undivided interest in real or personal property, or any other interest therein less than the entire ownership, and it appears to be to the advantage of the estate to borrow money to improve, utilize, operate, or preserve the property jointly with the owner or owners of the other interests therein, or to pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on all of the property, the guardian or conservator, after authorization by order of the court as provided in Section 2551, may join with the owner or owners of such other interests in the borrowing of money and the execution of a joint and several note or notes and such security interest, lien, mortgage, or deed of trust as may be required to secure the payment of the note or notes. The note or notes may be for such sum as is required for the purpose.

**Comment.** Section 2552 continues a portion of the substance of former Section 1533.

#### CROSS-REFERENCES

Appealable orders, § 2750

Bond increase when real property encumbered, § 2330

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Independent exercise of powers, § 2591

Instructions from the court, § 2403

Request for special notice, § 2700

### § 2553. Order authorizing lease required

2553. (a) Except as provided in Section 2555, leases may be executed by the guardian or conservator with respect to the property of the estate only after authorization by order of the court.

(b) To obtain an order under this section, the guardian or conservator or any interested person may file a petition

with the court. The petition shall state (1) a general description of the property proposed to be leased, (2) the term, rental, and general conditions of the proposed lease, and (3) the advantage to the estate to accrue from giving the lease. If the lease is proposed to be for a term longer than 10 years, the petition shall state additional facts showing the need for the longer lease and its advantage to the estate. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The court shall hear the petition and any objection thereto and may require such additional proof of the fairness and feasibility of the transaction as the court determines is necessary. The court also shall entertain and consider any other offer made in good faith at the hearing to lease the same property on more favorable terms. If the court is satisfied that it will be to the advantage of the estate, the court shall make an order authorizing the guardian or conservator to make the lease to the person and on the terms stated in the order. The court shall not make an order authorizing the guardian or conservator to make the lease to any person other than the lessee named in the petition unless the offer made at the hearing is acceptable to the guardian or conservator.

(d) Jurisdiction of the court to administer the estate of the ward or conservatee shall be effectual to vest the court with jurisdiction to make the order for the lease, and such jurisdiction shall conclusively inure to the benefit of the lessee and the lessee's heirs and assigns. No omission, error, or irregularity in the proceedings shall impair or invalidate the proceedings or the lease made in pursuance thereof.

**Legislative Committee Comment—Assembly**

**Comment.** Subdivision (a) of Section 2553 continues the substance of a portion of the first sentence of former Section 1538. Subdivisions (b), (c), and (d) are drawn from portions of Sections 841, 842, 842.1, and 843 (leases by executors or administrators) which were incorporated by reference and made applicable to guardianship and conservatorship proceedings by former Sections 1538 and 1852.

**CROSS-REFERENCES**

Appealable orders, § 2750

## Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Independent exercise of powers, § 2591

Leases by administrators, §§ 840-844

Request for special notice, § 2700

**§ 2554. Terms and conditions of leases**

2554. (a) An order authorizing the execution of a lease shall set forth the minimum rental or royalty and the period of the lease, which shall be for such time as the court may authorize.

(b) The order may authorize other terms and conditions, including, with respect to a lease for the purpose of production of minerals, oil, gas, or other hydrocarbon substances, any of the following:

(1) A provision for the payment of rental and royalty to a depository.

(2) A provision for the appointment of a common agent to represent the interests of all the lessors.

(3) A provision for the payment of a compensatory royalty in lieu of rental and in lieu of drilling and producing operations on the land covered by the lease.

(4) A provision empowering the lessee to enter into any agreement authorized by Section 3301 of the Public Resources Code with respect to the land covered by the lease.

(5) A provision for pooling or unitization by the lessee.

(c) If the lease covers additional property owned by other persons or an undivided or other interest of the ward or conservatee less than the entire ownership in the property, the lease may provide for division of rental and royalty in the proportion that the land or interest of each owner bears to the total area of the land or total interests covered by such lease.

(d) A lease for the purpose of production of minerals, oil, gas, or other hydrocarbon substances may be for a fixed period and any of the following:

(1) So long thereafter as minerals, oil, gas, or other hydrocarbon substances are produced in paying quantities from the property leased or mining or drilling operations are conducted thereon.



(2) If the lease provides for the payment of a compensatory royalty, so long thereafter as such compensatory royalty is paid.

(3) If the land covered by the lease is included in an agreement authorized by Section 3301 of the Public Resources Code, so long thereafter as oil, gas, or other hydrocarbon substances are produced in paying quantities from any of the lands included in any such agreement or drilling operations are conducted thereon.

**Comment.** Section 2554 continues the substance of former Section 1538.5.

#### CROSS-REFERENCES

Definition, court, § 1418

#### § 2555. Leases permitted without court authorization

2555. The guardian or conservator may lease real property without authorization of the court when (a) the rental does not exceed seven hundred fifty dollars (\$750) a month and the term does not exceed two years, or (b) regardless of the amount of the rental, when the lease is from month to month.

**Comment.** Section 2555 continues the substance of former Section 1538.6 except that the term has been increased from one year to two years and the amount from \$250 to \$750 a month.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Guardian, § 2400

Effect of court authorization or approval, § 2103

Instructions from the court, § 2403

Modification, extension, or renewal of leases, § 2501

Review on settlement of accounts, § 2625

#### § 2556. Dedication or conveyance of real property or easement with or without consideration

2556. (a) If it is for the advantage, benefit, and best interests of the estate and those interested therein, the guardian or conservator, after authorization by order of the court, may do any of the following either with or without consideration:

(1) Dedicate or convey any real property of the estate or any interest therein to any public entity (including but not

limited to the United States or any agency or instrumentality thereof) for any purpose.

(2) Dedicate or convey an easement over any real property of the estate to any person for any purpose.

(3) Convey, release, or relinquish to any public entity any access rights to any street, highway, or freeway from any real property of the estate.

(4) Consent as a lienholder to a dedication, conveyance, release, or relinquishment under paragraph (1), (2), or (3) by the owner of property subject to the lien.

(b) To obtain an order under this section, the guardian or conservator or any other interested person shall file a petition with the court. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 2556 continues the substance of former Section 1515 with the addition of paragraph (4) of subdivision (a).

#### CROSS-REFERENCES

Appealable orders, § 2750

Clerk sets petition for hearing, § 1451

Community and homestead property, court authorization of transaction, §§ 3101, 3102

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Independent exercise of powers, § 2591

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice, § 2700

### § 2557. Exchange of property

2557. (a) Whenever it is for the advantage, benefit, and best interests of the ward or conservatee and those legally entitled to support, maintenance, or education from the ward or conservatee, the guardian or conservator, after authorization by order of the court, may exchange any property of the estate for other property upon such terms and conditions as the court may prescribe. Such conditions may include the payment or receipt of part cash by the guardian or conservator.

(b) To obtain an order under this section, the guardian or conservator or any interested person may file a petition

with the court. Except as provided in subdivision (c), notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) If the petition is for authorization to exchange stocks, bonds, or other securities as defined in Section 771 for different stocks, bonds, or other securities, the court, upon a showing of good cause, may order that the notice be dispensed with.

(d) After authorization by order of the court, the guardian or conservator may execute the conveyance or transfer to the person with whom the exchange is made to effectuate the exchange.

**Comment.** Section 2557 continues the substance of former Section 1540 except that the reference to those equally entitled to support, maintenance, or education from the ward or conservatee is substituted for the former reference to members of the ward's family the ward is legally bound to support and maintain. Instead of incorporating by reference the provisions of this code governing exchanges of property by administrators as did former Section 1540, comparable provisions drawn from Section 860 are included in Section 2557.

#### CROSS-REFERENCES

Appealable orders, § 2750  
 Clerk sets petition for hearing, § 1451  
 Conveyance or transfer by guardian or conservator, § 2111  
 Definitions  
   Conservator, § 2400  
   Court, § 1418  
   Guardian, § 2400  
   Interested person, § 1424  
 Exchange of tangible personal property, § 2545  
 Independent exercise of powers, § 2501  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700

### Article 9. Investments and Purchase of Property

§ 2570. Authority to invest generally; petition; hearing; order

2570. (a) The guardian or conservator, after authorization by order of the court, may invest the proceeds of sales and any other money of the estate as provided in the order.

(b) To obtain an order of the court authorizing a transaction under subdivision (a) of this section, the guardian or conservator, the ward or conservatee, or any other interested person may file a petition with the court.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. The court may order that the notice be dispensed with.

(d) The court shall hear the petition and any objection thereto and may require such additional proof of the fairness and feasibility of the transaction as the court determines is necessary.

(e) If the required showing is made, the court may make an order authorizing the transaction and may prescribe in the order the terms and conditions upon which the transaction shall be made.

**Comment.** Subdivision (a) of Section 2570 provides general authority for the investment of surplus funds of the estate in real property or tangible or intangible personal property. The subdivision supersedes the portion of former Section 1557 which authorized investments in real property or in any other manner most to the interest of the ward. An investment made under Section 2570 requires court authorization. Other provisions in this article and outside this article permit specific types of investments without the need for court authorization. For example, see Section 2453 (bank and savings accounts) and Section 2574 (United States and State of California obligations and listed stocks, bonds, and other securities).

Subdivision (b) is drawn from the first portion of former Section 1557. Subdivision (c) supersedes a portion of former Sections 1557 and 1557.1 and has the effect of requiring 15 rather than five days' notice of the hearing unless the court shortens the time of notice or dispenses with the notice. See Section 1462 (shortening time of notice). Subdivision (d) is drawn from former Section 1557.1 and is made generally applicable. Subdivision (e) is drawn from the last sentence of former Section 1557.1 and is made generally applicable.

#### CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, § 1470

Clerk sets petition for hearing, § 1451

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400  
 Interested person, § 1424  
 Effect of court authorization or approval, § 2103  
 Independent exercise of powers, § 2591  
 Notice to Veterans Administration, § 1461.5  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700

### § 2571. Purchase of home for ward or conservatee or dependents

2571. When authorized by order of the court under Section 2570, the guardian or conservator may purchase:

(a) Real property in this state as a home for the ward or conservatee if such purchase is for the advantage, benefit, and best interest of the ward or conservatee.

(b) Real property as a home for those legally entitled to support and maintenance from the ward or conservatee if such purchase is for the advantage, benefit, and best interest of the ward or conservatee and of those legally entitled to support and maintenance from the ward or conservatee.

**Comment.** Section 2571 continues what appears to be the intended purpose of the authority granted by former Section 1557.1 insofar as that section authorized purchase of real property other than for investment purposes. A purchase under this section requires court authorization under Section 2570. As to investment of the proceeds of sale or exchange of community or separate property subject to a homestead in another home for the spouses, see Section 3021.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400  
 Court, § 1418  
 Guardian, § 2400  
 Independent exercise of powers, § 2591  
 Order authorizing purchase of real property, § 2572  
 Notice to Veterans Administration, § 1461.5  
 Request for special notice, § 2700

### § 2572. Order authorizing purchase of real property

2572. An order authorizing the guardian or conservator to purchase real property may authorize the guardian or conservator to join with the spouse of the ward or conservatee or with any other person or persons in the purchase of the real property, or an interest, equity, or

estate therein, in severalty, in common, in community, or in joint tenancy, for cash or upon a credit or for part cash and part credit. When the court authorizes the purchase of real property, the court may order the guardian or conservator to execute all necessary instruments and commitments to complete the transaction.

**Comment.** Section 2572 continues the substance of portions of former Section 1557.1. As to community property, see Sections 3020–3023.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Independent exercise of powers, § 2591

### § 2573. Order authorizing investment in governmental bonds

2573. An order authorizing investment in bonds issued by any state of the United States or of any city, county, city and county, political subdivision, public corporation, district, or special district of any state of the United States may authorize the guardian or conservator to select from among bonds issued by any such issuer, without specifying any particular issuer or issue of bonds, if the type of issuer is designated in general terms and the order specifies as to such bonds a minimum quality rating as shown in a recognized investment service, a minimum interest coupon rate, a minimum yield to maturity, and the date of maturity within a five-year range.

**Comment.** Section 2573 continues the substance of a portion of former Section 1557.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Guardian, § 2400

### § 2574. United States and State of California obligations; listed stocks, bonds, and other securities

2574. (a) Subject to subdivision (b), the guardian or conservator, without authorization of the court, may invest funds of the estate pursuant to this section in:

(1) Direct obligations of the United States, or of this state, having a maturity at the time of acquisition of not more than five years.

(2) United States Treasury bonds redeemable at par value on the death of the holder for payment of federal estate taxes, regardless of maturity date.

(3) Stocks, bonds, and other securities listed on an established stock or bond exchange in the United States which are purchased on such exchange.

(b) In making and retaining investments made under this section, the guardian or conservator shall conform to Section 2261 of the Civil Code and shall take into consideration the circumstances of the estate, indicated cash needs, and, if reasonably ascertainable, the date of the prospective termination of the guardianship or conservatorship.

(c) Nothing in this section limits the authority of the guardian or conservator to seek court authorization for any investment, or to make other investments with court authorization, as provided in this division.

**Comment.** Section 2574 is new. There were no comparable provisions under former law. Subdivision (a) eliminates the need for applying in advance for a court order in case of the investments or reinvestments described. Subdivision (b) refers to Section 2261 of the Civil Code (trustee's standard of care in investment of funds) but also specifically requires consideration of the circumstances of the estate (which may vary according to the circumstances of the particular guardianship or conservatorship involved) and consideration of the time when the protective proceedings will or will be likely to terminate. Section 2574 is consistent with Section 2544 which permits sale of United States government obligations and listed stocks, bonds, and other securities without authorization of the court but departs from comparable provisions relating to probate estates which require a court order for the sale of securities (Section 771). An investment in a government obligation, stock, bond, or security that is not one described in Section 2574 may be made only if court authorization is obtained under Section 2570. An investment made under Section 2574 is subject to court review on settlement of the accounts of the guardian or conservator. See Section 2625.

## CROSS-REFERENCES

## Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Effect of court authorization or approval, § 2103

**Article 10. Substituted Judgment****§ 2580. Petition to authorize proposed action**

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, but the court shall not authorize or require the conservator to exercise the right to revoke a revocable trust if the instrument governing the trust (A) evidences an intent to reserve the right of revocation exclusively to the conservatee, (B) provides expressly that a conservator may not revoke the trust, or (C) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke the trust.
- (11) Making an election or an election and agreement referred to in Section 202.

[Amended by 1960 Cal. Stats. ch. 246]

Law Revision Commission Comment

1979 Enactment

**Comment.** This article (commencing with Section 2580) is new and codifies the court-recognized doctrine of substituted judgment. See *Estate of Christiansen*, 248 Cal. App.2d 398, 56 Cal. Rptr. 505 (1967); *Conservatorship of Wemyss*, 20 Cal. App.3d 877, 98 Cal. Rptr. 85 (1971). Section 2580 is drawn in part from a portion of Mass. Ann. Laws ch. 201, § 38 (Michie/Law. Co-op 1978 Supp.). See also 20 Pa. Cons. Stat. Ann. § 5536(b) (Purdon 1978-79 Supp.); Uniform Probate Code § 5-408(3). For prior cases discussing gifts of surplus income for religious or charitable purposes to carry out the presumed wishes of an incompetent ward, see *Harris v. Harris*, 57 Cal.2d 367, 369 P.2d 481, 19 Cal. Rptr. 793 (1962); *Guardianship of Hall*, 31 Cal.2d 157, 187 P.2d 396 (1947).

Subdivision (a) of Section 2580 indicates the three general types of situations where substituted judgment may be exercised:

(1) Where the action proposed to be taken by the conservator is for the benefit of the conservatee or the estate.

(2) Where the proposed action is designed to minimize taxes (such as federal, state, or local income taxes or estate taxes) or expenses of administration during the lifetime and upon the death of the conservatee.

(3) Where there is a person to whom the conservatee probably would have made gifts or provided support from excess funds or assets or where there are charities or other objects of bounty which the conservatee had shown an inclination to support.

The nonexclusive listing in subdivision (b) of the types of actions which may be proposed in the petition is drawn in part from the Massachusetts and Pennsylvania statutes and from the Uniform Probate Code provision, *supra*. Under former law, the extent to which these types of actions could be authorized or required to be taken by the conservator, whether court authorization was required, and the relevant considerations in determining whether the action should be taken, were matters that were not covered by statute and the law was uncertain. As to transactions involving community or homestead property, see Section 3102(f).

In the case of gifts of income from the conservatorship estate, this article supplements Section 2423 which authorizes payments of surplus income to the spouse and to relatives within the second degree of the conservatee under certain circumstances. Gifts of surplus income under this article are not limited to the spouse and such relatives.

#### CROSS-REFERENCES

Appointment of legal counsel for conservatee, § 1470

#### Definitions

Conservator, § 2400

Court, § 1418

Interested person, § 1424

Disclaimer on behalf of ward or conservatee, § 190.2

Effect of court authorization or approval, § 2103

Election of guardian or conservator of surviving spouse concerning administration of community property in probate, §§ 202, 650

Exchange of securities, § 2557

Petition must be verified, § 1450

Request for special notice, § 2700

### § 2581. Notice of hearing of petition

2581. Notice of the hearing of the petition shall be given for the period and in the manner provided in Chapter 3

(commencing with Section 1460) or Part 1 to all of the following (other than the petitioner or persons joining in the petition):

(a) The persons required to be given notice under Chapter 3 (commencing with Section 1460) of Part 1.

(b) The persons required to be named in a petition for the appointment of a conservator.

(c) So far as is known to the petitioner, beneficiaries under any document executed by the conservatee which may have testamentary effect unless the court for good cause dispenses with such notice.

(d) So far as is known to the petitioner, the persons who, if the conservatee were to die immediately, would be the conservatee's heirs under the laws of intestate succession unless the court for good cause dispenses with such notice.

(e) Such other persons as the court may order.

**Comment.** Section 2581 is new.

#### CROSS-REFERENCES

Appointment of legal counsel for conservatee, § 1470

Clerk sets petition for hearing, § 1451

#### Definitions

Conservator, § 2400

Court, § 1418

#### Notice to

Director of Mental Health, § 1461

Director of Developmental Services, § 1461

Veterans Administration, § 1461.5

Proof of giving of notice, § 1468

Request for special notice, § 2700

### § 2582. Consent or lack of capacity of conservatee; adequate provision for conservatee and dependents

2582. The court may make an order authorizing or requiring the proposed action under this article only if the court determines all of the following:

(a) The conservatee either (1) is not opposed to the proposed action or (2) if opposed to the proposed action, lacks legal capacity for the proposed action.

(b) Either the proposed action will have no adverse effect on the estate or the estate remaining after the proposed action is taken will be adequate to provide for the needs of the conservatee and for the support of those legally entitled to support, maintenance, and education from the

conservatee, taking into account the age, physical condition, standards of living, and all other relevant circumstances of the conservatee and those legally entitled to support, maintenance, and education from the conservatee.

**Comment.** Subdivision (a) of Section 2582 has the effect of precluding an order under this article where the conservatee has legal capacity for the proposed action and is opposed to it. This is consistent with the rule of *Estate of Christiansen*, 248 Cal. App.2d 398, 56 Cal. Rptr. 505 (1967), that permits exercise of substituted judgment for a conservatee who is "insane" or "incompetent."

Subdivision (b) recognizes that the conservatee and those legally entitled to support, maintenance, and education from the conservatee have first claim on the income and assets of the estate.

#### CROSS-REFERENCES

Definition, court, § 1418

#### § 2583. Circumstances considered in determining whether to approve proposed action

2583. In determining whether to authorize or require a proposed action under this article, the court shall take into consideration all the relevant circumstances, including but not limited to:

(a) Whether the conservatee has legal capacity for the proposed transaction and, if not, the probability of the conservatee's recovery of legal capacity.

(b) The past donative declarations, practices, and conduct of the conservatee.

(c) The traits of the conservatee.

(d) The relationship and intimacy of the prospective donees with the conservatee, their standards of living, and the extent to which they would be natural objects of the conservatee's bounty by any objective test based on such relationship, intimacy, and standards of living.

(e) The wishes of the conservatee.

(f) Any known estate plan of the conservatee (including, but not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee,

and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated).

(g) The manner in which the estate would devolve upon the conservatee's death, giving consideration to the age and the mental and physical condition of the conservatee, the prospective legatees, devisees, or heirs of the conservatee, and the prospective donees.

(h) The value, liquidity, and productiveness of the estate.

(i) The minimization of current or prospective income, estate, inheritance, or other taxes or expenses of administration.

(j) Changes of tax laws and other laws which would likely have motivated the conservatee to alter the conservatee's estate plan.

(k) The likelihood from all the circumstances that the conservatee as a reasonably prudent person would take the proposed action if the conservatee had the capacity to do so.

**Comment.** Section 2583 gives the court discretion and flexibility in applying the doctrine of substituted judgment under the circumstances of the particular case. The listing in Section 2583 is not exclusive, and the weight to be given to any particular matter listed will depend upon the circumstances of the particular case. Subdivision (k) lists a relevant consideration absent a showing of contrary intent. See *Estate of Christiansen*, 248 Cal. App.2d 398, 414, 424, 56 Cal. Rptr. 505, 516, 522-23 (1967) (court will not assume that the conservatee is abnormally selfish unless that trait is established). A matter not listed may be significant in a particular case. For example, the conservatee may have received property from a parent with the understanding that the conservatee would leave the property to the descendants of that parent. Such an understanding would be a circumstance the court should take into account together with all other relevant circumstances.

#### CROSS-REFERENCES

Definition, court, § 1418

Production of conservatee's will and other relevant estate plan documents, § 2586

### § 2584. Determination and order

2584. After hearing, the court, in its discretion, may approve, modify and approve, or disapprove the proposed action and may authorize or direct the conservator to transfer or dispose of assets or take other action as provided in the court's order.

**Comment.** Section 2584 is new.

#### CROSS-REFERENCES

Appealable orders, § 2750

Definitions

Conservator, § 2400

Court, § 1418

### § 2585. No duty to propose action

2585. Nothing in this article imposes any duty on the conservator to propose any action under this article, and the conservator is not liable for failure to propose any action under this article.

**Comment.** Section 2585 is included to make clear that a conservator is not liable for the failure to propose an estate plan or other action under this article even though the conservatee, if competent and acting as a reasonably prudent person, would have developed an estate plan or would have taken other action in order to minimize taxes and expenses of administration. The remedy for a person who believes that some action should be taken by the conservator under this article is to petition under Section 2580 for an order requiring the conservator to take such action with respect to estate planning or gift giving as is set out in the petition.

#### CROSS-REFERENCES

Definition, conservator, § 2400

Effect of court authorization or approval, § 2103

### § 2586. Production of conservatee's will and other relevant estate plan documents

2586. (a) As used in this section, "estate plan of the conservatee" includes but is not limited to the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions

for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated.

(b) Notwithstanding Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code (lawyer-client privilege), the court, in its discretion, may order that any person having possession of any document constituting all or part of the estate plan of the conservatee shall deliver such document to the court for examination by the court, and, in the discretion of the court, by the attorneys for the persons who have appeared in the proceedings under this article, in connection with the petition filed under this article.

(c) Unless the court otherwise orders, no person who examines any document produced pursuant to an order under this section shall disclose the contents of the document to any other person; and, if such disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court.

[Amended by 1980 Cal. Stats. ch. 246]

Law Revision Commission Comment

1979 Enactment

**Comment.** Section 2586 is new and permits the court to require production of the conservatee's estate plan for confidential examination in proceedings under this article. Under the Evidence Code, the conservator is the holder of the lawyer-client privilege when the client has a conservator. See Evid. Code § 953(b). Under Evidence Code Section 912, the holder of the privilege may waive the lawyer-client privilege. Accordingly, there is no need to rely on Section 2586 if the conservator is willing to waive the lawyer-client privilege and have the lawyer produce the will or other document for consideration in the proceeding under this article. However, Section 2586 provides a procedural means for permitting examination of the will or other document and at the same time protecting the confidentiality of the document to the extent practical in cases where the document is not in the possession of the lawyer who drafted it for the conservatee or where the conservator refuses to waive the lawyer-client privilege or where it is desired to preserve the confidentiality of the document to the extent permitted by the section.

The court has discretion whether to order the production of a document under Section 2586. Such an order may not be needed in a case where consideration of the document is not reasonably necessary to the determination of the petition filed under Section 2580. The court might compel production of a document under Section 2586 but, after reviewing the document, return it to the custodian without further disclosure if the court determined further disclosure was not necessary because the contents of the document were not a significant factor to be considered in making a determination on the petition. The court might decline to order production of the document where the disclosure of its contents would be contrary to the express desire of the conservatee when competent. *Cf.* Section 1138.5 (disclosure of trust terms in proceeding to instruct trustee or make other determinations). Whether the document should be produced in the latter case depends on its importance as a factor to be considered in making the determination whether to authorize or require the action proposed in the petition.

Under prior law, the probate court lacked statutory authority to require the custodian to deliver an incompetent ward's will to the guardian. *Vigne v. Superior Court*, 37 Cal. App.2d 346, 99 P.2d 589 (1940); *Mastick v. Superior Court*, 94 Cal. 347, 29 P. 869 (1892). Section 2586 provides a narrow exception to the prior rule to permit the court to compel the custodian to deliver the will to the court for confidential consideration by the court and the attorneys in connection with a petition under this article.

#### CROSS-REFERENCES

Appealable orders, § 2750

Appointment of legal counsel for conservatee, § 1470

Definition, court, § 1418

### Article 11. Independent Exercise of Powers

**Comment.** Article 11 (commencing with Section 2590) supersedes former Sections 1853 and 1854. Unlike the former sections which applied only to conservators, Article 11 applies both to guardians and conservators. The purpose of the article is to permit the court to authorize an experienced and qualified guardian or conservator to exercise one or more of the powers to which the article applies without the need to petition for court authorization in each instance a power is to be exercised. In appropriate cases, use of the authority under this article will save time and expense in the management of the estate while preserving adequate safeguards through the requirement of



accounting. These provisions, which formerly were limited to conservators, are extended to guardians because the considerations that justify the granting of one of the specified powers to a conservator may justify granting the same power to a guardian in an appropriate case.

**§ 2590. Order granting authority for independent exercise of powers**

2590. The court may, in its discretion, make an order granting the guardian or conservator any one or more or all of the powers specified in Section 2591 if the court determines that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. Subject only to such requirements, conditions, or limitations as are specifically and expressly provided, either directly or by reference, in the order granting the power or powers, the guardian or conservator may exercise the granted power or powers without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as the ward or conservatee could do if possessed of legal capacity.

**Comment.** Section 2590 is based on a portion of former Section 1853 (portion of the first paragraph and the second sentence of the third paragraph). The standard—that the court determine that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to grant the power or powers—has been added. Under this standard, in determining whether to make an order under this article, the court is to consider the circumstances of the particular case, the need for the grant of the power or powers, the qualifications of the guardian or conservator, and the expense of obtaining court authorization for each exercise of the power or powers requested if the petition filed under this article is denied.

The former provision that the powers may be exercised without regard to whether other requirements of this code have been complied with has been revised to allow such powers to be exercised in the same manner as the ward or conservatee could do if possessed of legal capacity. Thus, if sale of real property is authorized, it is not necessary to comply with Article 7 of this chapter since the ward or conservatee would not be required to

do so if competent. However, the guardian or conservator remains subject to the general duty to use ordinary care and diligence in the management of the estate. Section 2401. The court may withdraw or limit a power previously granted under this article. See Section 2593.

Although, if so ordered, powers may be exercised under this article without notice, hearings, authorization, instruction, approval, or confirmation, any transaction not previously authorized, approved, or confirmed by the court is expressly made subject to review by the court on the next accounting of the guardian or conservator. See Section 2625.

#### CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, § 1470

#### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Effect of court authorization or approval, § 2103

Granting authority to independently exercise powers to guardian nominated by will, § 2108

Instructions on exercise of granted powers, § 2595

Request for special notice, § 2700

### § 2591. Powers that may be granted

2591. The powers referred to in Section 2590 are:

(a) The power to contract for the guardianship or conservatorship and to perform outstanding contracts and thereby bind the estate.

(b) The power to operate at the risk of the estate a business, farm, or enterprise constituting an asset of the estate.

(c) The power to grant and take options.

(d) The power to sell at public or private sale real or personal property of the estate.

(e) The power to create by grant or otherwise easements and servitudes.

(f) The power to borrow money and give security for the repayment thereof.

(g) The power to purchase real or personal property.

(h) The power to alter, improve, and repair or raze, replace, and rebuild property of the estate.

(i) The power to let or lease property of the estate for any purpose (including exploration for and removal of gas,

oil, and other minerals and natural resources) and for any period, including a term commencing at a future time.

(j) The power to lend money on adequate security.

(k) The power to exchange property of the estate.

(l) The power to sell property of the estate on credit if any unpaid portion of the selling price is adequately secured.

(m) The power to commence and maintain an action for partition.

(n) The power to exercise stock rights and stock options.

(o) The power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property.

(p) The power to pay, collect, compromise, arbitrate, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship.

(q) The power to employ attorneys, accountants, investment counsel, agents, depositaries, and employees and to pay the expense.

**Comment.** Section 2591 is based on the second paragraph of former Section 1853. Under former Section 1853, the court could authorize a conservator to exercise certain powers without the necessity of obtaining specific court authorization in each case. Under Section 2590, this authority is broadened to include guardians as well as conservators.

Except to the extent the court for good cause otherwise orders, a guardian nominated by will may, to the extent provided in the will, exercise any one or more of the powers listed in Section 2591 without notice, hearing, or court authorization, instructions, approval, or confirmation. See Section 2108.

Some of the powers listed in former Section 1853 are not listed in Section 2591 because they are codified in this division as powers exercisable without court authorization unless the power is restricted by the court. See Sections 2451 (power to collect debts and benefits), 2458 (power to vote shares and securities in person or by proxy), 2459 (life, medical, disability, and other insurance), 2460 (liability and casualty insurance), 2461 (taxes and tax returns), 2462 (power to maintain actions and proceedings, other than partition, and to defend actions and proceedings), 2465 (power to abandon valueless property). The

remaining powers from former Section 1853 are recodified in Section 2591. The power to commence and maintain an action for partition (which former Section 1853 included in the power to institute and maintain all actions) is retained in Section 2591 since court authorization otherwise would be required. Section 2463.

The listing of a power in this section does not require the guardian or conservator to obtain an order under this article in order to exercise the power. See Section 2595(b). In some instances, a power listed in this section may be exercised by the guardian or conservator without court authorization under another provision of this division. See, *e.g.*, Section 2555 (certain leases permitted without court authorization). However, the power is listed in this section because, in other instances, exercise of the same power requires authorization, and an order under this article may permit exercise of the power without such court authorization. See Sections 2553 (leases generally), 2457 (repair and maintenance of home of ward or conservatee and dependents), 2500–2507 (compromise of claims and actions).

### § 2592. Petition

2592. (a) The guardian or conservator may apply by petition for an order under Section 2590.

(b) The application for the order may be included in the petition for the appointment of the guardian or conservator. In such case, the notice of hearing on the petition shall include a statement that the petition includes an application for the grant of one or more powers under this article and shall list the specific power or powers applied for.

(c) If the application for the order is made by petition filed after the filing of the petition for the appointment of the guardian or conservator, notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

#### Legislative Committee Comment—Senate

**Comment.** Section 2592 continues the substance of the first portion of former Section 1853 and the third sentence of the third paragraph of former Section 1853 but adds the requirement of the second sentence of subdivision (b). Also, former Section 1853 required notice to be given to the conservatee; under Section 1460, this requirement is continued and notice also must be given to the ward if 14 or over.

## CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, § 1470

Clerk sets petition for hearing, § 1451

## Definitions

Conservator, § 2400

Guardian, § 2400

## Notice to

Director of Mental Health, § 1461

Director of Developmental Services, § 1461

Veterans Administration, § 1461.5

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice, § 2700

### § 2593. Withdrawal or subsequent limitation of powers

2593. (a) The court, on its own motion or on petition of any interested person, when it appears to be for the best interests of the ward or conservatee or the estate, may withdraw any or all of the powers previously granted pursuant to this article or may impose restrictions, conditions, and limitations on the exercise of such powers by the guardian or conservator.

(b) Notice of the hearing on a petition under this section shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Subdivision (a) of Section 2593 continues the substance of a portion of former Section 1854 except that subdivision (a) permits the court to continue the grant of the powers subject to such restrictions, conditions, and limitations as the court may order. Subdivision (b) is new.

## CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

## Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Interested person, § 1424

Limitation of powers of guardian nominated by will, § 2108

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice, § 2700

### § 2594. Contents of letters; when new letters required

2594. (a) When a power or powers are granted pursuant to this article, the letters of guardianship or conservatorship shall state the power or powers so granted

and the restrictions, conditions, or limitations, if any, prescribed in the order and shall refer to this article.

(b) When a power or powers are granted by a subsequent order, new letters shall be issued in the form described in subdivision (a).

(c) If the powers are withdrawn, or if the powers are restricted, conditioned, or limited by a subsequent order after they are granted, new letters shall be issued accordingly.

**Comment.** Subdivisions (a) and (b) of Section 2594 continue the substance of the fourth and fifth sentences of the third paragraph of former Section 1853 except that the requirement that the letters state any restrictions, conditions, or limitations is new. Subdivision (c) continues the substance of a portion of former Section 1854 except that it is conformed to Section 2593. See the Comment to Section 2593.

#### § 2595. Effect of article

2595. (a) The grant of a power or powers pursuant to this article does not affect the right of the guardian or conservator to petition the court as provided in Section 2403 or to petition the court under other provisions of this code, as to a particular transaction or matter, in the same manner as if the power or powers had not been granted pursuant to this article.

(b) Where authority exists under other provisions of law, either general or specific, for the guardian or conservator to do any act or to enter into any transaction described in Section 2591, the guardian or conservator may proceed under such other provisions of law and is not required to obtain authority under this article.

**Comment.** Subdivision (a) of Section 2595 continues the substance of the last sentence of former Section 1853 and makes clear that the guardian or conservator may submit any transaction or matter to the court in the same manner as if the power or powers had not been granted. Subdivision (b) is new and is added to make clear that this article does not preclude the exercise of powers that may exist under other provisions of law. See the last paragraph of the Comment to Section 2591. This was not clear under prior law. *Compare* *Place v. Trent*, 27 Cal. App.3d 526, 530, 103 Cal. Rptr. 841, 843 (1972), *with* *Olson v.*

United States, 437 F.2d 981, 985 (Ct. Cl. 1971). As to the compensation of the guardian or conservator and the attorney in connection with obtaining court instructions on exercise of powers granted under this article, see the Comment to Section 2640.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2400

Court, § 1418

Guardian, § 2400

Effect of court authorization or approval, § 2103

Guardian nominated by will, § 2108

## CHAPTER 7. INVENTORY AND ACCOUNTS

### Article 1. Definitions and General Provisions

#### § 2600. Definitions

2600. As used in this chapter, unless the context otherwise requires:

- (a) "Conservator" means the conservator of the estate.
- (b) "Guardian" means the guardian of the estate.

**Note.** Section 2600 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Comment.** Section 2600 is new. If one person is appointed as the conservator of the person and estate or as the guardian of the person and estate, that person has the powers and duties provided in this chapter.

#### § 2601. Wages of ward or conservatee

2601. (a) Unless otherwise ordered by the court, if the ward or conservatee is at any time during the continuance of the guardianship or conservatorship employed:

(1) The wages or salaries for such employment are not a part of the estate and the guardian or conservator is not accountable for such wages or salaries.

(2) The wages or salaries for such employment shall be paid to the ward or conservatee and are subject to his or her

control to the same extent as if the guardianship or conservatorship did not exist.

(b) Any court order referred to in subdivision (a) is binding upon the employer only after notice of the order has been received by the employer.

**Comment.** Section 2601 continues the substance of former Sections 1561 and 1910 but extends the provisions to minors.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Payment of wages of minor to minor, Civil Code § 212

Personal allowance for ward or conservatee, § 2421

Request for special notice, § 2700

Right of parent to minor child's earnings, Civil Code §§ 197, 211, 212, 5118

#### § 2602. Order to file inventory or account or to show cause

2602. (a) If the guardian or conservator fails to file an inventory and appraisal or any account within the time allowed by law or by court order, upon request of the ward or conservatee, the spouse or any relative or friend of the ward or conservatee, or any interested person, the court shall order the guardian or conservator to file the inventory and appraisal or to file the account, as the case may be, within such time as the order prescribes or to show cause why the guardian or conservator should not be removed. The person who requested the order shall serve it upon the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as is ordered by the court.

(b) If the guardian or conservator fails to file the inventory and appraisal or to file the account as required by the order within the time prescribed in the order, unless good cause is shown for not doing so, the court, on its own motion or on petition, may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly, and order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto.

(c) The procedure provided in this section is optional and does not preclude the use of any other remedy or



sanction when an inventory and appraisal or account is not timely filed.

**Legislative Committee Comment—Assembly**

**Comment.** Section 2602 is new. The section provides a procedure for requiring an inventory and appraisal or accounting short of removing the guardian or conservator. See also Section 2650 (removal of guardian or conservator for failure to file an inventory or to render an account within the time allowed by law or by court order).

**CROSS-REFERENCES**

Accounting, § 2620

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Inventory and appraisal, § 2610

Small estate, § 2633

**Article 2. Inventory and Appraisal of Estate**

**§ 2610. Filing inventory and appraisal**

2610. (a) Within 90 days after appointment, or within such further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court an inventory and appraisal of the estate, made as of the date of the appointment of the guardian or conservator.

(b) The guardian or conservator shall take and subscribe to an oath that the inventory contains a true statement of all of the estate of the ward or conservatee of which the guardian or conservator has possession or knowledge. The oath shall be endorsed upon or annexed to the inventory.

(c) The property described in the inventory shall be appraised in the manner provided for the inventory and appraisal of estates of decedents. The guardian or conservator may appraise the assets which an executor or administrator could appraise under Section 605.

(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 appraisal 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 an inheritance tax referee.

Legislative Committee Comment—Senate

**Comment.** Subdivision (a) of Section 2610 continues the substance of the first sentence of subdivision (a) of former Section 1550 and the first sentence of subdivision (a) of former Section 1901 except that “90 days” has been substituted for “three months” to conform to subdivision (d) of Section 2610, and it is made clear that a petition for additional time may be made *ex parte*. Subdivision (b) continues the oath requirement of the third sentence of subdivision (a) of former Section 1550 and the third sentence of subdivision (a) of former Section 1901, but the language of subdivision (b) is drawn from Section 604 (estate of decedent). Subdivision (c) continues the substance of the remainder of the third sentence and the fourth sentence of subdivision (a) of former Section 1550 and the comparable portion of former Section 1901. Subdivision (d) continues the substance of subdivision (b) of former Section 1550 and subdivision (b) of former Section 1901, except that the appraisal by the conservator in lieu of an inheritance tax referee is made optional rather than mandatory.

CROSS-REFERENCES

- Affirmation in lieu of oath, Code Civ. Proc. § 2015.6
- Court order to file inventory and appraisal, § 2602
- Declaration under penalty of perjury, Code Civ. Proc. § 2015.5
- Definitions
  - Conservator, § 2600
  - Court, § 1418
  - Guardian, § 2600
- Inventory and appraisal by
  - Guardian for particular property, § 2109
  - Guardian or conservator for nonresident, § 2107
  - Temporary guardian or conservator, § 2255
- Notice to Veterans Administration, § 1461.5
- Request for special notice, § 2700
- Termination of proceeding before filing of inventory, § 2633

**§ 2611. Sending copy to Director of Mental Health or Director of Developmental Services**

2611. If the ward or conservatee is or has been during the guardianship or conservatorship a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the guardian or conservator shall mail a copy of the inventory and appraisal filed under Section 2610 to the director of the appropriate department at the director's

office in Sacramento not later than 15 days after the inventory and appraisal is filed with the court. Compliance with this section is not required if an unrevoked certificate described in subdivision (c) of Section 1461 is on file with the court with respect to the ward or conservatee.

**Comment.** Section 2611 continues the fifth sentence of subdivision (a) of former Section 1550 and the fifth sentence of subdivision (a) of former Section 1901. The language has been revised to make clear that it is a copy of the inventory and appraisal filed under Section 2610 that is to be mailed to the director. A provision that the mailing be not later than 15 days after the filing has been added, and the last sentence has been added to conform to Section 1461.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

##### Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

### § 2612. Sending copy to county assessor

2612. If a timely request is made, the clerk of court shall mail a copy of the inventory and appraisal filed under Section 2610 to the county assessor.

**Comment.** Section 2612 continues the substance of the second sentence of subdivision (a) of former Section 1550 and the second sentence of subdivision (a) of former Section 1901. The language has been revised to permit delivery by mail. See also Section 1466 (personal delivery in lieu of mailing).

#### CROSS-REFERENCES

Definition, court, § 1418

##### Mailing

Manner of, § 1465

When complete, § 1465

### § 2613. Subsequently discovered or acquired property; supplemental inventory and appraisal

2613. Whenever any property of the ward or conservatee is discovered that was not included in the inventory, or whenever any other property is inherited or

acquired by the ward or conservatee (other than by the actions of the guardian or conservator in the investment and management of the estate), the guardian or conservator shall file a supplemental inventory and appraisal for the property so discovered, inherited, or acquired, and like proceedings shall be followed with respect thereto as in the case of an original inventory.

**Comment.** Section 2613 continues the substance of the last sentence of subdivision (a) of former Section 1550 and the last sentence of subdivision (a) of former Section 1901. Wages or salaries of the ward or conservatee from employment during the guardianship or conservatorship are not part of the estate unless otherwise ordered by the court. See Section 2601.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 2600

Guardian, § 2600

Notice to Veterans Administration, § 1461.5

#### § 2614. Objections to appraisals

2614. (a) Within 30 days after the inventory and appraisal is filed, the guardian or conservator or any creditor or other interested person may file written objections to any or all appraisals. The clerk shall set the objections for hearing not less than 15 days after their filing.

(b) At least 10 days before the hearing, the party filing the written objections shall mail a notice of the time and place of the hearing and a copy of the objections to all of the following (other than the person filing the objections):

- (1) The guardian or conservator.
- (2) The spouse and the relatives of the ward or conservatee within the second degree.
- (3) The inheritance tax referee.

(c) The court shall determine the objections and may fix the true value of any asset to which objection has been filed. For the purpose of this subdivision, the court may cause an independent appraisal or appraisals to be made by at least one additional appraiser at the expense of the estate or, if the objecting party is not the guardian or conservator and the objection is rejected by the court, the court may assess the cost of any such additional appraisal or appraisals against the objecting party.

**Comment.** Section 2614 continues former Section 1901.5 and supersedes former Section 1550.1 except that (1) the time for filing written objections has been increased from 15 to 30 days to provide sufficient time to file objections after receipt of notice pursuant to Section 2611 or 2702, which provide for notice of the filing of the inventory and appraisal to be given within 15 days after the filing and (2) the former requirement that notice of hearing and a copy of the objections be “served” on the persons listed in subdivision (b) has been replaced by the requirement that such notice and copy be mailed to such persons. “Creditor” has been added to subdivision (a) for clarity.

#### CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, § 1470

#### Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Interested person, § 1424

#### Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

### § 2615. Consequences of failure to file inventory

2615. If a guardian or conservator fails to file any inventory required by this article within the time prescribed by law or by court order, the guardian or conservator is liable for damages for any injury to the estate, or to any interested person, resulting from the failure timely to file the inventory. Any damages awarded pursuant to this section are a charge upon the bond of the guardian or conservator. If the bond is insufficient, or if there is no bond, the damages are a charge against the personal assets of the guardian or conservator.

**Comment.** Section 2615 continues the substance of a portion of former Section 1902 and supersedes former Section 1551.

#### CROSS-REFERENCES

#### Definitions

Conservator, § 2600

Guardian, § 2600

Interested person, § 1424

Liability of guardian or conservator not limited to amount of bond, § 554

Nature of surety's liability, § 554

Removal of guardian or conservator for failure to file inventory, § 2650

**§ 2616. Examination concerning assets of estate**

2616. (a) A petition may be filed under this section by any one or more of the following:

- (1) The guardian or conservator.
- (2) The ward or conservatee.
- (3) A creditor or other interested person, including persons having only an expectancy or prospective interest in the estate.

(b) The petition may allege any one or more of the following:

(1) A named person is suspected of having embezzled, concealed, smuggled, or falsely or fraudulently obtained or wrongfully disposed of any property of the ward or conservatee.

(2) A named person has in such person's possession, or has knowledge of, any instrument in writing belonging to the ward or conservatee.

(3) A named person asserts a claim against the ward or conservatee or the estate.

(4) The estate asserts a claim against a named person.

(c) Upon the filing of a petition under this section, the court may cite the named person to appear before the court, and the court and the petitioner may examine the named person under oath upon the matters recited in the petition. If the named person is not in the county where letters issued, the examination shall be made under this section but otherwise the procedure and the rights and duties of the parties shall be governed by the provisions of Sections 613, 614, and 615.

**Comment.** Section 2616 continues the substance of former Section 1903 and supersedes the somewhat narrower provisions of former Section 1552. The reference to Section 613 in former Section 1903 has been expanded to refer to Sections 613, 614, and 615. This change is consistent with the broad general reference found in former Section 1552. The reference to Section 614 is a useful clarification since that section authorizes the use of written interrogatories. Sections 614 and 615 also include provisions relating to the enforcement of the right of examination. The estate is liable for the necessary expenses of an examinee who appears and is found innocent. Section 613.

## CROSS-REFERENCES

## Definitions

- Conservator, § 2600
- Court, § 1418
- Guardian, § 2600
- Interested person, § 1424
- Petition must be verified, § 1450
- Production of conservatee's will or other document, § 2586

**Article 3. Accounts****§ 2620. Presentation of account for settlement and allowance**

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court, the guardian or conservator shall present the account of the guardian or conservator to the court for settlement and allowance.

(b) The account shall state the period covered by the account and contain a summary showing all of the following:

(1) If the first account, the amount of appraisalment; if a subsequent account, the amount chargeable from the prior account.

(2) The amount of any supplemental appraisalment filed within the period covered by the account.

(3) The amount of cash receipts, excluding amounts reported under paragraph (4).

(4) The gains on sales or other increases in assets, if any.

(5) The amount of cash disbursements, excluding amounts reported under paragraph (6).

(6) The losses on sales or other decreases in assets, if any.

(7) The amount of property on hand.

(c) The account shall contain itemized schedules showing receipts, disbursements, transactions, and balance of property on hand.

(d) The petition for approval of the account or a report accompanying the petition shall contain all of the following:

(1) Descriptions of all sales, purchases, changes in the form of assets, or other transactions occurring during the period of the account that are not otherwise readily understandable from the schedules.

(2) Explanations of any unusual items appearing in the account.

(3) Any additional information required by the court.

(e) The petition requesting approval of the account may include additional requests for authorization, instruction, approval, or confirmation authorized by this division, including, but not limited to, a request for any order authorized under Chapter 8 (commencing with Section 2640).

(f) When an account is rendered by or on behalf of two or more joint guardians or conservators, the court, in its discretion, may settle and allow the account upon the verification of any of them.

**Comment.** Section 2620 supersedes former Sections 1553 and 1904. Subdivisions (a) and (f) continue the substance of former Section 1904. Subdivisions (b), (c), (d), and (e) are new. Subdivisions (b), (c), and (d) are drawn from local court rules. Subdivision (e) makes clear that the petition for approval of the account may include such additional requests as requests for compensation for services rendered by the guardian or conservator of the estate, compensation for services rendered by the attorney for the guardian or conservator of the person or estate, compensation for the guardian or conservator of the person, monthly personal allowance for the conservatee, monthly allowance for the support of the conservatee and the dependents of the conservatee, periodic payments to the guardian or conservator or attorney, or distribution of excess income to relatives of the conservatee. The courts generally prefer to determine these kinds of matters when an account is being settled. See *W. Johnstone & G. Zillgitt, California Conservatorships* §§ 6.8, 6.26, 6.45, at 233, 244, 255–56 (Cal. Cont. Ed. Bar 1968).

#### CROSS-REFERENCES

Account must be verified, § 1450

Account where proceeding terminates before filing of inventory, § 2633

Accounting upon removal of guardian or conservator, § 2653

Appealable orders, § 2750

Appointment of legal counsel for ward or conservatee, § 1470

Compensation of guardian or conservator or attorney, §§ 2640-2643

Court order to file account, § 2602

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Effect of court authorization or approval, § 2103

Nonresident ward or conservatee, § 2107



Notice to Veterans Administration, § 1461.5  
 Removal for failure to render account, § 2650  
 Review of sales, purchases, and other transactions, § 2625  
 Settlement of accounts upon  
   Resignation or removal of guardian or conservator, § 2630  
   Termination of guardianship or conservatorship, § 2630  
 Small estate, § 2628

### § 2621. Notice of hearing

2621. Notice of the hearing on the account of the guardian or conservator shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. If notice is required to be given to the Director of Mental Health or the Director of Developmental Services under Section 1461, the account shall not be settled or allowed unless notice has been given as provided in Section 1461.

**Comment.** The first sentence of Section 2621 is new; the second sentence is based on portions of former Sections 1554 and 1905. Unless notice is given or waived as provided in Section 1461, if the account is settled without giving notice to the Director of Mental Health or the Director of Developmental Services in the cases where notice is required under Section 1461, the statute of limitations does not run against any claim of the State Department of Mental Health or the State Department of Developmental Services against the estate for board, care, maintenance, or transportation of the ward or conservatee. See Section 1461 (d).

#### CROSS-REFERENCES

##### Definitions

  Conservator, § 2600  
   Guardian, § 2600  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700

### § 2622. Objections to account

2622. The ward or conservatee, the spouse or any relative or friend of the ward or conservatee, or any creditor or other interested person may file written objections to the account of the guardian or conservator, stating the items of the account to which objection is made and the basis for the objection.

**Comment.** Section 2622 is new. No comparable provision was contained in the former guardianship or conservatorship statute, but Section 2622 appears to codify prior practice. See W.

Johnstone & G. Zillgitt, California Conservatorships § 6.42, at 253 (Cal. Cont. Ed. Bar 1968).

#### CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, § 1470

#### Definitions

Conservator, § 2600

Guardian, § 2600

Interested person, § 1424

Effect of court authorization or approval, § 2103

### § 2623. Compensation and expenses of guardian or conservator

2623. The guardian or conservator shall be allowed all of the following:

(a) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the court determines is just and reasonable).

(b) Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.

(c) All reasonable disbursements made before appointment as guardian or conservator.

(d) In the case of termination other than by the death of the ward or conservatee, all reasonable disbursements made after the termination of the guardianship or conservatorship but prior to the discharge of the guardian or conservator by the court.

(e) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred prior to the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the executor or administrator of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.

**Comment.** Section 2623 continues the substance of former Section 1908 and supersedes the first paragraph of former Section 1556 except that the limitation on the compensation for a nonprofit corporation and its attorney is continued in Section 2104. The reference to "such compensation for services rendered

by the guardian or conservator of the person as the court determines is just and reasonable" has been added in subdivision (a) in accord with prior practice. See the Comment to Section 2620. The amount incurred in the performance of the duties of the guardian or conservator includes, for example, amounts paid for support, maintenance, or education of the ward or conservatee and of persons legally entitled to support, maintenance or education from the ward or conservatee. See Section 2420. See also Sections 2430-2431 (payment of debts).

## CROSS-REFERENCES

Appealable orders, § 2750

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Independent exercise of powers, §§ 2590-2591

Nonprofit charitable corporation as guardian or conservator, limitation on compensation for corporation and attorney, § 2104

Order authorizing periodic payments of compensation to guardian, conservator, or attorney, § 2643

Order fixing compensation for guardian, conservator, or attorney, §§ 2640-2642

Request for special notice, § 2700

### § 2624. Investment of funds

2624. Upon each accounting, the guardian or conservator shall show that, during the period covered by the account, all cash has been kept invested in interest bearing accounts or investments authorized by law except for such amounts of cash as are reasonably necessary for the orderly administration of the estate.

**Comment.** Section 2624 continues former Sections 1556.3 and 1912.

## CROSS-REFERENCES

Definitions

Conservator, § 2600

Guardian, § 2600

### § 2625. Review of sales, purchases, and other transactions

2625. Any sale or purchase of property or other transaction not previously authorized, approved, or confirmed by the court is subject to review by the court upon the next succeeding accounting of the guardian or conservator occurring after the transaction. Upon such accounting and review, the court may hold the guardian or conservator liable for any violation of duties in connection

with the sale, purchase, or other transaction. Nothing in this section shall be construed to affect the validity of any sale or purchase or other transaction.

**Comment.** Section 2625 continues and expands former Sections 1519 and 1862. The former reference to court review of sales not previously “disapproved” has been omitted as unnecessary. The former provisions are expanded to include review of any transaction not previously authorized, approved, or confirmed, not merely sales or purchases.

Section 2620 requires disclosure of transactions occurring during the period covered by the account: Subdivision (c) of Section 2620 requires that the account contain itemized schedules showing the transactions, and subdivision (d)(1) requires a description of all sales, purchases, changes in the form of assets, or other transactions that are not readily understandable from the schedules. If the transactions have been previously authorized, approved, or confirmed by the court, they need not again be reviewed under Section 2625. See Section 2103 (effect of court authorization, approval, or confirmation). However, other transactions—those that did not require court authorization and those that required but were made without court authorization—are subject to review under Section 2625 at the time of the accounting.

The fact that a particular transaction is one that required prior court authorization which was not obtained does not preclude the court from approving and confirming the transaction at the time of the accounting or on a petition for approval and confirmation under Section 2403. See *Place v. Trent*, 27 Cal. App.3d 526, 103 Cal. Rptr. 841 (1972). However, if the transaction is one that required court authorization which was not obtained, the guardian or conservator should be prepared to give the same justification for the transaction at the time it is reviewed under Section 2625 that would have been required had authorization been sought before the transaction was made, and the guardian or conservator runs the risk that the court will not approve and confirm the transaction at the time of the accounting. A guardian or conservator may be surcharged for improper payments or other wrongful acts or omissions that cause pecuniary damage to the estate. See discussion in *W. Johnstone & G. Zillgitt, California Conservatorships* § 6.43, at 253–54 (Cal. Cont. Ed. Bar 1968). Nevertheless, unless the court determines that the transaction in question was improper because the guardian or conservator failed to use ordinary care and diligence (Section 2401) or for

some other reason, the court should approve and confirm the transaction in connection with its review of the current account. On the other hand, if the court determines, for example, that there was a loss from the failure to use ordinary care and diligence as the court views that requirement as applied to the particular transaction when it is reviewed at the time of the accounting, the court may surcharge the guardian or conservator. *Cf.* Estate of Hilde, 112 Cal. App.2d 189, 246 P.2d 79 (1952) (administrator surcharged where estate property sold below appraised value without required court authorization).

## CROSS-REFERENCES

Appealable orders, § 2750

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Review of periodic payments of compensation to guardian, conservator, or attorney, § 2643

### § 2626. Termination of proceeding upon exhaustion of estate

2626. If it appears upon the settlement of any account that the estate has been entirely exhausted through expenditures or disbursements which are approved by the court, the court, upon settlement of the account, shall order the proceeding terminated and the guardian or conservator forthwith discharged unless the court determines that there is reason to continue the proceeding.

**Comment.** Section 2626 continues former Sections 1559 and 1909, except that the authority for the court to continue the proceeding is new. Thus, for example, if it appears that the guardianship or conservatorship estate will be replenished by receiving new assets from some source, this section does not require termination of the proceeding.

## CROSS-REFERENCES

Appealable orders, § 2750

Continuing jurisdiction of court to settle accounts, § 2630

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Effect of court authorization or approval, § 2103

Limitation of action against surety on bond, § 2333

Request for special notice, § 2700

Termination of proceeding on transfer of all assets out of state, § 2808

**§ 2627. Settlement of accounts and release by ward; discharge of guardian**

2627. (a) After a ward has reached majority, the ward may settle accounts with the guardian and give the guardian a release which is valid if obtained fairly and without undue influence.

(b) Except as otherwise provided by this code, a guardian is not entitled to a discharge until one year after the ward has attained majority.

**Comment.** Subdivision (a) of Section 2627 continues the substance of former Section 1592. Subdivision (b) continues the substance of former Section 1593.

The former guardian has the burden of showing that a release given by the ward pursuant to subdivision (a) is just and fair. *Smith v. Fidelity & Deposit Co.*, 130 Cal. App. 45, 56-57, 19 P.2d 1018, 1023 (1933). Such a release does not operate to discharge the guardian, however, since the discharge must be granted by the court. See *Cupp, McCarroll, & McClanahan, Guardianship of Minors*, in 1 California Family Lawyer § 16.75, at 661 (Cal. Cont. Ed. Bar 1961). See also Section 2630 (ward's majority does not cause court to lose jurisdiction to settle accounts).

**CROSS-REFERENCES**

Appealable orders, § 2750

Appointment of legal counsel for ward or conservatee, § 1470

Definitions

Court, § 1418

Guardian, § 2600

Effect of court authorization or approval, § 2103

Request for special notice, § 2700

**§ 2628. Order dispensing with accounting in case of small estate**

2628. (a) As used in this section, "public benefit payments" means payments received or to be received under either or both of the following:

(1) Part 3 (commencing with Section 11000) of, Part 4 (commencing with Section 16000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(2) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of, Chapter 7 of Title 42 of the United States Code.

(b) The court may make an order that the guardian or conservator need not present the accounts otherwise required by this article so long as all of the following conditions are satisfied:

(1) The estate at the beginning and end of the accounting period for which an account is otherwise required consisted of property of a total net value of less than two thousand dollars (\$2,000).

(2) The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than one hundred fifty dollars (\$150).

(3) All income of the estate during the accounting period, if not retained, was spent for the benefit of the ward or conservatee.

(c) Notwithstanding that the court has made an order under subdivision (b), the ward or conservatee or any interested person may petition the court for an order requiring the guardian or conservator to present an account as otherwise required by this article or the court on its own motion may make such an order. An order under this subdivision may be made ex parte or on such notice of hearing as the court in its discretion requires.

(d) For any accounting period during which all of the conditions of subdivision (b) are not satisfied, the guardian or conservator shall present the account as otherwise required by this article.

[Repealed and Added by 1980 Cal. Stats. ch. 246]

Legislative Committee Comment—Assembly

**Comment.** Section 2628 is designed to reduce expense of administration of small estates. In determining whether the monthly income of the estate satisfies the small estate requirements, income from public benefit payments is excluded. These payments are: (1) state aid and medical assistance (Welf. & Inst. Code §§ 11000-15520), (2) county aid and relief to indigents (Welf. & Inst. Code §§ 17000-17410), (3) federal old age, survivors, and disability insurance benefits (42 U.S.C. §§ 401-431 (1970 & Supp. V 1976)), and (4) federal supplemental security income for the aged, blind, and disabled (42 U.S.C. §§ 1381-1383c (1970)). See *Review of Selected 1976 California Legislation*, 8 Pac. L.J. 165, 188 (1977).

## CROSS-REFERENCES

## Definitions

- Conservator, § 2600
- Court, § 1418
- Guardian, § 2600
- Dispensing with bond, § 2323

**Article 4. Accounts on Termination of Relationship****§ 2630. Continuing jurisdiction of court**

2630. The termination of the relationship of guardian and ward or conservator and conservatee by the death of either, by the ward attaining majority, by the determination of the court that the guardianship or conservatorship is no longer necessary, by the removal or resignation of the guardian or conservator, or for any other reason, does not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the guardian or conservator or for any other purpose incident to the enforcement of the judgments and orders of the court upon such accounts or upon the termination of the relationship.

**Comment.** Section 2630 continues the substance of the first sentence of former Section 1555 and the first sentence of former Section 1907. The last portion of the first sentence of former Section 1907 is continued in Section 2630 and is made applicable to guardianships. The reference to the removal or resignation of the guardian or conservator is new.

## CROSS-REFERENCES

- Account where proceeding terminates before filing of inventory, § 2633
- Appealable orders, § 2750
- Appointment of legal counsel for ward or conservatee, § 1470
- Definitions
  - Conservator, § 2600
  - Court, § 1418
  - Guardian, § 2600

**§ 2631. Death of ward or conservatee; disposition of assets**

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 of the deceased ward or conservatee, 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. The value of the property of the deceased ward or conservatee, for the purpose of ascertaining the right to transfer under Section 630, shall be determined after the deduction of the expenses so paid.

**Comment.** Section 2631 continues the substance of former Sections 1560 and 1911. If the guardian or conservator pays expenses from assets of the ward or conservatee which are the subject of a specific gift by will, the gift is not thereby adeemed, and the rules of abatement set forth in Sections 750-753 apply. See *Estate of Mason*, 62 Cal.2d 213, 397 P.2d 1005, 42 Cal. Rptr. 13 (1965).

#### CROSS-REFERENCES

Appealable orders, § 2750

Care of estate after death of ward or conservatee, § 2467

#### Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Disposition of estate by public guardian, Welf. & Inst. Code § 8012

Termination of conservatorship on death of conservatee, § 1860

Termination of guardianship on death of ward, § 1600

### § 2632. Account of dead, incapacitated, or absconding guardian or conservator

2632. (a) If the guardian or conservator dies or has a conservator of the estate appointed, the account may be presented by:

(1) The executor or administrator of the deceased guardian or conservator.

(2) The conservator of the estate appointed for the guardian or conservator.

(b) Upon petition of the successor of the guardian or conservator, the court shall compel the executor or administrator of the deceased guardian or conservator or the conservator of the estate appointed for the guardian or conservator to render the account and shall settle the account as in other cases.

(c) If the guardian or conservator dies and there is no executor or administrator, or if the guardian or conservator becomes incapable of rendering an account and has no conservator of the estate, or if the guardian or conservator absconds, the court may compel the attorney for the guardian or conservator or the attorney of record in the guardianship or conservatorship proceeding to render an account of the guardianship or conservatorship to the extent that information or records are available to the attorney. The account of the attorney need not be verified. A fee shall be allowed to the attorney by the court for this extraordinary service.

**Comment.** Section 2632 continues all of former Section 1555 except the first sentence (continued in Section 2630) and all of former Section 1907 except the first sentence (continued in Section 2630) and the last sentence (continued in Section 2104).

#### CROSS-REFERENCES

Appealable orders, § 2750

Definitions

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Joint guardians or conservators, § 2105

Nonprofit charitable corporation as guardian or conservator, limitation on fee for attorney, § 2104

Removal of guardian or conservator in case of incapacity, §§ 2650-2653

### § 2633. Account where relationship terminates before filing inventory

2633. Subject to Section 2630, where the guardianship or conservatorship terminates before the inventory of the estate has been filed, the court, in its discretion and upon such notice as the court may require, may make an order that the guardian or conservator need not file the inventory and appraisal and that the guardian or conservator

shall file an account covering only those assets of the estate of which the guardian or conservator has possession or control.

**Legislative Committee Comment—Assembly**

**Comment.** Section 2633 is new. The section authorizes the court, for example, to dispense with an inventory and appraisal where the conservatee dies a few days after the appointment of the conservator. This will permit the court, in its discretion, to waive an inventory and permit an accounting of assets actually marshalled, thereby avoiding (1) the need to inventory estate assets—such as stocks, oil rights, or real property—where the conservator has not yet taken possession or control of the asset and (2) the resulting additional fees for the conservator and an unnecessary delay in turning matters over to the executor of the deceased conservatee.

**CROSS-REFERENCES**

**Definitions**

Conservator, § 2600

Court, § 1418

Guardian, § 2600

Inventory and appraisal, § 2610

Termination of conservatorship, § 1860

Termination of guardianship, §§ 1600, 1601

**CHAPTER 8. COMPENSATION OF GUARDIAN,  
CONSERVATOR, AND ATTORNEY**

**§ 2640. Petition by guardian or conservator of estate**

**2640.** (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:

(1) The guardian or conservator of the estate for services rendered in that capacity to that time.

(2) The guardian or conservator of the person for services rendered in that capacity to that time.

(3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both.

(b) Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order allowing (1) such compensation requested in the petition as the court determines is just and reasonable to the guardian or conservator of the estate for services rendered in that capacity or to the guardian or conservator of the person for services rendered in that capacity, or to both, and (2) such compensation requested in the petition as the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation so allowed shall thereupon be charged to the estate.

Legislative Committee Comment—Assembly

**Comment.** Section 2640 is based on the second paragraph of former Section 1556. The court may also authorize periodic payments on account to the guardian or conservator or attorney. See Section 2643.

The matter of compensation for services of the guardian or conservator and the attorney in connection with obtaining instructions from the court is left to the discretion of the court. The court has discretion, for example, whether to allow compensation where instructions are sought concerning (1) a transaction that does not require court authorization or (2) a transaction covered by a previously made order granting authority for independent exercise of powers. See, *e.g.*, Sections 2450 (right to petition for instructions concerning exercise of estate management powers), 2595 (right to petition for instructions where order granting authority for independent exercise of powers made). See also the Comment to Section 2450. The court should allow compensation where instructions are sought unless the court determines that petitioning for instructions was not reasonably necessary under the circumstances.

Notwithstanding the authority of the guardian or conservator of the estate to petition under Section 2640 for an order fixing the compensation of the guardian or conservator of the person or the attorney, the guardian or conservator of the person or the attorney may petition for such an order. See Sections 2641 (guardian or conservator of person) and 2642 (attorney). As to compensation of the guardian or conservator of the person, see the Comment to Section 2641.

CROSS-REFERENCES

Appealable orders, § 2750

Appointment of legal counsel for ward or conservatee, § 1470

Clerk sets petition for hearing, § 1451  
 Contingent fee contract with attorney, § 2644  
 Definition, court, § 1418  
 Fee for attorney rendering account for dead, incapacitated, or absconding guardian or conservator, § 2632  
 Independent exercise of powers, § 2591  
 Nonprofit charitable corporation as guardian or conservator, limit on compensation and on fee allowed attorney, § 2104  
 Notice to Veterans Administration, § 1461.5  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700

### **§ 2641. Petition by guardian or conservator of person**

**2641.** (a) At any time permitted by Section 2640 and upon the notice therein prescribed, the guardian or conservator of the person may petition the court for an order fixing and allowing compensation for services rendered to that time in such capacity.

(b) Upon the hearing, the court shall make an order allowing such compensation as the court determines just and reasonable to the guardian or conservator of the person for services rendered. The compensation allowed shall thereupon be charged against the estate.

**Comment.** Section 2641 is new. The section is comparable to Section 2642 and is in accord with prior practice. See *W. Johnstone & G. Zillgitt, California Conservatorships § 6.26, at 244* (Cal. Cont. Ed. Bar 1968) (“The conservator of the person does not account to the court. . . . His petition for fees for his services may be part of the account of the conservator of the estate or he may file a separate petition for fees.”). As under prior practice, the court has discretion whether to allow the guardian or conservator of the person compensation since allowance of compensation is required only where it is “just” to allow compensation.

#### CROSS-REFERENCES

Accounting, compensation for guardian of person, § 2623  
 Appealable orders, § 2750  
 Appointment of legal counsel for ward or conservatee, § 1470  
 Clerk sets petition for hearing, § 1451  
 Definition, court, § 1418  
 Nonprofit charitable corporation as guardian or conservator, limit on compensation, § 2104  
 Notice to Veterans Administration, § 1461.5  
 Periodic payment of compensation, § 2643  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700

### § 2642. Petition by attorney

2642. (a) At any time permitted by Section 2640 and upon the notice therein prescribed, an attorney who has rendered legal services to the guardian or conservator of the person or estate or both, including services rendered under Section 2632, may petition the court for an order fixing and allowing compensation for such services rendered to that time.

(b) Upon the hearing, the court shall make an order allowing such compensation as the court determines reasonable to the attorney for services rendered to the guardian or conservator. The compensation so allowed shall thereupon be charged against the estate.

**Comment.** Section 2642 is based on former Section 1556.1 (guardianships) and applies both to guardianships and to conservatorships. Former Section 1908 did not expressly provide for a direct petition by the attorney in case of conservatorships but referred to attorney's fees which may be included in the conservator's account, but former Section 1702 appears to have authorized a direct petition by the attorney in the case of a conservatorship by incorporating the provisions of former Section 1556.1. See *W. Johnstone & G. Zillgitt, California Conservatorships* §§ 6.8, 6.25, at 233, 244 (Cal. Cont. Ed. Bar 1968). Direct petition by the attorney is provided for in probate estate procedure. See Section 911. See also discussion in Comment to Section 2640.

#### CROSS-REFERENCES

- Accounting, allowance for attorney's fees, § 2623
- Appealable orders, § 2750
- Appointment of legal counsel for ward or conservatee, § 1470
- Clerk sets petition for hearing, § 1451
- Contingent fee contracts, § 2644
- Definition, court, § 1418
- Fee for attorney rendering account for dead, incapacitated, or absconding guardian or conservator, § 2632
- Nonprofit charitable corporation as guardian or conservator, limit on fee for attorney, § 2104
- Notice to Veterans Administration, § 1461.5
- Periodic payments of compensation, § 2643
- Petition must be verified, § 1450
- Proof of giving of notice, § 1468
- Request for special notice, § 2700

**§ 2643. Order authorizing periodic payments of compensation to guardian or conservator or attorney**

2643. (a) On petition by the guardian or conservator of the person or estate or both, the court may by order authorize periodic payments on account to any one or more of the following persons for the services rendered by such person during the period covered by each payment:

- (1) The guardian of the person.
- (2) The guardian of the estate.
- (3) The conservator of the person.
- (4) The conservator of the estate.
- (5) The attorney for the guardian or conservator of the person or estate or both.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The petition shall describe the services to be rendered on a periodic basis and the reason why authority to make periodic payments is requested. In fixing the amount of the periodic payment, the court shall take into account the services to be rendered on a periodic basis and the reasonable value of such services. The guardian or conservator of the estate may make the periodic payments authorized by the order only if the services described in the petition are actually rendered. The payments made pursuant to the order are subject to review by the court upon the next succeeding accounting of the guardian or conservator of the estate to determine that the services were actually rendered and that the amount paid on account was not unreasonable, and the court shall make an appropriate order if the court determines that the amount paid on account was either excessive or inadequate in view of the services actually rendered.

**Comment.** Section 2643 is a new provision that makes clear that the court, in its discretion, may authorize periodic payments of compensation. Similar authority to authorize periodic payments of compensation to a trustee is found in Section 1122. Section 2643 permits the court, for example, to authorize the guardian or conservator of the estate to make a payment each month on account to the attorney for services rendered during the immediately preceding month.

An order under Section 2643 may be particularly useful in the case of a large estate where there may be tax advantages arising from making periodic payments of compensation. Where the guardian or conservator of the person is compensated and devotes substantial time to the care of the ward or conservatee, periodic payments may be needed. Periodic payments also avoid problems that may exist when payment is delayed: The payments provide funds on a current basis to cover out-of-pocket expenses in connection with providing services, avoid the need to determine questions that turn on the value of the loss of use of money caused by delay in payment, and tend to protect against variations in the value of money which may be significant in an inflationary period. Where services are rendered on a periodic basis, Section 2643 provides a means of avoiding frequent accountings or petitions for compensation merely to permit payment of compensation to the guardian or conservator or attorney.

The periodic payments are "on account." The actual compensation is determined at the time the court reviews the account of the guardian or conservator. At that time, the payments are subject to review by the court in light of the services actually rendered. If the total of the periodic payments is inadequate to reflect the just and reasonable compensation to the guardian or conservator or reasonable attorney fees, the court should make an order allowing additional compensation or fees for the services actually rendered. If the amount paid is unreasonably high in view of the services actually rendered, the court should make an appropriate order. Such an order might be one that requires the guardian or conservator to credit the excess paid against the amount to be paid for future services.

#### CROSS-REFERENCES

Appealable orders, § 2750  
 Clerk sets petition for hearing, § 1451  
 Compensation and expenses of guardian or conservator, § 2623  
 Definition, court, § 1418  
 Independent exercise of powers, § 2591 (g)  
 Nonprofit charitable corporation as guardian or conservator, limit on compensation and on fee of attorney, § 2104  
 Notice to Veterans Administration, § 1461.5  
 Petition must be verified, § 1450  
 Proof of giving of notice, § 1468  
 Request for special notice, § 2700

#### § 2644. Contingent fee contract with attorney

2644. (a) When it is to the advantage, benefit, and best interest of the ward or conservatee or the estate, the



guardian or conservator of the estate may contract with an attorney for a contingent fee for the attorney's services in representing the ward or conservatee or the estate in connection with a matter that is of a type that is customarily the subject of a contingent fee contract, but such a contract is valid only if (1) the contract is made pursuant to an order of the court authorizing the guardian or conservator to execute the contract or (2) the contract is approved by order of the court.

(b) To obtain an order under this section, the guardian or conservator shall file a petition with the court showing the advantage to the ward or conservatee or the estate of the contingent fee contract. A copy of the contingent fee contract shall be attached to the petition.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) As used in this section, "court" includes either of the following:

(1) The court in which the guardianship or conservatorship proceeding is pending.

(2) Where the contract is in connection with a matter in litigation, the court in which the litigation is pending.

**Comment.** Section 2644 is new. The section makes clear that the guardian or conservator, with court authorization or approval, may make a contingent fee contract with an attorney. The contract may, but need not, be made prior to the rendering of any services by the attorney.

#### CROSS-REFERENCES

Appealable orders, § 2750

Clerk sets petition for hearing, § 1451

Court approval of minor's contract for attorney's fees, § 3302

Definition, court, § 1418

Independent exercise of powers, § 2591

Notice to Veterans Administration, § 1461.5

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Request for special notice, § 2700

## CHAPTER 9. REMOVAL OR RESIGNATION

### Article 1. Removal of Guardian or Conservator

#### § 2650. Causes for removal

2650. A guardian or conservator may be removed for any of the following causes:

(a) Failure to use ordinary care and diligence in the management of the estate.

(b) Failure to file an inventory or to render an account within the time allowed by law or by court order.

(c) Continued failure to perform duties or incapacity to perform duties suitably.

(d) Conviction of a felony, whether before or after appointment as guardian or conservator.

(e) Gross immorality.

(f) Having such an interest adverse to the faithful performance of duties that there is an unreasonable risk that the guardian or conservator will fail faithfully to perform duties.

(g) In the case of a guardian of the person or a conservator of the person, acting in violation of any provision of Section 2356.

(h) In the case of a guardian of the estate or a conservator of the estate, insolvency or bankruptcy of the guardian or conservator.

(i) In any other case in which the court in its discretion determines that removal is in the best interests of the ward or conservatee; but, in considering the best interests of the ward, if the guardian was nominated under Section 1500 or 1501, the court shall take that fact into consideration.

**Comment.** Section 2650 continues the substance of the portions of former Sections 1580 and 1951 enumerating the causes for removal of a guardian or conservator with several exceptions. The procedure for removal is specified in Sections 2651-2653. The provisions for removal of a guardian when it is "no longer necessary that the ward should be under guardianship" and for removal of a conservator when the conservatorship is "no longer required" are not continued. In such cases, termination of the guardianship or conservatorship—rather than removal of the guardian or

conservator—is the appropriate remedy. See Sections 1601 (guardianship) and 1863 (conservatorship). The provision for removal of a guardian or conservator for failure to use ordinary care and diligence supersedes the former provision for removal for waste, mismanagement of the estate, or abuse of the trust. The duty to use ordinary care and diligence is imposed by Section 2401.

Subdivision (g) continues the substance of the last sentence of former Sections 1580 and 1951, but expands the provision to comprehend new subdivisions (b), (c), and (d) of Section 2356 concerning sterilization or the administration of an experimental drug or convulsive treatment.

The reference in former Section 1580 to a guardian appointed by will or deed has been revised in subdivision (i) to refer to nomination of a guardian since a nomination concept has been substituted for the former appointment scheme.

Former Sections 1580 (removal of guardian) and 1951 (removal of conservator) provided that such removal could be ordered after notice and hearing substantially as provided in former Section 1755, which related to termination of a conservatorship. The relevant portions of former Section 1755 have been superseded by Sections 1861–1863 (termination of conservatorship) and by Sections 2651–2653, which provide the procedure for removal of a guardian or conservator.

#### CROSS-REFERENCES

Court order to file inventory or account, § 2602

Definition, court, § 1418

Removal for failure to

Furnish sufficient or additional surety, § 2334

Produce conservatee for court investigator, § 1853

Temporary guardian or conservator, § 2258

### § 2651. Petition for removal

2651. The ward or conservatee, the spouse or any relative or friend of the ward or conservatee, or any interested person may apply by petition to the court to have the guardian or conservator removed. The petition shall state facts showing cause for removal.

**Comment.** Section 2651 is comparable to Section 1861 (termination of conservatorship).

#### CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, §§ 1470–1472

Definitions

Court, § 1418

Interested person, § 1424

Petition must be verified, § 1450

### § 2652. Notice of hearing

2652. (a) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of hearing shall be mailed to the following persons (other than the petitioner):

(1) In the case of a guardianship, to the persons specified in Section 1511.

(2) In the case of a conservatorship, to the conservatee and to the persons specified in Section 1822.

(b) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of hearing shall be served on the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as the court may order. If the guardian or conservator cannot with reasonable diligence be so served, the court may dispense with service.

**Comment.** Section 2652 is comparable to Section 1862 (termination of conservatorship). The court has authority under Section 2654 to suspend the powers of the guardian or conservator pending notice and hearing.

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Definition, court, § 1418

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

Request for special notice, § 2700

Service by mail, when deemed complete, § 1467

### § 2653. Hearing and judgment

2653. (a) The guardian or conservator, the ward or conservatee, the spouse or any relative or friend of the ward or conservatee, and any interested person, may appear at the hearing and support or oppose the petition.

(b) If the court determines that cause for removal of the guardian or conservator exists, the court may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto.

**Comment.** Section 2653 is comparable to subdivisions (a) and (b) of Section 1863 (termination of conservatorship). There is no right to jury trial in removal proceedings. See Section 1452. Subdivision (b) is based in part on the first sentence of former Section 1581. The court continues to have jurisdiction for the purpose of settling the guardian's or conservator's accounts despite the removal. See Section 2630. As to the account of an incapacitated or absconding guardian or conservator, see Section 2632.

#### CROSS-REFERENCES

Appealable orders, § 2750

Appointment of counsel to represent ward or conservatee, §§ 1470-1472

Appointment to fill vacancy, § 2110

Definitions

Court, § 1418

Interested person, § 1424

Revoking letters for failure to furnish additional or sufficient surety, § 2334

### § 2654. Surrender of estate and suspension of powers pending hearing

2654. Whenever it appears that the ward or conservatee or the estate may suffer loss or injury during the time required for notice and hearing under this article, the court, on its own motion or on petition, may do either or both of the following:

(a) Suspend the powers of the guardian or conservator pending notice and hearing to such extent as the court deems necessary.

(b) Compel the guardian or conservator to surrender the estate to a custodian designated by the court.

**Comment.** Section 2654 continues the substance of former Section 1952 and supersedes a portion of former Section 1581.

#### CROSS-REFERENCES

Appointment of temporary guardian or conservator, § 2250

Definition, court, § 1418

Petition must be verified, § 1450

Request for special notice, § 2700

Suspension of powers when petition for further surety or for bond filed, § 2334

## Article 2. Resignation of Guardian or Conservator

### § 2660. Resignation of guardian or conservator

2660. A guardian or conservator may at any time file with the court a petition tendering the resignation of the

guardian or conservator. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. The court shall allow such resignation when it appears proper, to take effect at such time as the court shall fix, and may make any order as may be necessary to deal with the guardianship or conservatorship during the period prior to the appointment of a new guardian or conservator and the settlement of the accounts of the resigning guardian or conservator.

**Legislative Committee Comment—Assembly**

**Comment.** Section 2660 is drawn in part from Section 1125.1 (resignation of trustee) and supersedes former Section 1953 and the first portion of former Section 1582. Section 2660 continues the substance of former Section 1953 except that the resignation takes effect at such time as the court fixes rather than upon settlement of the accounts of the guardian or conservator. The court may appoint a successor to the resigning guardian or conservator after notice and hearing. See Section 2110. The court may appoint a temporary guardian or conservator if necessary. See Section 2250. The court continues to have jurisdiction for the purpose of settling the guardian's and conservator's account despite the resignation. See Section 2630.

**CROSS-REFERENCES**

Clerk sets petition for hearing, § 1451  
 Definition, court, § 1418  
 Joint guardians or conservators, § 2105  
 Petition must be verified, § 1450  
 Request for special notice, § 2700  
 Temporary guardian or conservator, resignation, § 2258

**CHAPTER 10. REQUESTS FOR  
 SPECIAL NOTICE**

**§ 2700. Request for special notice**

2700. (a) At any time after the issuance of letters of guardianship or conservatorship, the ward if over 14 years of age or the conservatee, the spouse or any relative or creditor of the ward or conservatee, or any other interested person, in person or by attorney, may file with the clerk of the court a written request for special notice of the filing or commencing of any one or more or all of the following:

(1) Petitions to direct, authorize, approve, or confirm the sale, lease, encumbrance, conveyance, or exchange of property.

(2) Petitions for transfer of the proceeding to another county.

(3) Inventory and appraisal of the estate, including any supplemental inventory and appraisal.

(4) Accounts of the guardian or conservator.

(5) Petitions for the authorization to commence an action for the partition of property.

(6) Petitions for allowances of any nature payable from the estate of the ward or conservatee.

(7) Petitions for the investment of funds of the estate or for the purchase of real property.

(8) Petitions for the resignation, removal, suspension, or discharge of the guardian or conservator.

(9) Proceedings for the final termination of the guardianship or conservatorship proceeding.

(10) Petitions to direct or allow payment of a debt or claim or to fix, direct, authorize, or allow payment of an attorney's fee.

(11) Petitions to fix, direct, authorize, or allow payment of the compensation or expenses of a guardian or conservator.

(12) Petitions to direct, authorize, approve, or modify payments for the support, maintenance, or education of the ward or conservatee or a person legally entitled to support, maintenance, or education from the ward or conservatee.

(13) Petitions filed pursuant to Section 2423 (payment of surplus income to relatives of conservatee) or Article 10 (commencing with Section 2580) of Chapter 6 (substituted judgment).

(14) Petitions filed pursuant to Section 2359 or Section 2403 (authorization and instruction or approval and confirmation by court).

(15) Petitions filed pursuant to Article 11 (commencing with Section 2590) of Chapter 6 (independent exercise of powers).

(16) Petitions filed under Section 2520 (conveyance or transfer of property claimed to belong to ward or conservatee or other person).

(17) Petitions filed pursuant to Article 5 (commencing with Section 2500) of Chapter 6 (compromise of claims and actions or extension, renewal, or modification of obligations).

(18) Petitions to fix the residence of the ward or conservatee at a place not within this state.

(19) Petitions to remove property to another jurisdiction.

(20) Petitions filed pursuant to Chapter 4 (commencing with Section 1870) of Part 3 (legal capacity of conservatee).

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent. If the request is for all of the matters referred to in subdivision (a), the request may refer generally to the provisions of this section. If the request is for less than all of the matters set forth in subdivision (a), the request shall state specifically each of the matters of which special notice is requested.

(c) A copy of the request shall be served on the guardian or conservator or on the attorney for the guardian or conservator.

(d) The original of the request when filed with the clerk shall be accompanied by a written admission or proof of service.

**Legislative Committee Comment—Assembly**

**Comment.** Subdivisions (a), (c), and (d) of Section 2700 continue the substance of former Sections 1600 and 2002, with the addition of express provision for special notice of the matters listed in paragraphs (2), (3), (10), (11), (12), (13), (16), (17), and (20) of subdivision (a) and the addition of “resignation” to paragraph (8) of subdivision (a). The provision in paragraph (7) of subdivision (a) for special notice of petitions for the purchase of real property is drawn from the third sentence of former Section 1557.1.

Paragraphs (10), (11), and (12) of subdivision (a) are specific provisions that are included within the broad scope of paragraph (6) of that subdivision but are included to make clear that special notice may be requested of petitions described in those paragraphs. The inclusion of the specific paragraphs does not limit the broad scope of paragraph (6).

The first sentence of subdivision (b) continues the substance of the first sentence of former Section 2003 and supersedes that



sentence and the first clause of the first sentence of Section 1601. The second sentence of subdivision (b) is new but continues existing practice. See W. Johnstone & G. Zillgitt, *California Conservatorships* § 2.10, at 31-32 (Cal. Cont. Ed. Bar 1968). The third sentence of subdivision (b) is also new.

If a petition is one listed in Section 2700 and special notice of the petition is requested, special notice must be given under this chapter even though the particular provision under which the petition is filed permits an *ex parte* petition. See, *e.g.*, Section 2463 (authorization to commence partition action). However, if the action is taken without court authorization, no notice is required. See also the Comment to Section 2702 relating to the sale of perishable property and certain other property.

The ward, if over 14 years of age, or the conservatee may request special notice under Section 2700 and must be given such notice if requested, whether or not the court has dispensed with notice to the ward or conservatee under Section 1460.

#### CROSS-REFERENCES

##### Definitions

Court, § 1418

Interested person, § 1424

#### § 2701. Modification or withdrawal of request; new request

2701. (a) A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request and is deemed to be withdrawn at a date three years from the date it was served under subdivision (c) of Section 2700.

(b) A new request for special notice may be served and filed at any time as provided in the case of an initial request.

**Comment.** Section 2701 continues the substance of the second, third, and fourth sentences of former Section 2003. The former guardianship statute contained no express provision comparable to Section 2701.

#### § 2702. Petitioner required to give requested special notice

2702. In any case to which a request for special notice applies, the party filing the petition, report, or account, or commencing the proceeding, shall give written notice of the filing or commencement, together with the time and place set for the hearing thereon, by mailing the notice to

the person named in the request at the address set forth in the request, or by causing the notice to be personally delivered to such person, at least 15 days before the time set for the hearing or within such shorter time as the court may order. In the case of an inventory and appraisal of the estate, a written notice of the filing of the inventory and appraisal shall be so mailed or personally delivered not later than 15 days after the inventory and appraisal is filed with the court.

**Comment.** Section 2702 supersedes the last portion of former Section 1601 and all of former Section 2004. Section 2702 continues the substance of former Section 2004 except that the time for giving the notice has been increased from 10 to 15 days and the provision for shortening the time for the notice is new.

The provision of former Section 1601 that no notice is required when the petition is for the sale of perishable or certain other property is not continued. Section 2543 provides that the manner of sale shall conform to the procedure used for sales by administrators and Section 770 permits an administrator to sell perishable property and other personal property which will depreciate in value if not disposed of promptly, or which will incur loss or expense by being kept, without notice. Accordingly, there is no need to continue the provision of former Section 1601 that no notice is required in such cases. Notice would, however, be required of a petition for approval of a sale of such property under Section 770.

The provision of former Section 1601 which required a copy of the petition, application, account, or proceeding to accompany the notice has not been continued. No comparable requirement was contained in the conservatorship statute.

#### CROSS-REFERENCES

Definition, court, § 1418

Mailing

Manner of, § 1465

When complete, § 1465

"Petition" includes an application, § 1430

Proof of giving of notice, § 2703

### § 2703. Proof of giving of notice

2703. (a) Proof of mailing or of personal delivery of the notice required by Section 2702 shall be made at or before the hearing.

(b) If it appears to the satisfaction of the court that

notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order, and such order when it becomes final is conclusive upon all persons.

**Comment.** Section 2703 continues the substance of former Sections 1602 and 2005. For discussion of a provision similar to subdivision (b), see the Comment to Section 1468. As to the manner of proof of giving of notice, see Section 1468.

#### CROSS-REFERENCES

Definition, court, § 1418

## CHAPTER 11. APPEALS

### § 2750. Appealable orders

2750. An appeal may be taken from the making of, or the refusal to make, a judgment, order, or decree doing any of the following:

(a) Granting or revoking letters of guardianship or conservatorship except letters of temporary guardianship or temporary conservatorship.

(b) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, conveyance, or exchange of property.

(c) Adjudicating the merits of any claim under Article 5 (commencing with Section 2500) (compromise of claim or action or extension, renewal, or modification of obligation) or Article 6 (commencing with Section 2520) (conveyance or transfer of property claimed to belong to ward or conservatee or other person) of Chapter 6.

(d) Settling an account of a guardian or conservator.

(e) Authorizing and instructing a guardian or conservator or approving and confirming acts of a guardian or conservator.

(f) Granting permission to the guardian or conservator to fix the residence of the ward or conservatee at a place not within this state.

(g) Directing or allowing payment of a debt or claim or fixing, directing, authorizing, or allowing payment of an attorney's fee.

(h) Fixing, directing, authorizing, or allowing payment of the compensation or expenses of a guardian or conservator.

(i) Directing, authorizing, approving, or modifying payments for the support, maintenance, or education of the ward or conservatee or a person legally entitled to support, maintenance, or education from the ward or conservatee.

(j) Granting or denying a petition under Section 2423 (payment of surplus income to relatives of conservatee) or under Article 10 (commencing with Section 2580) of Chapter 6 (substituted judgment).

(k) Transferring the assets of the guardianship or conservatorship estate to a guardian, conservator, committee, or comparable fiduciary in another jurisdiction.

(l) Affecting the legal capacity of the conservatee pursuant to Chapter 4 (commencing with Section 1870) of Part 3.

(m) Allowing or denying a petition of the guardian or conservator to resign.

(n) Removing or discharging the guardian or conservator.

(o) Discharging a surety on the bond of a guardian or conservator.

**Legislative Committee Comment—Assembly**

**Comment.** Section 2750 supersedes former Sections 1630 (guardianship) and 2101 (conservatorship). The introductory portion of Section 2750 and subdivisions (a), (d), and (e) continue the substance of former Section 1630 (guardianship) with the addition of the exception in subdivision (a) (drawn from Section 2101) to make clear that an appeal may not be taken from an order granting or revoking letters of temporary guardianship or temporary conservatorship and the addition of “approving and confirming acts of a guardian or conservator” in subdivision (e). Subdivisions (b), (c), and (g) through (i) are new and are adapted from Section 1240 (estates in probate). Subdivisions (f), (j), (k), (l), (m), (n), and (o) are also new.

Section 2750 has the effect of broadening appealable orders in guardianship while narrowing appealable orders in conservatorship. See generally *Guardianship of Jacobson*, 30 Cal.2d 312, 182 P.2d 537 (1947) (order for allowance of counsel

fees to guardian not appealable); Conservatorship of Smith, 9 Cal. App.3d 324, 88 Cal. Rptr. 119 (1970) (appeals in conservatorship limited).

#### CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, §§ 1470-1472

### § 2751. Stay

2751. (a) Except as provided in subdivisions (b) and (c), an appeal pursuant to Section 2750 stays the operation and effect of the judgment, order, or decree.

(b) Notwithstanding that an appeal is taken from the judgment, order, or decree, for the purpose of preventing injury or loss to person or property, the trial court may direct the exercise of the powers of the guardian or conservator, or may appoint a temporary guardian or conservator of the person or estate, or both, to exercise the powers, from time to time, as though no appeal were pending. All acts of the guardian or conservator, or temporary guardian or temporary conservator, pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal.

(c) In proceedings for guardianship of the person, the provisions of Section 917.7 of the Code of Civil Procedure apply.

**Comment.** Subdivisions (a) and (b) of Section 2751 continue the substance of former Sections 1631 (guardianship) and 2102 (conservatorship) and broaden the former guardianship provisions to apply to all appeals in guardianship. *Cf.* Gold v. Superior Court, 3 Cal.3d 275, 284 n.6, 475 P.2d 193, 199 n.6, 90 Cal. Rptr. 161, 167 n.6 (1970) (stay provisions in guardianship limited to appeal from order appointing guardian for incompetent person). Any problems caused by broadening the stay provisions are subject to the trial court's continuing jurisdiction.

Subdivision (c) recognizes the effect of Section 917.7 of the Code of Civil Procedure, which applies to proceedings that affect the custody of a minor child, including guardianship proceedings. See 6 B. Witkin, California Procedure *Appeal* § 151, at 4145 (2d ed. 1971). Section 917.7 provides that, with certain exceptions, the perfecting of an appeal does not stay proceedings in the trial court that affect the custody of the minor.

#### CROSS-REFERENCES

Temporary guardians and conservators, §§ 2250-2258

**§ 2752. Reversal of order appointing guardian or conservator**

2752. If an order appointing a guardian or conservator is reversed on appeal for error, all lawful acts of the guardian or conservator performed after qualification and prior to the reversal are as valid as though the order were affirmed.

**Comment.** Section 2752 continues the substance of former Section 1632 (guardianship); there was no comparable provision for conservatorship. Although appeal of an order appointing a guardian or conservator ordinarily stays the order pursuant to Section 2751, there may be an interval between appointment and determination of the appeal during which the guardian or conservator acts. See Section 2751 (b).

**CROSS-REFERENCES**

Effect of court authorization, approval, or confirmation, § 2103

**CHAPTER 12. TRANSFER OF ASSETS  
OUT OF STATE**

**§ 2800. "Foreign guardian or conservator" defined**

2800. As used in this chapter, "foreign guardian or conservator" means a guardian, conservator, committee, or comparable fiduciary in another jurisdiction.

**Comment.** Section 2800 is a new provision included to avoid needless repetition in this chapter.

**§ 2801. Order for transfer of assets out of state**

2801. Subject to the limitations and requirements of this chapter, the court in which the guardianship of the estate or conservatorship of the estate is pending may order the transfer of some or all of the assets of the estate to a foreign guardian or conservator in another jurisdiction outside of California where the ward or conservatee resides at the time the petition for the order authorizing the transfer is filed.

**Comment.** Section 2801 is based on portions of former Sections 1603 (guardianship) and 2051 and 2052 (conservatorship), but Section 2801 is confined to the transfer of some or all of the assets of the estate while the former provisions provided for the "transfer of the proceeding." Section 2801

permits transfer of assets to "another jurisdiction outside of California where the ward or conservatee resides at the time the petition" is filed, whereas former Section 2052 permitted transfer to "any other state in which the conservatee resides at the time of the application for the transfer." Section 2801 thus permits transfer of assets to a foreign jurisdiction that is not another state. In this respect, Section 2801 is consistent with the statute relating to the transfer of some or all of the assets of a trust to another jurisdiction outside of California. See Sections 1139-1139.7. For the procedure for removal of assets to another jurisdiction by a nonresident guardian or conservator or similar fiduciary where there is no California guardian or conservator, see Sections 3800-3803.

#### CROSS-REFERENCES

Appealable orders, § 2750

Definition, foreign guardian or conservator, § 2800

### § 2802. Who may petition for transfer

2802. A petition for an order authorizing a transfer may be filed by any of the following:

(a) The guardian of the estate or the conservator of the estate.

(b) The ward or conservatee.

(c) A foreign guardian or conservator.

**Comment.** Section 2802 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship) except that the list of persons who may file a petition has been expanded to include the ward or conservatee. See also former Section 1603 (guardianship).

#### CROSS-REFERENCES

Appointment of legal counsel for ward or conservatee, § 1470

Definition, foreign guardian or conservator, § 2800

### § 2803. Contents of petition

2803. The petition shall set forth all of the following:

(a) The name and address of:

(1) The foreign guardian or conservator, who may but need not be the guardian or conservator appointed in this state.

(2) The ward or conservatee.

(3) The guardian or conservator, so far as is known to the petitioner.

(b) The names, ages, and addresses, so far as they are known to the petitioner, of the spouse and of relatives of the ward or conservatee within the second degree.

(c) A brief description of the character, condition, value, and location of the property comprising the assets sought to be transferred.

(d) A statement whether the foreign guardian or conservator has agreed to accept the transfer of the assets. If the foreign guardian or conservator has so agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(e) A statement of the manner in which and by whom the foreign guardian or conservator was appointed.

(f) A general statement of the qualifications of the foreign guardian or conservator.

(g) The amount of bond, if any, of the foreign guardian or conservator.

(h) A general statement of the nature and value of the assets of the ward or conservatee already under the management or control of the foreign guardian or conservator.

(i) The name of the court having jurisdiction of such foreign guardian or conservator or of the accounts of such foreign guardian or conservator or, if none, the court in which a proceeding may be had with respect to the guardianship or conservatorship if the assets are transferred.

(j) Whether there is any pending civil action in this state against the guardian or conservator, the ward or conservatee, or the estate.

(k) A statement of the reasons for the transfer.

**Comment.** Section 2803 is drawn primarily from Section 1139.2 (transfer of trust assets out of state) and in part from former Section 2052 (transfer of conservatorship proceeding out of state). See also former Section 1603 (guardianship). The information required to be included in the petition is needed so that the court can decide whether the requirements of Section 2806 are satisfied.

#### CROSS-REFERENCES

Definition, foreign guardian or conservator, § 2800  
Petition must be verified, § 1450



**§ 2804. Notice of hearing**

2804. At least 30 days before the hearing, the petitioner shall mail a notice of the time and place of the hearing and a copy of the petition to each person (other than the petitioner) required to be listed in the petition at the address stated in the petition.

**Comment.** Section 2804 continues the substance of the second sentence of former Section 2053 (conservatorship) except that the time for mailing notice is increased from 10 to 30 days to conform to the time provided in Section 1139.3 (transfer of trust assets out of state). See also former Section 1603 (guardianship).

**CROSS-REFERENCES**

Clerk sets petition for hearing, § 1451

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

Request for special notice, § 2700

**§ 2805. Opposition to petition**

2805. Any of the following may appear and file written objections to the petition:

- (a) Any person required to be listed in the petition.
- (b) Any creditor of the ward or conservatee or of the estate.
- (c) The spouse or any relative or friend of the ward or conservatee.
- (d) Any other interested person.

**Comment.** Section 2805 continues the substance of the third sentence of former Section 2053 (conservatorship) and expands the list of those who may appear and object by adding the spouse or any relative or friend of the ward or conservatee and any other interested person. See also former Section 1603 (guardianship).

**CROSS-REFERENCES**

Appointment of legal counsel for ward or conservatee, § 1470

Definition, interested person, § 1424

**§ 2806. Order for transfer**

2806. The court may grant the petition and order the guardian or conservator to transfer some or all of the assets of the estate to the foreign guardian or conservator if the court determines all of the following:

(a) The transfer will promote the best interests of the ward or conservatee and the estate.

(b) The substantial rights of creditors or claimants in this state will not be materially impaired by the transfer.

(c) The foreign guardian or conservator is qualified, willing, and able to administer the assets to be transferred.

**Comment.** Section 2806 is drawn from Section 1139.4 (transfer of trust assets out of state) and former Section 1572 (removal of ward's property from state) and supersedes the fourth sentence of former Section 2053 (conservatorship). See also former Section 1603 (guardianship). Important elements in determining whether the "transfer will promote the best interests of the ward or conservatee and the estate" are whether the transfer will facilitate the economical and convenient administration of the estate and whether the guardianship or conservatorship estate will be administered by a competent fiduciary in the other jurisdiction.

#### CROSS-REFERENCES

Appealable orders, § 2750

Definitions

Court, § 1418

Foreign guardian or conservator, § 2800

#### § 2807. Manner of transfer; conditions

2807. If a transfer is ordered, the court may direct the manner of transfer and impose such terms and conditions as may be just.

**Comment.** Section 2807 is drawn from the first sentence of Section 1139.5 (transfer of trust assets out of state). It supersedes the last two sentences of former Section 2053 (conservatorship). See also former Section 1603 (guardianship).

#### CROSS-REFERENCES

Definitions

Court, § 1418

Foreign guardian or conservator, § 2800

#### § 2808. Termination of guardianship or conservatorship

2808. (a) If the court's order provides for the transfer of all of the assets of the estate to the foreign guardian or conservator, the court, upon settlement of the final account, shall order the guardianship of the estate or the conservatorship of the estate terminated upon the filing

with the clerk of the court of a receipt for such assets executed by the foreign guardian or conservator.

(b) Unless notice is waived, a copy of the final account of the guardian or conservator and of the petition for discharge, together with a notice of the hearing thereon, shall be mailed at least 30 days before the date of the hearing to all persons required to be listed in the petition for transfer, including the foreign guardian or conservator.

**Comment.** Section 2808 is based on former Section 2055 (conservatorship). See also former Section 1603 (guardianship). As to the termination of the proceeding and discharge of the guardian or conservator when the estate is exhausted, see also Section 2626. If there is California real property being administered in the California proceeding, it may be necessary to continue the California proceeding for the purpose of administering such property. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 2.28, at 45 (Cal. Cont. Ed. Bar 1968).

#### CROSS-REFERENCES

Appealable orders, § 2750

Definitions

Court, § 1418

Foreign guardian or conservator, § 2800

Mailing

Manner of, § 1465

Personal delivery in lieu of, § 1466

When complete, § 1465

Proof of giving of notice, § 1468

Request for special notice, § 2700

## PART 5. UNIFORM VETERANS' GUARDIANSHIP ACT

The Uniform Veterans Guardianship Act—Probate Code Sections 2900-2918, enacted by 1979 Cal. Stats. ch. 726—was repealed by 1980 Cal. Stats. ch. 89. The official Comment, which explains this repeal, is set out below. The Comment is taken from California Law Revision Commission *Recommendation Relating to Uniform Veterans Guardianship Act*, 15 Cal. L. Revision Comm'n Reports 1289 (1980).

**Comment.** The Uniform Veterans' Guardianship Act (Prob. Code §§ 2900-2918) is repealed as a separate statute. Pertinent portions of the Uniform Veterans' Guardianship Act are

continued elsewhere in Division 4 of the Probate Code and in the Government Code. The portions that are not continued are either obsolete or are superseded by existing provisions of general guardianship-conservatorship law. The disposition of each repealed section of the Uniform Veterans' Guardianship Act is indicated in the Comment to the repealed section set out below.

§ 2900 (repealed). Short title

Comment. Former Section 2900 is not continued.

§ 2901 (repealed). Definitions

Comment. The terms in which "income" and "estate" were defined in former Section 2901 are continued in the substantive provisions of Section 1461.5 (notice to Veterans Administration). The terms in which "benefits" was defined in former Section 2901 are continued in the substantive provisions of Sections 1510 and 1821 (contents of petition). The remaining definitions of former Section 2901 are not continued.

§ 2902 (repealed). Necessity and manner of appointment of guardian; fiduciary for adult called "conservator"

Comment. Subdivision (a) of former Section 2902 is superseded by the requirement in Section 1514 that the court may appoint a guardian if it appears "necessary or convenient," and by the requirement in Section 1800 that the court may appoint a conservator if satisfied of the "need therefor." Subdivision (b) of former Section 2902 is superseded by the provision of Section 1510 that a guardian may be appointed only for a minor. An adult in need of protective supervision may have a conservator appointed. See Section 1800.

§ 2903 (repealed). Petition; filing; authorized petitioners; contents

Comment. Subdivision (a) of former Section 2903 is superseded by Sections 1510 (guardianship), 1820 (conservatorship), and 2901 (venue). Subdivision (b) is superseded by Sections 1510 (guardianship) and 1821 (conservatorship). The requirement that the petition set forth the age of the proposed ward or conservatee is continued with respect to minor wards in Section 1510, but is not continued with respect to conservatees (see Section 1821). The substance of the requirement of subdivision (b) of allegations concerning Veterans Administration benefits is continued in Sections 1510 and 1821.

The first sentence of subdivision (c) is superseded with respect to minors by Section 1510; the requirement that the petition show the age, relationship, if any, and occupation of the proposed guardian is not continued. With respect to adults, the first sentence of subdivision (c) is not continued. The second sentence of subdivision (c) is superseded by Sections 1514 (guardianship) and 1810-1813 (conservatorship). Subdivision (d) is not continued.

§ 2904 (repealed). Evidence of necessity for guardian of minor

Comment. Former Section 2904 is not continued.

§ 2905 (repealed). Evidence of necessity for guardian for incompetent

Comment. Former Section 2905 is not continued.

§ 2906 (repealed). Notice

Comment. Former Section 2906 is continued in Section 1461.5, except that the former requirement that the copy of the petition be a signed duplicate or be certified is not continued.

§ 2907 (repealed). **Fitness of appointee; bond**

Comment. Subdivision (a) of former Section 2907 is superseded by Sections 1514 (guardianship) and 1810-1813 (conservatorship). Subdivision (b) is superseded by Sections 2300 and 2320-2336.

§ 2908 (repealed). **Accounting by guardian**

Comment. Former Section 2908 is superseded by Sections 2620-2633. The requirement of notice to the Veterans Administration is continued in Section 1461.5.

§ 2909 (repealed). **Penalty for failure to account**

Comment. Former Section 2909 is superseded by Sections 2602 and 2650.

§ 2910 (repealed). **Compensation of guardians; allowance of bond premiums**

Comment. Former Section 2910 is superseded by Sections 2640 and 2643. The limitation on compensation contained in former Section 2910 is not continued; under Section 2640, the compensation must be "just and reasonable." The requirement of notice to the Veterans Administration is continued in Section 1461.5.

§ 2911 (repealed). **Investments; deposits**

Comment. Former Section 2911 is superseded by Sections 2401 (duty to use ordinary care and diligence in management of estate), 2453 (deposit in bank or other financial institution), 2570-2574 (investments and purchase of property), and 2590-2595 (independent exercise of powers). The requirement of notice to the Veterans Administration is continued in Section 1461.5.

§ 2912 (repealed). **Maintenance and support of person other than ward**

Comment. Former Section 2912 is superseded by Section 2423. The requirement of notice to the Veterans Administration is continued in Section 1461.5, except that the requirement that the copy of the petition be a signed duplicate or be certified is not continued.

§ 2913 (repealed). **Purchase of home or other real property for ward**

Comment. Subdivision (a) of former Section 2913 is superseded by Section 2571. The limitation of subdivision (a) that real property may be purchased "only as a home" for the ward is not continued. The requirement of notice to the Veterans Administration is continued in Section 1461.5. Subdivision (b) is not continued. Notwithstanding the omission of the second sentence of subdivision (b) (which required that title be taken in the name of the ward), it is the accepted practice in guardianship and conservatorship proceedings to take title to real property in the name of the ward or conservatee. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 4.17, at 116 (Cal. Cont. Ed. Bar 1968).

Subdivision (c) is superseded by Sections 2463 (partition), 2500-2501 (compromises affecting real property), and 2590-2591 (independent exercise of powers).

§ 2914 (repealed). **Furnishing copy of public record without charge**

Comment. Former Section 2914 is continued in Government Code Section 6107.

§ 2915 (repealed). **Certificate of majority or competency; termination of guardianship; discharge of guardian and release of sureties**

Comment. The first sentence of former Section 2915 is not continued. The second and third sentences are superseded by Sections 1600-1601 (guardianship), 1890-1893 (conservatorship), 2627 (discharge of guardian), and 2630 (accounts on termination of relationship).

§ 2916 (repealed). Application of part

Comment. Former Section 2916 is not continued.

§ 2917 (repealed). Law applicable to exercise of powers and duties of guardian

Comment. Former Section 2917 is not continued.

§ 2918 (repealed). Construction to effect uniformity

Comment. Former Section 2918 is not continued.

Note. Section 8 of 1980 Cal. Stats. ch. 89, provides:

*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 January 1, 1981, where the guardianship estate consists entirely of veterans' benefits.*

*(b) A veterans' guardianship for an unmarried minor ward in existence on December 31, 1980, shall continue in existence after December 31, 1980, as a guardianship of the estate and is governed by Division 4 (commencing with Section 1400) of the Probate Code on and after January 1, 1981.*

*(c) A veterans' guardianship for an adult ward or a married minor ward in existence on December 31, 1980, shall continue in existence after December 31, 1980, 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 January 1, 1981.*

*(d) Notwithstanding Sections 1485 and 1872 of the Probate Code and Section 40 of the Civil Code, if, on December 31, 1980, an adult or married minor is subject to a veterans' guardianship but is not subject to a general guardianship or conservatorship, on and after January 1, 1981, 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, on December 31, 1980, a person is subject both to a veterans' guardianship and a general guardianship or conservatorship, the general guardianship or conservatorship shall continue on and after January 1, 1981, 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.*

## **PART 6. MANAGEMENT OR DISPOSITION OF COMMUNITY OR HOMESTEAD PROPERTY WHERE SPOUSE LACKS LEGAL CAPACITY**

### **CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS**

#### **Article 1. Definitions**

#### **§ 3000. Application of definitions**

3000. Unless the provision or context otherwise requires, the definitions contained in this article govern the construction of this part.

**Comment.** Section 3000 is new.

#### **§ 3002. Community property**

3002. "Community property" means community real property and community personal property, including but not limited to community property on which a homestead has been declared and a community property business that is or was under the sole management and control of one of the spouses, but does not include community property in a revocable trust described in Section 5113.5 of the Civil Code.

## Legislative Committee Comment—Assembly

**Comment.** Section 3002 gives broad scope to the meaning of “community property.” For the purposes of this part, community property includes community property on which a homestead has been declared. A homestead may be declared on community real property pursuant to Civil Code Sections 1237-1238. Community property also includes business property notwithstanding the fact that a spouse now lacking legal capacity formerly had sole management and control of the business. See Civil Code § 5125(d). The property may be community property notwithstanding that title is held in some other form. *W. Johnstone & G. Zillgitt, California Conservatorships* § 4.11, at 113 (Cal. Cont. Ed. Bar 1968). See also 7 B. Witkin, *Summary of California Law Community Property* §§ 49-50, at 5140-42 (8th ed. 1974).

Even though community property in a revocable trust described in Section 5113.5 of the Civil Code remains community property, it is excluded from the provisions of this part because the trust property is administered pursuant to the trust.

### § 3004. Conservator

3004. “Conservator” means conservator of the estate and includes the guardian of the estate of a married minor.

**Note.** Section 3004 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

**Comment.** Sections 3004, 3006, and 3008 supersede the first portion of former Section 1435.18. Conservator of the estate includes a person appointed as conservator of the person and estate.

### § 3006. Conservatorship estate

3006. “Conservatorship estate” includes the guardianship estate of a married minor.

**Comment.** See Comment to Section 3004.

### § 3008. Conservatorship proceeding

3008. “Conservatorship proceeding” means conservatorship of the estate proceeding and includes a guardianship of the estate proceeding of a married minor.



**Comment.** See Comment to Section 3004.

**§ 3010. Homestead**

3010. "Homestead" means a homestead declared by either or both spouses on community property or on the separate property of a spouse but does not include a married person's separate homestead under Chapter 5 (commencing with Section 1300) of Title 5 of Part 4 of Division 2 of the Civil Code.

**Comment.** Section 3010 excludes a married person's separate homestead for purposes of this part. Such a homestead affects the property rights of only one spouse. See Civil Code §§ 1300-1304.

**§ 3012. Legal capacity with respect to community and homestead property**

3012. (a) Unless the spouse lacks legal capacity under the applicable standard prescribed in subdivision (b), a spouse has legal capacity to:

(1) Manage and control community property, including legal capacity to dispose of community property.

(2) Join in or consent to a transaction involving community or homestead property.

(b) A spouse lacks legal capacity to:

(1) Manage and control, including legal capacity to dispose of, community property if the spouse is substantially unable to manage or control the community property.

(2) Join in or consent to a transaction involving community or homestead property if the spouse does not have legal capacity for the particular transaction measured by principles of law otherwise applicable to the particular transaction.

(3) Do any act, or engage in any activity, described in paragraph (1) or (2) if the spouse has a conservator.

(c) Nothing in this section shall be construed to deny a spouse, whether or not lacking legal capacity, any of the following:

(1) The right to control an allowance provided under Section 2421.

(2) The right to control wages or salary to the extent provided in Section 2601.

(3) The right to make a will subject to the limitations of

Chapter 1 (commencing with Section 20) of Division 1.

(4) The right to enter into transactions to the extent reasonable to provide the necessities of life to the spouse, the other spouse, and the minor children of the spouses.

**Comment.** Section 3012 is a new provision that governs the construction of this part. See Section 3000. The legal capacity of a conservatee for other purposes is governed by Sections 1870-1898 (legal capacity of conservatee).

Subdivision (a) is based on the presumption that a spouse has legal capacity, and its effect is to impose the burden of proof on a person seeking to show lack of legal capacity.

Subdivision (b) (3) implements the policy that a conservator of the estate acts for the conservatee under this part. See Section 3004 (defining "conservator"). This rule is consistent with the duty of the conservator to manage and control the conservatorship estate and provides needed certainty for property transactions.

Subdivision (b) (1) recognizes that a spouse not having a conservator may lack legal capacity to manage, control, and dispose of community property and adopts the rule that such a spouse lacks such legal capacity if the spouse is substantially unable to manage or control the community property. The standard of substantial inability is consistent with the grounds for appointment of a conservator. See Section 1801(b) (person substantially unable to manage his or her own financial resources).

Subdivision (b) (2) recognizes that a spouse not having a conservator may lack legal capacity to join in or consent to a particular transaction under principles of law otherwise applicable. See, *e.g.*, Civil Code §§ 38, 39. Whether the spouse lacks legal capacity for the particular purpose depends upon the act involved and the standards otherwise applicable to determine capacity for that act.

Subdivision (c) is comparable to Section 1871. See the Comment to Section 1871.

#### CROSS-REFERENCES

##### Definitions

Community property, § 3002

Conservator, § 3004

Homestead, § 3010

## Article 2. General Provisions

### § 3020. Community property interests preserved

3020. (a) The proceeds, rents, issues, and profits of community property dealt with or disposed of under this division, and any property taken in exchange for the community property or acquired with the proceeds, are community property.

(b) Except as provided in this part for the management, control, and disposition of community property, nothing in this division alters the rights of the spouses in community property or in the proceeds, rents, issues, or profits of community property.

**Comment.** Section 3020 continues the substance of the first portion of the second paragraph of former Section 1435.12 and the last paragraph of former Section 1435.17. Section 3020 applies to all transactions involving community property “under this division”; the former provisions were not expressly made so broadly applicable.

#### CROSS-REFERENCES

Definition, community property, § 3002

Determination whether property community or separate, § 3023

Purchase of another home, § 3021

Right of spouse having legal capacity to manage, control, and dispose of community property, § 3051

### § 3021. Purchase of another home

3021. (a) The court authorizing a sale or exchange pursuant to this division of community or separate property subject to a homestead may, upon its own motion or upon request, make an order authorizing or requiring the investment of the proceeds, or part thereof, in another home for the spouses, to be held as community or separate property in the same manner as the homestead property sold or exchanged.

(b) The court authorizing a conservator to join in the sale or exchange of community or separate property subject to a homestead may, upon its own motion or upon request, make an order authorizing such joinder on the condition that the proceeds, or part thereof, be invested in another home for the spouses, to be held as community or separate property in the same manner as the homestead property sold or exchanged.

**Comment.** Section 3021 is based upon the first sentence of the fourth paragraph of former Section 1435.16. However, the provisions are revised to refer to any sale or exchange authorized by the court under this division, to permit the court to act upon its own motion, and to refer to investment of only part of the proceeds in a new home. The word "exchange" has been added in the first part of subdivision (a) for technical consistency. Subdivision (b) contains new provisions expressly recognizing the court's power to make an order protecting homestead rights in joinder authorizations.

#### CROSS-REFERENCES

##### Definitions

Community property, § 3002

Conservator, § 3004

Homestead, § 3010

Homestead exemption, § 3022

Order authorizing transactions, conditions, § 3144(d)

Purchase of home for conservatee or dependents, § 2571

Sale or exchange does not affect community property interests, § 3020

### § 3022. Homestead exemption

**3022.** (a) The proceeds of a sale pursuant to this division of community or separate property subject to a homestead shall enjoy the exemption prescribed in Section 1265 of the Civil Code.

(b) Any property taken pursuant to this division in exchange for community or separate property subject to a homestead, and any property acquired with the proceeds of a sale thereof, shall enjoy the exemption prescribed by Section 1265a of the Civil Code if the declaration required by that section is filed within the time therein prescribed by such person or persons as the court authorizing the sale or exchange may by order designate.

**Comment.** Section 3022 is based on the last portion of the second paragraph of former Section 1435.12 and the second sentence of the fourth paragraph of former Section 1435.16 but expands former law to cover all sales under this division. Subdivision (b) is broader than former law. Under former law, only the petitioner could file the new declaration.

#### CROSS-REFERENCES

##### Definitions

Community property, § 3002

Homestead, § 3010

Determination of validity of homestead, § 3023

Order authorizing purchase of another home, § 3021

**§ 3023. Determination of validity of homestead or character of property**

3023. (a) Except as provided in subdivisions (b) and (c), where one or both of the spouses has a conservator, the court in which any of the conservatorship proceedings is pending may hear and determine any of the following when the issue is raised in any proceeding under this division:

(1) The validity of a homestead.

(2) Whether property is community property or the separate property of either spouse.

(b) Any person having or claiming title to or an interest in the property, at or prior to the hearing on the issue, may object to the hearing if the court is not the proper court under any other provision of law for the trial of an action to determine the issue. If the objection is established, the court shall not hear and determine the issue.

(c) If a civil action is pending with respect to the issue and jurisdiction has been obtained in the court in which the civil action is pending, upon request of any party to the civil action, the court shall abate the hearing until the conclusion of the civil action.

**Comment.** Section 3023 applies to all proceedings under this division where an issue is raised whether property is homestead property or community or separate property. The section is consistent with the holding in *Estate of Baglione*, 65 Cal.2d 192, 417 P.2d 683, 53 Cal. Rptr. 139 (1966) (probate court has jurisdiction in a decedent's estate proceeding to determine the interest of each spouse in the community property).

Subdivision (a) is drawn from a portion of former Section 1435.15, which gave the conservatorship court jurisdiction to determine the validity of a homestead and the character of property in a proceeding under former Sections 1435.15-1435.17. The probate court also may have had similar jurisdiction under former Probate Code Section 1435.8 although the court's authority under that section was unclear. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 5.67, at 214 (Cal. Cont. Ed. Bar 1968).

Subdivisions (b) and (c) are new and are drawn from a portion of Section 851.5 (title to property of decedent).

## CROSS-REFERENCES

## Definitions

Community property, § 3002

Conservator, § 3004

Conservatorship proceeding, § 3008

Homestead, § 3010

Determination of nature of property in proceeding for particular transaction, § 3101(d)

## CHAPTER 2. MANAGEMENT, CONTROL, AND DISPOSITION

### Article 1. Management, Control, and Disposition Generally

#### § 3051. Community property

3051. (a) Subject to Section 3071, the right of a spouse to manage and control community property, including the right to dispose of community property, is not affected by the lack or alleged lack of legal capacity of the other spouse.

(b) Except as provided in subdivision (c), if one spouse has legal capacity and the other has a conservator:

(1) The spouse who has legal capacity has the exclusive management and control of the community property including, subject to Section 3071, the exclusive power to dispose of the community property.

(2) The community property is not part of the conservatorship estate.

(c) If one spouse has legal capacity and the other has a conservator, the spouse having legal capacity may consent, by a writing filed in the proceeding, that all or part of the community property be included in and, subject to Section 3071, be managed, controlled, and disposed of as a part of the conservatorship estate.

(d) Except as provided in subdivision (e), if both spouses have conservators, an undivided one-half interest in the community property shall be included in and, subject to Section 3071, be managed, controlled, and disposed of as a part of the conservatorship estate of each spouse.

(e) If both spouses have conservators, when authorized by order of the court in which any of the conservatorship proceedings is pending, the conservators may agree in writing that all or specific parts of the community property

shall be included in the conservatorship estate of one or the other of the spouses and, subject to Section 3071, be managed, controlled, and disposed of as a part of the conservatorship estate of that spouse.

**Comment.** Subdivisions (a) and (b) of Section 3051 make clear that the lack of legal capacity of one spouse does not affect the right of the spouse having legal capacity to manage and control community property or to dispose of such property, whether or not the other spouse has a conservator. As to when a spouse lacks legal capacity, see Section 3012. The authority given the spouse having legal capacity is limited by Section 3071 which applies in any case where joinder or consent would be required for a transaction if both spouses had legal capacity. The spouse having legal capacity has the duty of good faith in managing and controlling the property. See Section 3057; Civil Code § 5125(e). Subdivisions (a) and (b) supersede provisions in the second sentence of former Section 1435.1, subdivision (a) of former Section 1435.16, and subdivision (b) of former Section 1435.17, that favored the husband. Subdivisions (a) and (b) replace these former provisions with rules that implement the principle of equality between husband and wife.

Subdivision (c) continues the substance of subdivision (a) of former Section 1435.17 but extends the procedure to cases where the wife has a conservator of the estate. Subdivision (c) also supersedes the first sentence of subdivision (a) of former Section 1435.16 insofar as that provision applied to community property. Subdivision (d) continues the substance of subdivision (c) of former Section 1435.17. Subdivision (d) also supersedes the first sentence of subdivision (c) of former Section 1435.16 insofar as that provision applied to community property. Subdivision (e) is new. It is intended to add flexibility to the administration of community property in conservatorship estates.

Community property is defined in Section 3002 to include both real and personal property, to include community property on which a homestead has been declared, and to include a community property business. Such a business, even if formerly managed by a spouse now lacking legal capacity, is included in the management, control, and disposition provisions of this section.

If both spouses have conservators, the approval of only one of the courts in which the conservatorship proceedings are pending is required under subdivision (e). However, if the other conservatorship proceeding is pending in another court, that

court may order that the community property not be included in that conservatorship estate (Section 3054) and, if the court so orders, subdivision (d) of Section 3051 applies. Likewise, if a spouse having legal capacity consents as provided in subdivision (c) to inclusion of property in the conservatorship estate of the other spouse, the court in which the conservatorship proceeding is pending may nevertheless order that the property not be included in the conservatorship estate. See Section 3054.

Section 3051 applies only where one spouse has legal capacity or both spouses have conservators. The section does not cover the situation where both spouses lack legal capacity and neither or only one has a conservator. In these situations, since Section 3051 applies only if both of the spouses lacking legal capacity have conservators, a conservator or conservators will need to be appointed in order to make the section applicable.

#### CROSS-REFERENCES

Community property interests, extent to which affected, § 3020

#### Definitions

Community property, § 3002

Conservator, § 3004

Conservatorship estate, § 3006

Conservatorship proceeding, § 3008

Legal capacity, § 3012

Determination whether property community or separate, § 3023

### § 3052. Separate property owned by one spouse subject to homestead

3052. If a spouse has a conservator and owns separate property subject to a homestead (other than separate property owned by both spouses as joint tenants, tenants in common, or otherwise), the property shall be included in and, subject to Section 3071, be dealt with and disposed of as a part of the conservatorship estate.

**Comment.** Section 3052 combines the substance of a portion of the first sentence of subdivision (a) of former Section 1435.16 and the last sentence of subdivision (b) of former Section 1435.16, except that the requirement of subdivision (a) of former Section 1435.16 that, if the homestead was on the separate property of the husband, the wife, if competent, must consent to management in the husband's estate, is omitted. This change conforms to the policy of equal rights of the spouses and gives effect to recent amendment of the homestead laws removing the distinction between the separate property of husband and wife in selection of a homestead. See Civil Code § 1238.



## CROSS-REFERENCES

## Definitions

Conservator, § 3004

Conservatorship estate, § 3006

Homestead, § 3010

Determination whether property community or separate, § 3023

Purchase of another home, §§ 3021, 3022

**§ 3053. Separate property owned by both spouses subject to homestead**

3053. (a) As used in this section, "homestead property" means separate property subject to a homestead that is owned by both spouses as joint tenants, tenants in common, or otherwise.

(b) If one spouse has legal capacity and the other spouse has a conservator:

(1) The conservator may, after authorization by order of the court in which the conservatorship proceeding is pending, consent in writing that the spouse having legal capacity shall have the right to manage and control and, subject to Section 3071, dispose of the homestead property.

(2) The spouse having legal capacity may consent in writing that homestead property be included in and, subject to Section 3071, be dealt with and disposed of as a part of the conservatorship estate.

(c) Except as provided in subdivision (d), if both spouses have conservators, the interest of each spouse in the homestead property shall be included in and, subject to Section 3071, be dealt with and disposed of as a part of the conservatorship estate of that spouse.

(d) If both spouses have conservators, the conservators may, after authorization by order of the court in which any of the conservatorship proceedings is pending, agree in writing that the homestead property be included in the conservatorship estate of one of the spouses and, subject to Section 3071, be dealt with and disposed of as a part of the conservatorship estate of that spouse.

[Amended by 1980 Cal. Stats. ch. 246]

Legislative Committee Comment—Assembly

1979 Enactment

**Comment.** Subdivision (c) of Section 3053 continues the substance of the second sentence of subdivision (c) of former Section 1435.16. Subdivisions (b) and (d) are new and are

intended to add flexibility to the administration of the property in conservatorship estates. The authority given by Section 3053 to the spouse having legal capacity, or to one or both conservators where conservators have been appointed, is limited by Section 3071 which applies in any case where joinder or consent would be required for a transaction if both spouses had legal capacity.

If both spouses have conservators, the approval of only one of the courts in which the conservatorship proceedings are pending is required under subdivision (d). However, if the other conservatorship proceeding is pending in another court, that court may order that the property not be included in that conservatorship estate (Section 3054) and, if the court so orders, subdivision (c) of Section 3053 applies. Likewise, if a spouse having legal capacity consents to inclusion of property in the conservatorship estate of the other spouse, the court in which the conservatorship proceeding is pending may order that the property not be included in the conservatorship estate. See Section 3054.

For the purposes of this section, "homestead property" does not include community property subject to a homestead. See Section 3002 and the Comment to that section.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 3004

Conservatorship estate, § 3006

Conservatorship proceeding, § 3008

Homestead, § 3010

Legal capacity, § 3012

##### Determination of

Character of property as community or separate, § 3023

Validity of homestead, § 3023

Purchase of another home, §§ 3021, 3022

### § 3054. Authority of court

3054. When homestead property as defined in Section 3053 or community property is included or proposed to be included in the conservatorship estate of a spouse, the court in which the conservatorship proceeding is pending, upon its own motion or upon petition of a spouse having legal capacity or the conservator of either spouse and upon such notice to such persons as the court prescribes, may do any of the following:

(a) Determine that the inclusion of some or all of the homestead property or community property that is proposed to be included in the conservatorship estate

would not be in the best interest of the spouses or their estates and order that such property not be included.

(b) Permit revocation of a written consent for inclusion of property in the conservatorship estate, with or without terms or conditions.

(c) Determine that the continued inclusion of some or all of the homestead property or community property in the conservatorship estate is not in the best interest of the spouses or their estates and order that the inclusion of such property in the conservatorship estate be terminated, with or without terms or conditions.

(d) Make such other orders as may be appropriate for the orderly administration of the conservatorship estate or to protect the interests of the spouses.

**Comment.** Section 3054 is new. It is intended to state expressly the powers of the court as to the receipt and handling of additional assets under this chapter and to recognize the right to revoke the consent to administration in one of the conservatorship estates.

#### CROSS-REFERENCES

Community property interests, extent to which affected, § 3020

#### Definitions

Community property, § 3002

Conservator, § 3004

Conservatorship estate, § 3006

Conservatorship proceeding, § 3008

Legal capacity, § 3012

#### Determination of

Character of property as community or separate, § 3023

Validity of homestead, § 3023

Effect on consent of death or subsequent lack of legal capacity, § 3055

Petition must be verified, § 1450

Proof of giving of notice, § 1468

Protection of rights of spouse who lacks legal capacity, § 3057

### § 3055. Effect on consent of death or subsequent lack of legal capacity

3055. (a) If consent is given under this article that homestead property as defined in Section 3053 or community property be included in the conservatorship estate of a spouse, the death of either spouse terminates the consent.

(b) If a spouse consents under this article that homestead property as defined in Section 3053 or

community property be included in the conservatorship estate of the other spouse:

(1) Subject to paragraph (2), the subsequent lack of legal capacity of the spouse giving the consent has no effect on the inclusion of the property in the conservatorship estate of the other spouse.

(2) The appointment of a conservator for the spouse giving the consent terminates the consent.

**Comment.** Section 3055 is new. If a conservator is appointed for a spouse that has given consent to inclusion of community or homestead property in the conservatorship estate of the other spouse, the appointment terminates the consent but the two conservators may, when authorized by order of the court, consent that the property continue to be included in the same conservatorship estate or may work out some other arrangement for the administration of the property as a part of a plan for the administration of the community and homestead property of the two spouses. See Sections 3051 (d)–(e) and 3053 (c)–(d). As to the revocation of consent or termination of inclusion of property in a conservatorship estate, see Section 3054.

#### CROSS-REFERENCES

##### Definitions

- Community property, § 3002
- Conservator, § 3004
- Conservatorship estate, § 3006
- Legal capacity, § 3012

### § 3056. Manner of management, control, and disposition of property as a part of a conservatorship estate

3056. Except as otherwise provided in this part and subject to Section 3071, when homestead property or community property is included in a conservatorship estate under this article for the purpose of management, control, and disposition, the conservator has the same powers and duties with respect to such property as the conservator has with respect to other property of the conservatorship estate.

**Comment.** Section 3056 is new. It makes applicable to the property included in a conservatorship estate under this article the provisions of Part 4 (commencing with Section 2100) and any other applicable provisions. The introductory clause to Section 3056 recognizes the limitations on disposition imposed by Section 3071 (substitute for joinder or consent requirement) and other

provisions, such as Sections 3020 (community property interests not affected), 3021 (purchase of another home), 3022 (homestead exemption), 3054 (authority of court), and 3055 (effect on consent of death or subsequent lack of legal capacity). See also Section 3057 (protection of rights of spouse who lacks legal capacity).

#### CROSS-REFERENCES

##### Definitions

Community property, § 3002  
Conservator, § 3004  
Conservatorship estate, § 3006  
Homestead, § 3010

### § 3057. Protection of rights of spouse who lacks legal capacity

3057. (a) Where a spouse lacks legal capacity and does not have a conservator, any interested person who has knowledge or reason to believe that the rights of such spouse in the community property are being prejudiced may bring an action on behalf of such spouse to enforce the duty of good faith in the management and control of the community property and to obtain such relief as may be appropriate.

(b) If one spouse has a conservator and the other spouse is managing or controlling community property, the conservator has the duty to keep reasonably informed concerning the management and control, including the disposition, of the community property. If the conservator has knowledge or reason to believe that the rights of the conservatee in the community property are being prejudiced, the conservator may bring an action on behalf of the conservatee to enforce the duty of good faith in the management and control of the community property and to obtain such relief as may be appropriate.

**Comment.** Section 3057 is new. As to the duty of good faith in managing and controlling community property, see Civil Code Section 5125(e).

#### CROSS-REFERENCES

##### Definitions

Community property, § 3002  
Conservator, § 3004  
Legal capacity, § 3012

## **Article 2. Substitute for Joinder or Consent Requirements**

### **§ 3070. Article provides substitute for joinder or consent requirements of other statutes**

3070. If the requirements of this article are satisfied with respect to a transaction described in Section 3071, the transaction is deemed to satisfy the joinder or consent requirements of the statute referred to in that section.

**Comment.** Section 3070 makes clear that a transaction that satisfies the provisions of this article is deemed to satisfy the joinder or consent requirement of the Civil Code section or other statutory provision referred to in Section 3071.

### **§ 3071. Substitute for joinder or consent**

3071. (a) In case of a transaction for which the joinder or consent of both spouses is required by Section 1242, 1243, 5125, or 5127 of the Civil Code or by any other statute, if one or both spouses lacks legal capacity for the transaction, the requirement of joinder or consent shall be satisfied as provided in this section.

(b) Where one spouse has legal capacity for the transaction and the other spouse has a conservator, the requirement of joinder or consent is satisfied if both of the following are obtained:

(1) The joinder or consent of the spouse having legal capacity.

(2) The joinder or consent of the conservator of the other spouse given in compliance with Section 3072.

(c) Where both spouses have conservators, the joinder or consent requirement is satisfied by the joinder or consent of each such conservator given in compliance with Section 3072.

(d) In any case, the requirement of joinder or consent is satisfied if the transaction is authorized by an order of court obtained in a proceeding pursuant to Chapter 3 (commencing with Section 3100).

**Comment.** Section 3071 continues provisions of former Sections 1435.1, 1435.16(a)-(c) and 1435.17(a)-(c). Civil Code Sections 1242 and 1243 require joint action by spouses to convey or encumber homestead property or to abandon a homestead.

Civil Code Section 5127 requires joint action by spouses with regard to disposition of community real property (lease for a longer period than one year or sale, conveyance, or encumbrance). The reference to Civil Code Section 5125, which requires joint action of spouses for certain community personal property transactions, is new; it applies to such matters as gifts of personal property and disposition of furniture and furnishings where consent is required by Civil Code Section 5125(b) and (c). For the manner in which joinder in or consent to the transaction under Section 3071 is to be given, see Section 3073.

A spouse having a conservator of the estate is deemed to lack legal capacity for the purposes of this section. See Section 3012. However, a good faith purchaser or encumbrancer for value is protected unless a notice of the establishment of the conservatorship is recorded. See Section 3074.

If a spouse lacks legal capacity and does not have a conservator, either:

(1) A conservator must be appointed for that spouse so the conservator can join in or consent to the transaction in order to satisfy subdivision (b) or (c); or

(2) A proceeding may be brought under Chapter 3 to authorize the transaction, thereby avoiding the need to appoint a conservator, if the other spouse has legal capacity for the transaction or has a conservator.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 3004

Conservatorship proceeding, § 3008

Legal capacity, § 3012

Effect of compliance with this article, § 3070

#### § 3072. Court order authorizing joinder or consent by conservator

3072. (a) Except as provided in subdivision (b), a conservator may join in or consent to a transaction under Section 3071 only after authorization by either of the following:

(1) An order of the court obtained in the conservatorship proceeding upon a petition filed pursuant to Section 2403 or under Article 7 (commencing with Section 2540) or 10 (commencing with Section 2580) of Chapter 6 of Part 4.

(2) An order of the court made in a proceeding pursuant to Chapter 3 (commencing with Section 3100).

(b) A conservator may consent without court authorization to a sale, conveyance, or encumbrance of community personal property requiring consent under subdivision (c) of Section 5125 of the Civil Code if the conservator could sell or transfer such property under Section 2545 without court authorization if the property were a part of the conservatorship estate.

**Comment.** Subdivision (a) of Section 3072 continues the requirement of former Sections 1435.16 and 1435.17 that the conservator be first authorized by order of the court before joining in a transaction where joinder is required and extends the requirement to cases where consent is required for a transaction involving community personal property. Subdivision (b) provides an exception to the requirement of a court order in certain cases where consent for a transaction involving community personal property is required. See Civil Code Section 5125(c) and Probate Code Section 2545. Subdivision (b) does not, however, dispense with the need for court authorization for the conservator to join in or consent to a gift of community personal property or a disposition of community personal property without a valuable consideration under subdivision (b) of Civil Code Section 5125. See also Sections 3122(d)(4) and 3144(b) (substituted judgment).

#### CROSS-REFERENCES

##### Definitions

Community property, § 3002

Conservator, § 3004

Conservatorship estate, § 3006

Conservatorship proceeding, § 3008

Manner of joinder or consent, § 3073

Protection of rights of spouse who lacks legal capacity, § 3057

Rights of spouses in proceeds of transaction, § 3020

### § 3073. Manner of joinder or consent

3073. (a) The joinder or consent under Section 3071 of a spouse having legal capacity shall be in such manner as complies with Section 1242, 1243, 5125, or 5127 of the Civil Code or other statute that applies to the transaction.

(b) The joinder or consent under Section 3071 of a conservator shall be in the same manner as a spouse would join in or consent to the transaction under the statute that applies to the transaction except that the joinder or consent shall be executed by the conservator and shall refer to the



court order, if one is required, authorizing the conservator to join in or consent to the transaction.

Legislative Committee Comment—Assembly

**Comment.** Section 3073 is new and requires that the joinder or consent satisfy the requirements of the statute applicable to the transaction. Civil Code Section 1242 requires in part that the instrument by which a homestead is conveyed or encumbered be “executed and acknowledged” by both spouses or that each spouse “executes and acknowledges” a separate instrument so conveying or encumbering the homestead in favor of the same party or his successor in interest. Section 1243 of the Civil Code provides in part that a homestead can be abandoned (1) by a declaration of abandonment “executed and acknowledged” by husband and wife “jointly or by separate instruments,” or (2) by a “conveyance or conveyances by both spouses as provided in Section 1242.” Section 5125 of the Civil Code requires “written consent” of a spouse for certain dispositions of community personal property. Section 5127 of the Civil Code requires in part that “both spouses either personally or by duly authorized agent, must join in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered.” Under Section 3073, a spouse having legal capacity must satisfy the requirements of the statute that applies to the transaction just as if both spouses had legal capacity. If one or both spouses has a conservator, the conservator or conservators must satisfy the requirements of the statute that applies to the transaction and, in addition, subdivision (b) of Section 3073 requires that the joinder or consent refer to the court order (if one is required by Section 3072) authorizing the conservator to join in or consent to the transaction. As to requirements in connection with a conveyance of real property by a conservator and the effect of the conveyance, see Section 2111.

CROSS-REFERENCES

Definitions

Conservator, § 3004

Legal capacity, § 3012

**§ 3074. Good faith purchaser or encumbrancer for value**

3074. Notwithstanding any other provision of this article, a transaction that affects real property, entered into by a purchaser or encumbrancer in good faith and for a valuable consideration, is not affected by the fact that one

or both spouses have conservators unless a notice of the establishment of the conservatorship or conservatorships, as the case may be, has been recorded prior to the transaction in the county in which the property is located.

**Comment.** Section 3074 is new and is designed to protect innocent third parties who do not have knowledge of the existence of the conservatorship. The section is comparable to Section 1875. See the Comment to that section. Nothing in Section 3074 validates a transaction that is invalid under Civil Code Section 38 nor prevents rescission of a transaction under Civil Code Section 39 if the conservatee would lack sufficient capacity to join in or consent to the transaction absent the conservatorship.

#### CROSS-REFERENCES

Definition, conservator, § 3004

## CHAPTER 3. PROCEEDING FOR PARTICULAR TRANSACTION

### Article 1. General Provisions

#### § 3100. "Transaction" defined

3100. As used in this chapter, "transaction" means a transaction that involves homestead property or community real or personal property, tangible or intangible, or an interest therein or a lien or encumbrance thereon, including, but not limited to, those transactions with respect thereto as are listed in Section 3102.

**Comment.** Section 3100 continues the substance of the first portion of former Section 1435.1.

#### CROSS-REFERENCES

##### Definitions

Community property, § 3002

Homestead, § 3010

#### § 3101. Nature of proceeding

3101. (a) A proceeding may be brought under this chapter for a court order authorizing a proposed transaction, whether or not the proposed transaction is one that otherwise would require the joinder or consent of both spouses, if both of the following conditions are satisfied:

(1) One of the spouses is alleged to lack legal capacity for the proposed transaction, whether or not that spouse has a conservator.

(2) The other spouse either has legal capacity for the proposed transaction or has a conservator.

(b) A proceeding may be brought under this chapter for a court order declaring that one or both spouses has legal capacity for a proposed transaction.

(c) One proceeding may be brought under this chapter under both subdivision (a) and subdivision (b).

(d) In a proceeding under this chapter, the court may determine whether the property that is the subject of the proposed transaction is subject to a valid homestead and whether the property that is the subject of the proposed transaction is community property or the separate property of either spouse, but such determination shall not be made in the proceeding under this chapter if the court determines that the interest of justice requires that the determination be made in a civil action.

(e) This chapter is permissive and cumulative for the transactions to which it applies.

**Comment.** Subdivision (a) of Section 3101 continues the substance of a portion of the first sentence of former Section 1435.1 except that the rules provided in Section 3012 determine whether a spouse lacks legal capacity for the purposes of this chapter. See Section 3012. For the purposes of this chapter, a spouse lacks legal capacity for a transaction if a conservator of the estate has been appointed for the spouse. See Sections 3004 (defining "conservator") and 3012 (legal capacity). This rule is consistent with the rule adopted in Section 3071 which requires the joinder or consent of the conservator rather than the spouse to a transaction requiring joinder or consent of both spouses.

Section 3012 (legal capacity) also covers the case where, applying the principles of law otherwise applicable, a spouse not having a conservator of the estate lacks capacity for the particular proposed transaction that is the subject of the proceeding. See generally Civil Code Sections 38 and 39. Section 3012 also supersedes former Section 1435.2, which defined "incompetent" in the same language that was used to describe an adult for whom a guardian could be appointed. The effect of former Section 1435.2 is continued, however, in Section 3144(a) (4), which precludes a court from ordering a transaction

against the wishes of a spouse not having a conservator unless the spouse is a person for whom a conservator could be appointed. *Compare* Section 3144(a)(4)(iii) *with* Section 1801(b) (conservator of the estate).

The proposed transaction must be one that involves homestead property or community real or personal property, tangible or intangible, or an interest therein or a lien or encumbrance thereon, including, but not limited to, those transactions with respect thereto as are listed in Section 3102. See Section 3100 (defining "transaction"). See also Sections 3002 (defining "community property") and 3010 (defining "homestead"). Court authorization may be sought under this chapter in order to satisfy the requirements of Section 3071 (substitute for joinder or consent) or may be sought so that a transaction not requiring joinder or consent of both spouses cannot later be rescinded by someone acting on behalf of a spouse who lacks legal capacity for the transaction.

Approval of a proposed transaction in a proceeding under this chapter avoids the need to establish a conservatorship for a spouse lacking legal capacity merely in order to accomplish that transaction. Thus, where one spouse has a conservator of the estate and the other spouse lacks legal capacity for the transaction but does not have a conservator, a proceeding may be brought under this chapter to obtain authorization of the transaction and the need to establish a conservatorship for the other spouse is avoided. See Section 3071. However, in order to bring a proceeding under subdivision (a), there must be at least one spouse having legal capacity for the transaction or a conservator of the estate for one of the spouses. See also Section 3111 and Comment to that section. Where both spouses have conservators of the estate, the procedure provided in this chapter is available to obtain court authorization as an alternative to the other methods provided in Section 3072.

Subdivision (b) is new. It covers the case where a spouse does not have a conservator and it is uncertain whether the spouse has legal capacity for the proposed transaction. The court is requested to determine that the spouse has legal capacity for the transaction. If the court determines the spouse has legal capacity for the transaction and if the other spouse has legal capacity for the transaction, the two spouses can proceed with the transaction without further court authorization as any other married persons having legal capacity. If the other spouse does not have legal capacity for the transaction, the transaction may be authorized under this chapter only if the spouse found to have legal capacity

for the transaction is willing to join in or consent to the proposed transaction. See Section 3144.

Subdivision (c) enables a proceeding to be brought under this chapter, for example, to have one spouse declared to have legal capacity for a proposed transaction, to have the other spouse determined to lack legal capacity for the proposed transaction, and to authorize the proposed transaction.

Subdivision (d) continues the substance of a portion of former Section 1435.15, but subdivision (d) extends the former provisions to apply where neither spouse has a conservator. The court has greater authority under subdivision (d) than under Section 3023, because subdivision (d) has no exceptions comparable to subdivisions (b) and (c) of Section 3023.

Subdivision (e) makes clear that the procedure provided in this part is not exclusive of other remedies.

#### CROSS-REFERENCES

Appointment of conservator not required, § 3113

#### Definitions

Community property, § 3002

Conservator, § 3004

Homestead, § 3010

Legal capacity, § 3012

Transaction, § 3100

Inconsistent allegations and alternative relief, § 3120

Notice to Veterans Administration, § 1461.5

Persons who may file or join in petition, § 3111

Protection of rights of spouse who lacks legal capacity, § 3057

Several proposed transactions may be included in one proceeding, § 3120

Transactions authorized, §§ 3100, 3102

### **§ 3102. Transactions that may be subject of the proceeding**

3102. The transactions that may be the subject of a proceeding under this chapter include, but are not limited to:

(a) Sale, conveyance, assignment, transfer, exchange, conveyance pursuant to a preexisting contract, encumbrance by security interest, deed of trust, mortgage, or otherwise, lease, including but not limited to a lease for the exploration for and production of oil, gas, minerals, or other substances, or unitization or pooling with other property for or in connection with such exploration and production.

(b) Assignment, transfer, or conveyance, in whole or in part, in compromise or settlement of an indebtedness,

demand, or proceeding to which the property may be subject.

(c) Dedication or conveyance, with or without consideration, of (1) the property or an interest therein to a public entity (including but not limited to the United States or an agency or instrumentality thereof) for any purpose or (2) an easement over the property to any person for any purpose.

(d) Conveyance, release, or relinquishment to a public entity, with or without consideration, of any access rights to a street, highway, or freeway from the property.

(e) Consent as a lienholder to a dedication, conveyance, release, or relinquishment under subdivision (c) or (d) by the owner of property subject to the lien.

(f) Conveyance or transfer, without consideration, to provide gifts for such purposes, and to such charities, relatives (including one of the spouses), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the spouses.

**Comment.** Section 3102 continues a portion of former Section 1435.1, with the addition of the introductory statement that the listing of transactions is nonexclusive. Thus, unlisted transactions (such as giving an option) are included within the scope of this chapter. Subdivisions (c), (d), and (e) are phrased in language derived from Section 2556 (power of conservator to dedicate or convey real property or easement with or without consideration). Subdivision (f) is new and is derived from Section 2580 (substituted judgment). A transaction proposed under subdivision (f) must satisfy the requirements of Sections 2582 and 2583. See Section 3144(b).

#### CROSS-REFERENCES

Definition, transaction, § 3100

## Article 2. Commencement of Proceeding

### § 3110. Jurisdiction and venue

3110. (a) A proceeding under this chapter shall be brought by a petition filed in the superior court.

(b) Except as provided in subdivision (d), if the proceeding affects real property or a lien or encumbrance

on real property, the proper county for commencement of the proceeding is either of the following:

(1) The county in which the real property, or some part thereof, is situated.

(2) The county in which a conservatorship proceeding of one of the spouses is pending.

(c) Except as provided in subdivision (d), if the proceeding affects only personal property, other than a lien or encumbrance on real property, the proper county for commencement of the proceeding is any of the following:

(1) The county in which one or both of the spouses resides at the time the petition is filed.

(2) The county in which a conservatorship proceeding of one of the spouses is pending.

(3) Such other county as may be in the best interests of the spouses.

(d) If both spouses have conservators and the conservatorship proceedings are pending in the same county, the proper county for the commencement of the proceeding, whether the proceeding affects real or personal property, is the county in which the conservatorship proceedings are pending.

**Comment.** Section 3110 continues the substance of the introductory portion of former Section 1435.4 with the following revisions. Paragraph (2) is added to subdivision (b) to permit the proceeding to be commenced in the county where a conservatorship proceeding for one of the spouses is pending. Paragraph (3) is added to subdivision (c) to conform to Sections 2201 and 2202 (venue for conservatorship proceeding). Subdivision (d) is new and requires the proceeding to be commenced in the county where the conservatorship proceedings of both spouses are pending if both spouses have conservators. Since that court will be settling the accounts of the two conservators and otherwise acting on petitions in connection with the conservatorship estates, it is the appropriate court to commence a proceeding under this chapter, even where the proceeding involves real property located in another county.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 3004

Conservatorship proceeding, § 3008

Notice to Veterans Administration, § 1461.5

Petition must be verified, § 1450

### § 3111. Who may file or join in petition

3111. (a) Except as provided in subdivision (b), any of the following persons may file, or join in, a petition under this chapter:

(1) Either spouse, whether or not the spouse has legal capacity.

(2) The conservator of either spouse.

(b) If the petition requests approval of a proposed transaction, at least one of the petitioners shall be either a conservator or a spouse having legal capacity for the transaction.

**Comment.** Subdivision (a) of Section 3111 continues the substance of the first sentence of former Section 1435.3. The reference to joining in the petition of another is added. Also added is the provision permitting a spouse to file (or join in) a petition even though the spouse lacks legal capacity for the proposed transaction or is one whose legal capacity for the proposed transaction is to be determined in the proceeding. This addition reflects the expansion of the scope of the proceeding to include a determination that one or both spouses has legal capacity for the proposed transaction. See Section 3101(b).

Subdivision (b) of Section 3111 is consistent with the second sentence of former Section 1435.3. The subdivision is necessary to ensure that, if the proposed transaction is approved, the petitioner will have the legal capacity to carry out the court's orders with reference to the transaction. The subdivision does not apply where the only relief requested in the petition is a declaration that one or both spouses has legal capacity for a proposed transaction.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 3004

Legal capacity, § 3012

Transaction, § 3100

When proceeding may be brought, § 3101

### § 3112. Representation of petitioning spouse

3112. (a) If a petitioning spouse is one whose legal capacity for the proposed transaction is to be determined in the proceeding, the court may do any of the following:

(1) Permit the spouse to appear without a representative.



- (2) Appoint a guardian ad litem for the spouse.
- (3) Take such other action as the circumstances warrant.
- (b) If a petitioning spouse lacks legal capacity for the proposed transaction, the court may do either of the following:
  - (1) Require the spouse to be represented by the conservator of the spouse.
  - (2) Appoint a guardian ad litem for the spouse.

**Comment.** Section 3112 is new. Subdivision (a) supplements subdivisions (a) and (b) of Section 3101 and paragraph (1) of subdivision (a) of Section 3111 (who may be a petitioner). Subdivision (b) is consistent with Section 2462 and Code of Civil Procedure Section 372.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 3004

Legal capacity, § 3012

Protection of rights of spouse who lacks legal capacity, § 3057

Representation of spouse alleged to lack legal capacity, § 3140

### § 3113. Appointment of conservator not required

3113. A proceeding may be brought under this chapter by the conservator of a spouse, or by a spouse having legal capacity for the proposed transaction, without the necessity of appointing a conservator for the other spouse.

**Comment.** Section 3113 continues the substance of the second sentence of former Section 1435.3 and extends it to situations where a proceeding is brought by a conservator.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 3004

Legal capacity, § 3012

## Article 3. Petition

### § 3120. Permissible allegations in petition

3120. (a) Several proposed transactions may be included in one petition and proceeding under this chapter.

(b) The petition may contain inconsistent allegations and may request relief in the alternative.

**Comment.** Section 3120 is new. It implements the expanded character of the special proceeding under this chapter which permits a petition for court authorization of a proposed

transaction or a judicial declaration of legal capacity for the proposed transaction or both. See Section 3101.

#### CROSS-REFERENCES

Orders authorized under chapter generally, § 3101

Proposed transactions, §§ 3100, 3102

Verification of petition, § 1450

### § 3121. Required contents of petition

3121. The petition shall set forth all of the following information:

(a) The name, age, and residence of each spouse.

(b) If one or both spouses is alleged to lack legal capacity for the proposed transaction, a statement that the spouse has a conservator or a statement of the facts upon which the allegation is based.

(c) If there is a conservator of a spouse, the name and address of the conservator, the county in which the conservatorship proceeding is pending, and the court number of the proceeding.

(d) If a spouse alleged to lack legal capacity for the proposed transaction is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the name and address of the institution.

(e) The names and addresses of the adult relatives within the second degree of each spouse alleged to lack legal capacity for the proposed transaction, if known to the petitioner.

(f) A sufficient description of the property that is the subject of the proposed transaction.

(g) An allegation of the status of the property, whether community property, community property subject to a homestead, or separate property subject to a homestead.

(h) The estimated value of the property.

(i) The terms and conditions of the proposed transaction, including the names of all parties thereto.

(j) The relief requested.

**Comment.** Section 3121 continues the substance of portions of former Sections 1435.4 and 1435.6. The listing of adult relatives in subdivision (e) is not limited to those "in this state." The relief

requested under subdivision (j) may be in the alternative. Section 3120. See also Section 3101. Section 3121 states the required contents of a petition under this chapter regardless of the relief sought. For special allegations that depend upon the relief sought, see Sections 3122–3123.

## CROSS-REFERENCES

## Definitions

Community property, § 3002  
 Conservator, § 3004  
 Conservatorship proceeding, § 3008  
 Homestead, § 3010  
 Legal capacity, § 3012  
 Transaction, § 3100

## Petition

Alternative relief, requesting, § 3120  
 Declaration of legal capacity, additional allegation, § 3123  
 Inconsistent allegations permitted, § 3120  
 Verification, § 1450

## Proposed transactions

Additional information, § 3122  
 Several permitted in one petition, § 3120

**§ 3122. Petition for court order authorizing transaction**

**3122.** If the proceeding is brought for a court order authorizing a proposed transaction, the petition shall set forth, in addition to the information required by Section 3121, all of the following:

(a) An allegation that one of the spouses has a conservator or facts establishing lack of legal capacity of the spouse for the proposed transaction.

(b) An allegation that the other spouse has legal capacity for the proposed transaction or has a conservator.

(c) An allegation that each spouse either: (1) joins in or consents to the proposed transaction, (2) has a conservator, or (3) is substantially unable to manage his or her financial resources or resist fraud or undue influence.

(d) Facts that may be relied upon to show that the authorization sought is for one or more of the following purposes:

(1) The advantage, benefit, or best interests of the spouses or their estates.

(2) The care and support of either spouse or of such persons as either spouse may be legally obligated to support.

(3) The payment of taxes, interest, or other encumbrances or charges for the protection and

preservation of the homestead or community property.

(4) The providing of gifts for such purposes, and to such charities, relatives (including one of the spouses), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the spouses.

**Comment.** Section 3122 continues the substance of portions of former Section 1435.4. Subdivisions (a) and (b) are phrased to include the situation where each of the spouses has a conservator. Subdivision (c) is added to conform to Section 3144(a)(4). It implements the policy of Section 3144 that the court may not authorize a transaction without the consent of a spouse alleged to lack legal capacity unless the spouse has a conservator or is a person for whom a conservator could be appointed. Subdivision (d)(4) is new and conforms to the addition of subdivision (f) to Section 3102. See also Section 3144(b) (substituted judgment).

#### CROSS-REFERENCES

##### Definitions

Conservator, § 3004

Legal capacity, § 3012

Transaction, § 3100

Several proposed transactions permitted in one petition, § 3120

### § 3123. Petition for court order declaring legal capacity for transaction

3123. If the proceeding is brought for a court order declaring that one or both spouses has legal capacity for a proposed transaction, the petition shall set forth, in addition to the information required by Section 3121, an allegation of the legal capacity of such spouse or spouses for the proposed transaction.

**Comment.** Section 3123 is new. It implements the policy of Section 3101 to permit a proceeding for a judicial declaration of legal capacity for a transaction.

#### CROSS-REFERENCES

##### Definitions

Legal capacity, § 3012

Transaction, § 3100

## Article 4. Citation and Notice of Hearing

### § 3130. Citation to nonpetitioning spouse alleged to lack legal capacity; notice to conservator in lieu of citation

3130. (a) Except as provided in subdivision (b), upon the filing of the petition, the clerk shall issue a citation to

each nonpetitioning spouse alleged to lack legal capacity for the proposed transaction, setting forth the time and place of hearing. The citation and a copy of the petition shall be served upon the spouse at least 15 days before the hearing.

(b) Unless the court otherwise orders, if a spouse alleged to lack legal capacity for the proposed transaction has a conservator, no citation to the spouse need be issued, and the petitioner shall cause a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to be served on the conservator at least 15 days before the hearing.

(c) Service under this section shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

**Comment.** Section 3130 supersedes a portion of the first paragraph, the second and third paragraphs, and the first sentence of the fourth paragraph of former Section 1435.5. Unlike the former provisions which dispensed with a citation where the spouse had a conservator, subdivision (b) grants the court discretion to require a citation. A reference to Code of Civil Procedure Section 415.40 (service outside state) is added in subdivision (c).

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

#### Definitions

Conservator, § 3004

Legal capacity, § 3012

Transaction, § 3100

Duty of conservator to appear and represent spouse, § 3140

Extending time for notice, § 1462

Form of notice, § 1464

#### Notice to

Director of Mental Health, § 1461

Director of Developmental Services, § 1461

Veterans Administration, § 1461.5

Proof of giving of notice, § 1468

Shortening time, § 1462

When service by mail deemed complete, § 1467

### § 3131. Notice to nonpetitioning spouse having legal capacity and relatives

3131. (a) At least 15 days before the hearing on the petition, the petitioner shall cause a notice of the time and

place of the hearing and a copy of the petition to be served upon any nonpetitioning spouse not alleged to lack legal capacity for the proposed transaction.

(b) Service under subdivision (a) shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

(c) At least 15 days before the hearing on the petition, the petitioner shall mail a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to the adult relatives named in the petition at the addresses set forth in the petition.

**Comment.** Subdivisions (a) and (b) of Section 3131 are new. They take into account the fact that, because of the expansion of the class of persons who may bring a proceeding under this chapter (see Section 3111), the nonpetitioning spouse may have legal capacity, thus making unnecessary the issuance and service of a citation.

Subdivision (c) continues the substance of the fifth paragraph of former Section 1435.5 except that the time of mailing has been lengthened from 10 to 15 days. Subdivision (c) is comparable to Section 1822 (notice of hearing on appointment of conservator).

#### CROSS-REFERENCES

Additional notice, § 1462  
 Clerk sets petition for hearing, § 1451  
 Definition, legal capacity, § 3012  
 Extending time for notice, § 1462  
 Form of notice, § 1464  
 Mailing  
   Manner of, § 1465  
   Personal delivery in lieu of, § 1466  
   When complete, § 1465  
 Notice to  
   Director of Mental Health, § 1461  
   Director of Developmental Services, § 1461  
   Veterans Administration, § 1461.5  
 Proof of giving of notice, § 1468  
 Shortening time, § 1462  
 When service by mail deemed complete, § 1467

### Article 5. Hearing and Order

#### § 3140. Representation of spouse alleged to lack legal capacity; appointment of legal counsel

3140. (a) A conservator served pursuant to this article shall, and the Director of Mental Health or the Director of

Developmental Services given notice pursuant to Section 1461 may, appear at the hearing and represent a spouse alleged to lack legal capacity for the proposed transaction.

(b) If a spouse alleged to lack legal capacity is not otherwise represented, the court may in its discretion appoint the public guardian, public administrator, or a guardian ad litem to represent the interests of the spouse.

(c) If a spouse alleged to lack legal capacity is unable to retain legal counsel, upon request of the spouse, the court shall appoint the public defender or private counsel under Section 1471 to represent the spouse and, if such appointment is made, Section 1472 applies.

(d) Except as provided in subdivision (c), the court may fix a reasonable fee, to be paid out of the proceeds of the transaction or otherwise as the court may direct, for all services rendered by privately engaged counsel, the public guardian, public administrator, or guardian ad litem, and by counsel for such persons.

**Comment.** Subdivision (a) of Section 3140 continues the substance of the last sentence of former Section 1435.5 and a portion of former Section 1435.6.

Subdivision (b) continues the substance of a portion of the second paragraph of former Section 1435.7 and supersedes a portion of the sixth paragraph of former Section 1435.5. See also Code Civ. Proc. § 372. —

Subdivision (c) is added to ensure that counsel will be appointed if requested by a spouse unable to retain legal counsel. Section 1472 relates to compensation for counsel appointed under subdivision (c).

Subdivision (d) continues the substance of the last sentence of former Section 1435.5 and a portion of the last sentence of former Section 1435.7. Subdivision (d) adds references to privately engaged counsel and to counsel for the public guardian, public administrator, and guardian ad litem; former law had no express provisions relating to such counsel.

#### CROSS-REFERENCES

##### Definitions

Conservator, § 3004

Legal capacity, § 3012

Representation of petitioning spouse, § 3112

**§ 3141. Presence of spouse at hearing**

3141. (a) If a spouse is alleged to lack legal capacity for the proposed transaction and has no conservator, the spouse shall be produced at the hearing unless unable to attend the hearing.

(b) If the spouse is not able to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the spouse is an adherent of a religion whose tenets and practices call for reliance upon prayer alone for healing and is under treatment by an accredited practitioner of the religion, by the affidavit of the practitioner.

(c) Emotional or psychological instability is not good cause for absence of the spouse from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage.

**Comment.** Section 3141 supersedes the first paragraph of former Section 1435.7. The provisions of former Section 1435.7 that are superseded by subdivisions (b) and (c) of Section 3141 have been conformed to Section 1825 (attendance of proposed conservatee).

**CROSS-REFERENCES**

**Definitions**

Conservator, § 3004

Legal capacity, § 3012

Representation of petitioning spouse, § 3112

Representation of spouse alleged to lack legal capacity, § 3140

**§ 3142. Information to be given to spouse by court**

3142. (a) If a spouse is alleged to lack legal capacity for the proposed transaction and has no conservator, the court, before commencement of the hearing on the merits, shall inform the spouse of all of the following:

(1) A determination of lack of legal capacity for the proposed transaction may result in approval of the proposed transaction.

(2) The spouse has the right to legal counsel of the spouse's own choosing, including the right to have legal counsel appointed by the court if unable to retain legal counsel.



(b) This section does not apply if the spouse is absent from the hearing and is not required to attend the hearing under the provisions of subdivision (a) of Section 3141 and any showing required by Section 3141 has been made.

**Comment.** Section 3142 is new. It is adapted from Section 1828 (relating to the information required to be given to a proposed conservatee) and Section 1823 (form of citation to proposed conservatee).

#### CROSS-REFERENCES

Appointment of legal counsel, § 3140

#### Definitions

Conservator, § 3004

Legal capacity, § 3012

### § 3143. Order declaring legal capacity

3143. (a) If the petition requests that the court make an order declaring a spouse to have legal capacity for the proposed transaction and the court determines that the spouse has legal capacity for the proposed transaction, the court shall so order.

(b) If the petition alleges that a spouse having no conservator lacks legal capacity for the proposed transaction and the court determines that the spouse has legal capacity for the transaction, the court shall make an order so declaring.

**Comment.** Section 3143 is new. It implements the policy of Section 3101 to permit a proceeding under this chapter for a declaration of legal capacity for a transaction.

#### CROSS-REFERENCES

#### Definitions

Conservator, § 3004

Legal capacity, § 3012

### § 3144. Order authorizing transaction

3144. (a) The court may authorize the proposed transaction if the court determines all of the following:

(1) The property that is the subject of the proposed transaction is homestead or community property of the spouses.

(2) One of the spouses then has a conservator or otherwise lacks legal capacity for the proposed transaction.

(3) The other spouse either has legal capacity for the proposed transaction or has a conservator.

(4) Each of the spouses either (i) joins in or consents to the proposed transaction, (ii) has a conservator, or (iii) is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved by isolated incidents of negligence or improvidence.

(5) The proposed transaction is one that should be authorized under this chapter.

(b) If the proposed transaction is to provide gifts for such purposes, and to such charities, relatives (including one of the spouses), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the spouses, the court may authorize the transaction under this chapter only if the transaction is one that the court would authorize under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 (substituted judgment) in the case of a conservatorship.

(c) If the court determines under subdivision (a) that the transaction should be authorized, the court shall so order and may authorize the petitioner to do and perform all acts and to execute and deliver all papers, documents, and instruments necessary to effectuate the order.

(d) In an order authorizing a transaction, the court may prescribe such terms and conditions as the court in its discretion determines appropriate, including but not limited to requiring joinder or consent of another person.

**Comment.** Section 3144 continues the substance of former Section 1435.8 with the addition of subdivision (b) to reflect the expansion of this chapter to cover the type of transactions described in that subdivision and subdivision (d) to make express the court's authority to make appropriate orders. Subdivision (d) supplements authority given the court under Sections 3021 (purchase of another home) and 3022 (protection of homestead exemption). Subdivision (a) (4) continues the effect of former Section 1435.2, which permitted authorization of transactions involving an "incompetent" spouse. See the Comment to Section 3122.

## CROSS-REFERENCES

## Definitions

Community property, § 3002

Conservator, § 3004

Homestead, § 3010

Legal capacity, § 3012

Transaction, § 3100

Determination of validity of homestead or character of property, § 3101(d)

Protection of rights of spouse who lacks legal capacity, § 3057

Rights of spouses in proceeds of transaction, § 3020

**§ 3145. Effect of determination of lack of legal capacity**

3145. A court determination pursuant to this chapter that a spouse lacks legal capacity for the proposed transaction affects the legal capacity of the spouse for that transaction alone and has no effect on the legal capacity of the spouse for any other purpose.

**Comment.** Section 3145 is a new provision that makes clear that a determination of lack of legal capacity under this chapter is limited in scope. See Section 3012 (legal capacity). Section 3145 supersedes former Section 1435.14.

**Article 6. Consummation of Transaction****§ 3150. Bond**

3150. (a) Unless the court for good cause dispenses with the bond, the court shall require the petitioner to give a bond, in the amount fixed by the court, conditioned on the duty of the petitioner to account for and apply the proceeds of the transaction to be received by the petitioner only as the court may by order direct.

(b) Unless the court for good cause fixes the amount of the bond in a lesser amount, if given by an authorized surety company, the bond shall be in an amount not less than the value of the personal property (including cash and any notes) to be received by the petitioner, as determined by the court.

(c) If the sureties on the bond are individual sureties, the bond shall be approved by the court and shall be for twice the amount required for a bond given by an authorized surety company.

(d) Sections 2328, 2329, 2331, 2334, 2335, and 2336 are applicable to the bond of the petitioner under this chapter.

## Legislative Committee Comment—Assembly

**Comment.** Section 3150 continues the substance of former Section 1435.9, with the addition of provisions for deposit in a court-controlled account (Section 2328) and filing a “cash bond” (Section 2331). If some of the proceeds of the transaction are payable into a conservatorship estate, Section 2334 (court may require further security on petition or on its own motion) will apply.

**§ 3151. Execution, delivery, and recording of documents**

3151. (a) The petitioner shall, upon receipt of the consideration therefor, execute, acknowledge, and deliver any necessary instruments or documents as directed by the court, setting forth therein that they are made by authority of the order.

(b) The petitioner shall cause a certified copy of the order to be recorded in the office of the recorder of each county in which is situated any real property affected by the order or any real property upon which there is a lien or encumbrance affected by the order.

(c) If a sale is made upon a credit pursuant to the order, the petitioner shall take the note of the person to whom the sale is made for the amount of the unpaid balance of the purchase money, with such security for the payment thereof as the court shall by order approve. The note shall be made payable to the petitioner or, if the petition was made by a conservator, to the petitioner as conservator.

**Comment.** Subdivisions (a) and (b) of Section 3151 continue the substance of the first paragraph of former Section 1435.10. Subdivision (c) continues the substance of the first paragraph of former Section 1435.12.

## CROSS-REFERENCES

Conveyances of real property by conservator, § 2111  
Definition, conservator, § 3004

**§ 3152. Validity of conveyance or other disposition**

3152. A sale, conveyance, assignment, transfer, exchange, encumbrance, security interest, mortgage, deed of trust, lease, dedication, release, or relinquishment, and any instrument or document, made pursuant to the court's order, is as valid and effectual as if the property affected

thereby were the sole and absolute property of the person making it.

**Comment.** Section 3152 continues the substance of the second paragraph of former Section 1435.10.

**§ 3153. Liability of conservator**

3153. Notes, encumbrances, security interests, mortgages, leases, or deeds of trust, executed as provided in this chapter by a petitioning conservator create no personal liability against the conservator so executing, unless the conservator is one of the spouses and then only to the extent that personal liability would have resulted had both spouses had legal capacity for the transaction and joined in the execution.

**Comment.** Section 3153 continues the substance of former Section 1435.11.

CROSS-REFERENCES

Definitions

Conservator, § 3004

Legal capacity, § 3012

**§ 3154. Further proceedings if transaction not consummated**

3154. (a) If any party to the transaction, other than the petitioner, does not consummate a transaction authorized by the court, the court, on application of the petitioner, after such notice to the parties to the transaction as the court directs, may vacate the order authorizing the transaction.

(b) If the order authorized the sale or encumbrance of property, the petitioner may by supplemental petition apply to the court for an order authorizing any other sale or encumbrance of the property to the advantage, benefit, or best interests of the spouses or their estates. The supplemental petition and a notice of the time and place of the hearing shall be served and mailed as provided in Article 4 (commencing with Section 3130) except that (1) no further citation shall be issued and (2) a copy of the supplemental petition and a notice of the time and place of the hearing shall be served upon any person who has appeared as representative of a nonpetitioning spouse or

upon counsel of record for a nonpetitioning spouse or as the court may otherwise direct.

(c) If it appears to the court that the other sale or encumbrance is to the advantage, benefit, or best interests of the spouses or their estates and that the request in the supplemental petition that the transaction be authorized should be granted, the court may so order and may authorize the petitioner to do and perform acts and to execute and deliver all papers, documents, and instruments necessary to effectuate the order.

**Comment.** Section 3154 continues the substance of former Section 1435.13. In subdivision (b), the former language as to service of copies of the supplemental petition is changed to recognize that a spouse lacking legal capacity is represented in the proceeding.

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Notice to Veterans Administration, § 1461.5

Petition must be verified, § 1450

## PART 7. AUTHORIZATION OF MEDICAL TREATMENT FOR ADULT WITHOUT CONSERVATOR

### § 3200. "Patient" defined

3200. As used in this part, "patient" means an adult who does not have a conservator of the person and who is in need of medical treatment.

**Comment.** Section 3200 is new.

### § 3201. Petition for court authorization for medical treatment

3201. If a patient requires medical treatment for an existing or continuing medical condition and the patient is unable to give an informed consent to such medical treatment, a petition may be filed under this part for an order authorizing such medical treatment and authorizing the petitioner to give consent to such treatment on behalf of the patient.

**Comment.** Section 3201 is similar to a portion of subdivision (b) of Section 2357. In the ordinary, nonemergency case, medical treatment may be given to a person only with the person's informed consent. See *Cobbs v. Grant*, 8 Cal.3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (1972). If the person is incompetent or is otherwise unable to give informed consent and has no conservator, the physician may be willing to proceed with the consent of the person's nearest relative. See *id.* at 244, 502 P.2d at 10, 104 Cal. Rptr. at 514. However, if treatment is not available because of a question of the validity of the consent, court intervention may be needed to authorize the treatment and to protect medical personnel and facilities from later legal action based upon asserted lack of consent.

The provisions of this part afford an alternative to establishing a conservatorship of the person where there is no ongoing need for a conservatorship. The procedural rules of this part are designed to provide an expeditious means of obtaining authorization for medical treatment while safeguarding the basic rights of the patient: The patient has a right to counsel (Section 3205) and the hearing is held after notice to the patient and the patient's attorney and such other persons as the court orders (Section 3206). The court may determine the issue on medical affidavits alone if the attorney for the petitioner and the attorney for the patient so stipulate. Section 3207. The court may not order medical treatment under this part if the patient has the capacity to give informed consent to the treatment but refuses to do so. See Section 3208(b).

#### CROSS-REFERENCES

Petition must be verified, § 1450

### § 3202. Jurisdiction and venue

3202. The petition may be filed in the superior court of any of the following counties:

- (a) The county in which the patient resides.
- (b) The county in which the patient is temporarily living.
- (c) Such other county as may be in the best interests of the patient.

**Comment.** Section 3202 provides liberal venue rules for determining the county in which the petition is to be filed. See also the Comment to Section 2201.

**§ 3203. Who may file petition**

3203. A petition may be filed by any of the following:

- (a) The patient.
- (b) The spouse of the patient.
- (c) A relative or friend of the patient or other interested person.
- (d) The patient's physician.
- (e) A person acting on behalf of the medical facility in which the patient is located if the patient is in a medical facility.
- (f) The public guardian or such other county officer as is designated by the board of supervisors of the county in which the patient is located or resides or is temporarily living.

**Comment.** Section 3203 permits any interested person to file a petition under this part, including a person acting on behalf of the medical facility if the patient is in a medical facility.

**§ 3204. Contents of petition**

3204. The petition shall state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

- (a) The nature of the medical condition of the patient which requires treatment.
- (b) The recommended course of medical treatment which is considered to be medically appropriate.
- (c) The threat to the health of the patient if authorization for the recommended course of treatment is delayed or denied by the court.
- (d) The predictable or probable outcome of the recommended course of treatment.
- (e) The medically available alternatives, if any, to the course of treatment recommended.
- (f) The efforts made to obtain an informed consent from the patient.
- (g) If the petition is filed by a person on behalf of a medical facility, the name of the person to be designated to give consent to the recommended course of treatment on behalf of the patient.



**Comment.** Section 3204 is comparable to subdivision (c) of Section 2357.

**§ 3205. Appointment of legal counsel if necessary**

3205. Upon the filing of the petition, the court shall determine the name of the attorney the patient has retained to represent the patient in the proceeding under this part or the name of the attorney the patient plans to retain for that purpose. If the patient has not retained an attorney and does not plan to retain one, the court shall appoint the public defender or private counsel under Section 1471 to consult with and represent the patient at the hearing on the petition and, if such appointment is made, Section 1472 applies.

**Comment.** Section 3205 is designed to assure that the patient has legal counsel in a proceeding under this part.

**§ 3206. Notice of hearing**

3206. (a) Notice of the time and place of the hearing on the petition shall be given for the period and in the manner prescribed by order of court. In determining the period of notice to be required, the court shall take into account (1) the existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court and (2) the desirability, where the condition of the patient permits, of giving adequate notice to all interested persons.

(b) A notice of the time and place of the hearing or a copy of the order prescribing the time and place of the hearing, and a copy of the petition, shall be given, as prescribed in the order, to all of the following:

- (1) The patient.
- (2) The attorney for the patient.
- (3) Such other persons, if any, as the court in its discretion may require in the order, which may include the spouse of the patient and any known relatives of the patient within the second degree.

**Comment.** Section 3206 is comparable to subdivisions (e) and (f) of Section 2357.

**CROSS-REFERENCES**

Proof of giving of notice, § 1468

**§ 3207. Submission for determination on medical affidavits**

3207. Notwithstanding Section 3206, the matter presented by the petition may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the patient so stipulate and further stipulate that there remains no issue of fact to be determined.

**Comment.** Section 3207 is comparable to subdivision (g) of Section 2357.

**§ 3208. Order authorizing treatment**

3208. (a) The court may make an order authorizing the recommended course of medical treatment of the patient and designating a person to give consent to the recommended course of medical treatment on behalf of the patient if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the patient requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical health of the patient.

(3) The patient is unable to give an informed consent to the recommended course of treatment.

(b) If the patient has the capacity to give an informed consent to the recommended course of medical treatment but refuses to do so, the court is not authorized to make an order under this part. If an order has been made under this part, the order shall be revoked if the court determines that the patient has recovered the capacity to give informed consent to the recommended course of medical treatment. Until revoked or modified, the order is effective authorization of the course of medical treatment.

**Comment.** Subdivision (a) of Section 3208 is comparable to subdivision (h) of Section 2357. The person designated to give consent may be called upon to make decisions on particular matters that arise within the authorized course of medical treatment. Subdivision (b) makes clear that this part applies only

to the case where the patient either lacks the capacity to give informed consent or is in such a condition that the patient is unable to give such consent.

**§ 3209. Continuing jurisdiction of court**

3209. The court in which the petition is filed has continuing jurisdiction to revoke or modify an order made under this part upon a petition filed, noticed, and heard in the same manner as an original petition filed under this part.

**Comment.** Section 3209 gives the court continuing jurisdiction to make such further orders as are necessary concerning the medical treatment of the patient. If the court determines that the patient has recovered capacity to give informed consent, the order under this part must be revoked. See Section 3208(b). The patient can then determine whether to consent or to refuse to consent to continuation of the treatment.

**§ 3210. Procedure supplemental and alternative**

3210. (a) This part is supplemental and alternative to other procedures or methods for obtaining medical consent.

(b) Nothing in this part limits the providing of medical treatment in an emergency case in which the medical treatment is required because (1) such treatment is required for the alleviation of severe pain or (2) the patient has a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death.

**Comment.** Subdivision (a) of Section 3210 makes clear that this part is permissive, not mandatory. See the Comment to Section 3201. Subdivision (b) makes clear that the enactment of this part does not by implication impose a requirement of informed consent of the patient in emergency cases where such consent cannot reasonably be obtained. Such cases are governed by other law. See generally *Cobbs v. Grant*, 8 Cal.3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (1972).

**§ 3211. Limitations on application of part**

3211. (a) No person may be placed in a mental health treatment facility under the provisions of this part.

(b) No experimental drug as defined in Section 26668 of the Health and Safety Code may be prescribed for or administered to any person under this part.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on any person under this part.

(d) No person may be sterilized under this part.

(e) The provisions of this part are subject to any valid and effective directive of the patient under Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code (Natural Death Act).

Legislative Committee Comment—Assembly

**Comment.** Section 3211 is new and is comparable to Section 2356 (guardianship-conservatorship).

## **PART 8. OTHER PROTECTIVE PROCEEDINGS**

### **CHAPTER 1. GENERAL PROVISIONS**

#### **§ 3300. Parent must account to minor for money received**

3300. A parent who receives any money or property belonging to a minor under any provision of this part shall account to the minor for the money or other property when the minor reaches the age of majority.

**Comment.** Section 3300 is based on former Section 1432, but Section 3300 expands the scope of the former section to include property other than money and to cover money and other property received under any of the provisions of this part. Former Section 1432 applied specifically only to money received under former Sections 1430, 1430.5, and 1431.

#### **§ 3301. Consent of court to permit hospital or medical care or enlistment in armed forces**

3301. Whenever it appears to the satisfaction of the superior court by application of the minor concerned that the consent of a parent or guardian is necessary to permit hospital or medical care or enlistment in the armed services for or by a minor of the age of 16 years or over residing in the State of California and that such minor has no parent or guardian available to give such consent, the court may

summarily grant such consent. No fee shall be charged for proceedings under this section.

**Comment.** Section 3301 is the same as former Section 1444.

CROSS-REFERENCES

Application must be verified, §§ 1430, 1450

Hospital, medical, or dental care without parent's consent, Civil Code §§ 25.6-25.7, 34.5-34.10

**§ 3302. Approval of contract for attorney's fees for minor; fees in absence of contract**

3302. A contract for attorney's fees for services in litigation, made by or on behalf of a minor, is void unless the contract is approved by the court in which the litigation is pending or the court having jurisdiction of the guardianship estate of the minor, upon petition of any interested person. When no such contract is approved and a judgment is recovered by or on behalf of a minor, the attorney's fees chargeable against the minor shall be fixed by the court rendering the judgment.

**Comment.** Section 3302 is the same in substance as former Section 1509. "Guardianship" has been inserted before "estate" to make clear that the contract is valid if approved by the court in which the guardianship proceeding is pending if the minor has a guardian. As to a contingent fee contract in a case where there is a guardianship of the estate, see Section 2644.

CROSS-REFERENCES

Order for payment of fee to attorney, § 3601

Definition, interested person, § 1424

**CHAPTER 2. MONEY OR PROPERTY  
BELONGING TO MINOR**

**Article 1. Total Estate Not in Excess of \$5,000**

**§ 3400. "Total estate of the minor" defined**

3400. (a) As used in this article, "total estate of the minor" includes both the money and other property belonging to the minor and the money and other property belonging to the guardianship estate, if any, of the minor.

(b) In computing the "total estate of the minor" for the purposes of this article, all of the following shall be deducted:

(1) "Custodial property" held pursuant to the California Uniform Gifts to Minors Act, Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Any money or property subject to court order pursuant to subdivision (c) of Section 3602 or Article 2 (commencing with Section 3610) of Chapter 4.

**Comment.** Subdivision (a) of Section 3400 is new. Subdivision (b) continues the substance of the second sentence of former Section 1430 with the addition of the reference to subdivision (c) of Section 3602.

### **§ 3401. Delivery of money or property to parent**

3401. (a) Where a minor does not have a guardian of the estate, money or other property belonging to the minor may be paid or delivered to a parent of the minor entitled to the custody of the minor to be held in trust for the minor until the minor reaches majority if the requirements of subdivision (c) are satisfied.

(b) Where the minor has a guardian of the estate, all the money and other property belonging to the guardianship estate may be paid or delivered to a parent entitled to the custody of the minor to be held in trust for the minor until the minor reaches majority if the requirements of subdivision (c) are satisfied.

(c) This section applies only if both of the following requirements are satisfied:

(1) The total estate of the minor, including the money and other property to be paid or delivered to the parent, does not exceed five thousand dollars (\$5,000) in value.

(2) The parent to whom the money or other property is to be paid or delivered gives the person making the payment or delivery written assurance, verified by the oath of such parent, that the total estate of the minor, including the money or other property to be paid or delivered to the parent, does not exceed five thousand dollars (\$5,000) in value.

**Comment.** Sections 3400, 3401, and 3402 continue the substance of former Section 1430 except that the former provisions have been simplified and broadened by substituting a five thousand dollar total estate limit in Section 3401 for the

references in former Section 1430 to two thousand and two thousand five hundred dollars.

Subdivision (a) applies only where the minor has no guardian of the estate. If the minor has a guardian of the estate, the money would be paid to the guardian not to a parent.

Subdivision (b) is designed to permit the entire guardianship estate to be paid over to a parent without the need for a court order when the requirements of subdivision (c) are satisfied. Such payment would not avoid the need for the termination of the guardianship by the court. See Section 2626.

#### CROSS-REFERENCES

Definition, total estate of the minor, § 3400

Duty of parent to account to minor, § 3300

Payment of money belonging to the minor, §§ 3412(c), 3413(c)

Payment or delivery of proceeds of compromise or judgment, § 3611(d)

Right of parent to minor child's earnings, Civil Code § 197

### § 3402. Effect of written receipt of parent

3402. The written receipt of the parent giving the written assurance under Section 3401 shall be an acquittance of the person making the payment of money or delivery of other property pursuant to this article.

**Comment.** See the Comment to Section 3401.

## Article 2. Property in the Form of Money

### § 3410. Application of article; computing "money belonging to the minor"

3410. (a) This article applies to both of the following cases:

(1) Where the minor has a guardian of the estate and the sole asset of the guardianship estate is money.

(2) Where the minor has no guardian of the estate and there is money belonging to the minor.

(b) This article does not apply to, and there shall be excluded in computing "money belonging to the minor" for the purpose of this article, all of the following:

(1) Money or property which is or will be held as "custodial property" pursuant to the California Uniform Gifts to Minors Act, Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Any money or property subject to court order pursuant to subdivision (c) of Section 3602 or Article 2 (commencing with Section 3610) of Chapter 4.

**Comment.** Sections 3410–3413 continue the substance of former Section 1430.5 except that the former minimum (\$2,000) and maximum (\$20,000) limits on its scope have not been continued. See also the Comment to Section 3412. The authority under former Section 1430.5 for the court to “prescribe such other conditions as the court in its discretion deems to be in the best interests of the minor” has been continued in Sections 3412 and 3413 and is limited, as under former Section 1430.5, to cases where the amount is not in excess of \$20,000. Where the amount exceeds \$20,000, authority has been added in Sections 3412 and 3413 for the court to require that the money be deposited or invested in court–controlled accounts in certain financial institutions in lieu of guardianship in the same manner as money paid pursuant to a compromise of a claim of, or a judgment in favor of, a minor or person lacking legal capacity. Compare Sections 3412 and 3413 with Section 3611. Where the amount is \$5,000 or less, authority has been added in Sections 3412 and 3413 to permit the court to order the amount to be paid to a parent to be held in trust for the minor during minority in the same manner as money paid pursuant to a compromise of a claim of, or a judgment in favor of, a minor or person lacking legal capacity. Compare Sections 3412 and 3413 with Section 3611.

Section 3410 is drawn from the introductory clause of the first sentence of former Section 1430.5.

### § 3411. Filing of petition

3411. (a) A parent of a minor entitled to custody of the minor, the guardian of the estate of the minor, or the person holding the money belonging to the minor may file a petition requesting that the court make an order under this article.

(b) The petition shall be filed in the superior court of:

(1) The county where the minor resides if the minor has no guardian of the estate.

(2) The county having jurisdiction of the guardianship estate if the minor has a guardian of the estate.

**Comment.** Section 3411 continues the substance of a portion of the first sentence of former Section 1430.5.



## CROSS-REFERENCES

Definition, money belonging to the minor, § 3410

Petition must be verified, § 1450

Payment or delivery of property pursuant to compromise or judgment, §§ 3600-3612

**§ 3412. Order of court where guardianship of estate**

3412. If the minor has a guardian of the estate and the sole asset of the guardianship estate is money, the court may order that the guardianship of the estate be terminated and, if the court so orders, the court in its discretion shall also order any one or more of the following:

(a) That the money be deposited in a bank in this state or a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) If the money of the guardianship estate does not exceed twenty thousand dollars (\$20,000), that the money be held on such other conditions as the court in its discretion determines to be in the best interests of the minor.

(c) If the money of the guardianship estate does not exceed five thousand dollars (\$5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

**Comment.** Section 3412 applies only where the minor has a guardian of the estate. Where the minor has no guardian of the estate, Section 3413 applies. See also the Comment to Section 3410. The authorization in subdivision (a) to invest in a single-premium deferred annuity is new and is comparable to Section 3611 (disposition of money received pursuant to compromise or judgment). The minimum amount under Section 1430.5 for application of these provisions—\$2,000—has been omitted so that the court can order any amount deposited in a court-controlled account as an alternative to ordering it paid to a parent. Subdivision (c) has been added to give the court the alternative of ordering direct payment to a parent to hold the money in trust for the minor during minority where the amount does not exceed \$5,000. Subdivision (c) is comparable to subdivision (d) of Section 3611.

Where the money of the guardianship estate does not exceed \$5,000, the court, in its discretion, may make an order under subdivision (a), (b), or (c). Where the money does not exceed \$20,000, the court has discretion to make an order under subdivision (a) or (b). Where the money exceeds \$20,000, the court may make an order only under subdivision (a).

Where the total estate of the minor (as defined in Section 3400) does not exceed \$5,000, money of the guardianship estate may be paid directly to a parent under Section 3401 without obtaining a court order under this article or a petition may be filed under this article to obtain a court order under Section 3412. This article provides the guardian who is reluctant to turn over the money to a parent to hold in trust for the minor with the alternative of requesting that the court order the amount deposited or invested under subdivision (a) of Section 3412.

#### CROSS-REFERENCES

##### Definitions

- Account in an insured savings and loan association, § 1406
- Shares of an insured credit union, § 1443
- Single-premium deferred annuity, § 1446
- Proper court, § 3411

#### § 3413. Order of court where no guardianship of estate

3413. If the minor has no guardian of the estate and there is money belonging to the minor, the court may order that a guardian of the estate be appointed and that the money be paid to the guardian or the court may order any one or more of the following:

(a) That the money be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) If the money belonging to the minor does not exceed twenty thousand dollars (\$20,000), that the money be held on such other conditions as the court in its discretion determines to be in the best interests of the minor.

(c) If the money belonging to the minor does not exceed five thousand dollars (\$5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

**Comment.** Section 3413 applies only where the minor does not have a guardian of the estate. Where the minor has a guardian of the estate, Section 3412 applies. See also the Comment to Section 3410. Section 3413 is similar to Section 3412. See the Comment to Section 3412.

#### CROSS-REFERENCES

##### Definitions

- Account in an insured savings and loan association, § 1406
- Money belonging to the minor, § 3410
- Shares of an insured credit union, § 1443
- Single-premium deferred annuity, § 1446
- Proper court, § 3411

### CHAPTER 3. COMPROMISE BY PARENT OF MINOR'S DISPUTED CLAIM

#### § 3500. Parent's right to compromise minor's claim

3500. (a) When a minor has a disputed claim for damages, money, or other property and does not have a guardian of the estate, the following persons have the right to compromise, or to execute a covenant not to sue on or a covenant not to enforce judgment on, the claim, unless the claim is against such person or persons:

(1) Either parent if the parents of the minor are not living separate and apart.

(2) The parent having the care, custody, or control of the minor if the parents of the minor are living separate and apart.

(b) The compromise or covenant is valid only after it has been approved, upon the filing of a petition, by the superior court of either of the following counties:

(1) The county where the minor resides when the petition is filed.

(2) Any county where suit on the claim or matter properly could be brought.

(c) Any money or other property to be paid or delivered for the benefit of the minor pursuant to the compromise or covenant shall be paid and delivered in the manner and upon the terms and conditions specified in Chapter 4 (commencing with Section 3600).

(d) A parent having the right to compromise the disputed claim of the minor under this section may execute

a full release and satisfaction, or execute a covenant not to sue on or a covenant not to enforce judgment on the disputed claim, after the money or other property to be paid or delivered has been paid or delivered as provided in subdivision (c). If the court orders that all or any part of the money to be paid under the compromise or covenant be deposited in a bank or in a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, the release and satisfaction or covenant is not effective for any purpose until the money has been deposited or invested as directed in the order of the court.

**Comment.** Section 3500 continues the substance of former Section 1431 except (1) the limitation of the section to cases where the minor has no guardian of the estate is new, (2) a reference is added to "a covenant not to enforce judgment on" the claim, and (3) the court authorized to approve the compromise or covenant has been expanded to include the superior court of "any county where suit on the claim or matter properly could be brought." The extension which permits approval by the superior court in any county in which a suit could be brought on the claim or matter makes Section 3500 consistent with Section 2505 (compromise by guardian or conservator).

Where the minor has a guardian of the estate, the guardian (rather than the parent) has authority to compromise the claim. See Sections 2500-2507. If the claim is the subject of pending litigation, the minor must appear in the action either by a guardian of the estate or by a guardian ad litem, and in such case Section 372 of the Code of Civil Procedure provides for compromise of the claim.

#### CROSS-REFERENCES

##### Definitions

- Account in an insured savings and loan association, § 1406
- Shares of an insured credit union, § 1443
- Single-premium deferred annuity, § 1446
- Petition must be verified, § 1450

**CHAPTER 4. MONEY OR PROPERTY PAID  
OR DELIVERED PURSUANT TO COMPROMISE  
OR JUDGMENT FOR MINOR  
OR INCOMPETENT PERSON**

**Article 1. General Provisions**

**§ 3600. Application of article**

3600. This article applies whenever both of the following conditions exist:

(a) A court approves (1) a compromise of, or the execution of a covenant not to sue on or a covenant not to enforce judgment on, a minor's disputed claim or (2) approves a compromise of a pending action or proceeding to which a minor or incompetent person is a party or (3) gives judgment for a minor or incompetent person.

(b) The compromise, covenant, or judgment provides for the payment or delivery of money or other property for the benefit of the minor or incompetent person.

**Comment.** Section 3600 continues the substance of a portion of the third paragraph of former Section 1510 except that the reference to a covenant not to enforce judgment has been added.

**CROSS-REFERENCES**

Definition, incompetent person, § 3603

Money or property paid or delivered pursuant to compromise or judgment, Code Civ. Proc. § 372

**§ 3601. Order directing payment of expenses, costs, and fees**

3601. (a) The court making the order or giving the judgment referred to in Section 3600, as a part thereof, shall make a further order authorizing and directing that such reasonable expenses (medical or otherwise and including reimbursement to a parent, guardian, or conservator), costs, and attorney's fees, as the court shall approve and allow therein, shall be paid from the money or other property to be paid or delivered for the benefit of the minor or incompetent person.

(b) The order required by subdivision (a) may be directed to the following:

(1) A parent of the minor, the guardian ad litem, or the guardian of the estate of the minor or the conservator of the estate of the incompetent person.

(2) The payer of any money to be paid pursuant to the compromise, covenant, or judgment for the benefit of the minor or incompetent person.

**Comment.** Section 3601 continues the substance of a portion of the third paragraph of former Section 1510 and supersedes former Section 1511. Under subdivision (b) (2), the court may order the payer of the money to pay the expenses, costs, and fees approved and allowed by the court directly to the persons entitled thereto. For example, under subdivision (b), the court may either:

(1) Order pursuant to paragraph (1) that the money be paid to the guardian or conservator of the estate who is further ordered to pay the expenses, costs, and fees approved and allowed by the court to the persons entitled thereto; or

(2) Order pursuant to paragraph (2) that the payer of the money pay such expenses, costs, and fees directly to the persons entitled thereto and the remaining balance to the guardian or conservator of the estate or as otherwise provided in Article 2 (commencing with Section 3610).

#### CROSS-REFERENCES

Application of section, § 3600

Approval of contract for attorney's fees for minor, § 3302

Contingent fee contract with attorney, § 2644

Definition, incompetent person, § 3603

Fixing fees for attorney of minor, § 3302

### § 3602. Disposition of remaining balance

3602. (a) If there is no guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in Article 2 (commencing with Section 3610).

(b) Except as provided in subdivision (c), if there is a guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the

court under Section 3601) shall be paid or delivered to the guardian or conservator of the estate. Upon application of the guardian or conservator, the court, making the order or giving the judgment referred to in Section 3600 or the court in which the guardianship or conservatorship proceeding is pending may, with or without notice, make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section 2456.

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may for good cause shown order that all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court. If the petition is by a person other than the guardian or conservator, notice of hearing on a petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**Comment.** Section 3602 is based on a portion of the third paragraph of former Section 1510 except that subdivisions (b) and (c) are added to make clear the alternatives available where there is an existing guardianship or conservatorship of the estate.

#### CROSS-REFERENCES

Application of section, § 3600

Application or petition must be verified, § 1450

Clerk sets petition for hearing, § 1451

#### Definitions

Account in an insured savings and loan association, § 1406

Incompetent person, § 3603

Shares of an insured credit union, § 1443

Single-premium deferred annuity, § 1446

#### § 3603. Reference to "incompetent person"

3603. When reference is made in this chapter to "incompetent person," the reference shall be deemed to

include "a person for whom a conservator may be appointed."

**Comment.** Section 3603 continues the last portion of the last paragraph of former Section 1510.

## **Article 2. Disposition of Money or Other Property Where No Guardianship or Conservatorship**

### **§ 3610. Disposition of remaining balance**

**3610.** When money or other property is to be paid or delivered for the benefit of a minor or incompetent person under a compromise, covenant, order or judgment, and there is no guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in this article.

**Comment.** Section 3610 is new and makes clear that this article applies only where there is not an existing guardianship or conservatorship of the estate. The section is consistent with subdivision (a) of Section 3602. For provisions relating to the authority of a parent, guardian, conservator, or guardian ad litem to compromise claims and actions, see Sections 2500–2507 and 3500 and Code of Civil Procedure Sections 372 and 373.5.

#### **CROSS-REFERENCES**

Definition, incompetent person, § 3603

Disposition of money or property where existing guardianship or conservatorship, § 3602(b), (c)

### **§ 3611. Order of court**

**3611.** In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited in a bank in this state or in a trust company authorized to transact a trust business in this state



or invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on such conditions as the court determines to be in the best interest of the minor or incompetent person.

(c) If the remaining balance of the money and other property to be paid or delivered does not exceed twenty thousand dollars (\$20,000) in value, that all or any part of the money and other property be held on such other conditions as the court in its discretion determines to be in the best interest of the minor or incompetent person.

(d) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars (\$5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

**Comment.** Section 3611 continues the substance of the first paragraph of former Section 1510 except that the upper limit for the application of subdivision (c) has been increased from \$10,000 to \$20,000 and the upper limit for the application of subdivision (d) has been increased from \$1,000 to \$5,000.

Where the money and other property to be paid or delivered does not exceed \$5,000 and is for the benefit of a minor, the court, in its discretion, may make an order under subdivision (a), (b), (c), or (d). Where the amount does not exceed \$20,000, the court has discretion to make an order under subdivision (a) or subdivision (c), but not under subdivision (d). Where the amount exceeds \$20,000, the court may make an order under subdivision (a) or subdivision (b). See also Section 3401 (direct payment to parent without court order).

#### CROSS-REFERENCES

##### Definitions .

Account in an insured savings and loan association, § 1406

Incompetent person, § 3603

Shares of an insured credit union, § 1443

Single-premium deferred annuity, § 1446

Duty of parent to account, § 3300

**§ 3612. Reservation of jurisdiction where minor**

3612. Notwithstanding any other provision of law and except to the extent the court orders otherwise, the court making the order under Section 3611 shall have continuing jurisdiction of the money and other property paid, delivered, deposited, or invested under this article until the minor reaches the age of 18 years.

**Comment.** Section 3612 supersedes the second paragraph of former Section 1510. The provision of former law for the court to provide in its order that it retains jurisdiction has been revised to confer such jurisdiction automatically unless the court orders otherwise. The court's continuing jurisdiction has been extended to include "other property."

**CHAPTER 5. PERSONAL PROPERTY  
OF ABSENTEES**

**Comment.** Chapter 5 (commencing with Section 3700) continues former Chapter 2.5 (commencing with Section 1776) of Division 5, enacted as part of the P.O.W.-M.I.A. Family Relief Act of 1972. See 1972 Cal. Stats. ch. 988, §§ 8, 10. For related provisions, see Chapter 3 (commencing with Section 295) of Division 2a (administration of estates of absentees).

**§ 3700. Definitions**

3700. As used in this chapter:

(a) "Absentee" is defined in Section 1403.

(b) "Eligible spouse" means the spouse of an absentee who has not commenced an action or proceeding for judicial or legal separation, divorce, annulment, adjudication of nullity, or dissolution of the marriage of the spouse and the absentee.

(c) "Family of an absentee" means an eligible spouse, if any, or if no eligible spouse, the child or children of an absentee, equally, or if no child or children, the parent or parents of an absentee, equally, and the guardian of the estate or conservator of the estate of any person bearing such relationship to the absentee.

(d) "Secretary concerned" is defined in Section 1440.

**Comment.** Section 3700 continues the substance of former Section 1776.

**§ 3701. Setting aside personal property of absentee**

3701. Upon petition as provided in this chapter, the court may set aside to the family of an absentee personal property of the absentee situated in this state for the purpose of managing, controlling, encumbering, selling, or conveying, or otherwise engaging in any transaction with respect to the property, if the court determines that to do so will be in the best interest of the absentee, including the interest of the absentee in providing for shelter, food, health care, education, transportation, or the maintenance of a reasonable and adequate standard of living for the family of the absentee. The absentee's interest in the property set aside shall not exceed twenty thousand dollars (\$20,000).

**Comment.** Section 3701 continues the substance of former Section 1777 but increases the amount that may be set aside from \$5,000 to \$20,000 and makes clear that the court may set aside property of the absentee in order to provide for the support of the dependents of the absentee. This accomplishes the purpose of the legislation which is not only to avoid "prejudice to the estates of such missing persons" but also to avoid "difficulty and hardship to their families [caused] by their inability to consummate transactions, such as to sell property, withdraw funds, cash checks, transfer securities and the like, upon which the families are dependent." 1972 Cal. Stats. ch. 988, § 9. *Accord*, C. Stephenson & G. Cole, Supplement to 1 California Decedent Estate Administration § 3.31, at 36 (Cal. Cont. Ed. Bar 1976) (intended to provide for support of dependents of absentee). See also Section 295.1 (administration of estate of absentee).

**CROSS-REFERENCES****Definitions**

Absentee, § 1403

Family of an absentee, § 3700

**§ 3702. Who may petition**

3702. A petition that personal property of an absentee be set aside as provided in this chapter may be filed by any of the following persons:

(a) A person in whose favor the personal property of the absentee may be set aside.

(b) A person to whom the absentee has issued a general power of attorney while serving in the armed forces of the

United States or while an employee of any agency or department of the United States, provided the power of attorney was valid and effective at the time issued, regardless whether it has expired or terminated.

**Comment.** Section 3702 continues the substance of a portion of the first sentence of former Section 1778.

#### CROSS-REFERENCES

Definition, absentee, § 1403

### § 3703. Contents of petition

3703. (a) The petition shall contain all of the following:

(1) A statement that the petition is filed under this chapter.

(2) In its caption, the last known military rank or grade and the social security account number of the absentee.

(3) A specific description and estimate of the value of all of the absentee's property, wherever situated (including all sums due the absentee from the United States).

(4) A designation of the property to be set aside, and the facts establishing that setting aside the property is necessary and in the best interest of the absentee.

(5) If the property is to be set aside for the benefit of the spouse of the absentee, an allegation that the spouse is an eligible spouse.

(6) So far as known to the petitioner, the names and residences of all persons comprising the family of the absentee, and an allegation whether a guardian of the estate or a conservator of the estate of any member of the family of the absentee has been appointed.

(b) There shall be attached to the petition a certificate complying with Section 1283 of the Evidence Code showing the determination of the secretary of the military department or the head of the department or agency concerned or the delegate of the secretary or head that the absentee is in missing status. The certificate shall be received as evidence of that fact and the court shall not determine the status of the absentee inconsistent with the status shown in the certificate.

**Comment.** Section 3703 continues the substance of a portion of former Section 1778.

## CROSS-REFERENCES

## Definitions

Absentee, § 1403

Eligible spouse, § 3700

Family of an absentee, § 3700

Petition must be verified, § 1450

**§ 3704. Notice of hearing**

3704. (a) Notice of the nature of the proceedings and the time and place of the hearing shall be given by the petitioner at least 15 days before the hearing date by all of the following means:

(1) By mail, together with a copy of the petition, to all persons comprising the family of the absentee.

(2) By delivery by a method that would be sufficient for service of summons in a civil action, together with a copy of the petition, to the secretary concerned or to the head of the United States department or agency concerned.

(3) By publication pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proceedings will be held.

(b) Whenever notice to an officer or agency of this state or of the United States would be required under Section 1461 or Section 1822 upon petition for appointment of a conservator, like notice shall be given of the petition under this chapter.

**Comment.** Section 3704 continues the substance of a portion of former Section 1779. The reference to appointment of a guardian of an incompetent person in former Section 1779 has been replaced by a reference in subdivision (b) to appointment of a conservator, and a specific reference to the relevant section of the conservatorship statute has been added.

## CROSS-REFERENCES

## Definitions

Family of an absentee, § 3700

Secretary concerned, § 1440

**§ 3705. Hearing and order**

3705. (a) Upon the hearing of the petition, any officer or agency of this state or the United States or the authorized delegate of the officer or agency, or any relative or friend of the absentee, may appear and support or oppose the petition.

(b) If the court determines that the allegations of the petition are true and correct, the court may order set aside to the family of the absentee personal property of the absentee situated in California (excluding any sums due the absentee from the United States) in which the absentee's interest does not exceed twenty thousand dollars (\$20,000). The property set aside shall be specified in the order.

(c) No bond shall be required of any person to whom property of the absentee has been set aside by order of the court pursuant to this chapter.

**Comment.** Subdivision (a) of Section 3705 supersedes the last sentence of former Section 1779. Subdivisions (b) and (c) continue the substance of former Section 1780 but the amount that may be set aside is increased from \$5,000 to \$20,000. Subdivision (b) also continues the substance of the requirement of former Section 1778 that the court find that the spouse is an eligible spouse.

#### CROSS-REFERENCES

##### Definitions

Absentee, § 1403

Family of an absentee, § 3700

#### § 3706. Jurisdiction of court not affected by size of absentee's estate

**3706.** A determination by the court that the value of all of the absentee's property, wherever situated, exceeds twenty thousand dollars (\$20,000) or that the absentee owns or has an interest in real property, wherever situated, does not deprive the court of jurisdiction to set aside to the family of the absentee personal property of the absentee situated in California in which the absentee's interest does not exceed twenty thousand dollars (\$20,000), and the court shall order set aside such personal property to the family of the absentee if the court finds that all of the other provisions of this chapter have been complied with. The property set aside shall be specified in the order.

**Comment.** Section 3706 continues the substance of former Section 1781 but the amount has been increased from \$5,000 to \$20,000. See also Section 295.1 (administration of estate of absentee where estate consists of no real property and is \$5,000 or less).

## CROSS-REFERENCES

## Definitions

Absentee, § 1403

Family of an absentee, § 3700

**§ 3707. Joint tenancy property**

3707. For the purposes of this chapter, any property or interest therein or lien thereon that the absentee holds as joint tenant shall be included in determining the property of the absentee and its value. The joint tenancy interest may be set aside to the family of the absentee as provided in this chapter but may only be set aside to a member of the absentee's family who was a joint tenant with the absentee in the property.

**Comment.** Section 3707 continues the substance of former Section 1782.

## CROSS-REFERENCES

## Definitions

Absentee, § 1403

Family of an absentee, § 3700

**§ 3708. Accounting**

3708. (a) Within six months after the absentee has returned to the controllable jurisdiction of the military department or civilian agency or department concerned, or within six months after the determination of death of the absentee by the secretary concerned or the head of the department or agency concerned or the delegate of the secretary or head, the former absentee or the personal representative of the deceased absentee may, by motion in the same proceeding, require the person or persons to whom the property of the absentee was set aside to account for the property and the proceeds, if any. The time of return to the controllable jurisdiction of the military department or civilian department or agency concerned or the determination of the time of death of the absentee shall be determined by the court under 37 United States Code, Section 556, or 5 United States Code, Section 5566. An official written report or record of the military department or civilian department or agency that the absentee has returned to its controllable jurisdiction or is deceased shall be received as evidence of that fact.

(b) This section does not in any manner derogate the finality and conclusiveness of any order, judgment, or decree previously entered in the proceeding.

**Comment.** Section 3708 continues the substance of former Section 1783.

#### CROSS-REFERENCES

##### Definitions

Absentee, § 1403

Secretary concerned, § 1440

## CHAPTER 6. REMOVAL OF PROPERTY OF NONRESIDENT

### § 3800. Petition for removal

3800. (a) If a nonresident has a duly appointed, qualified, and acting guardian, conservator, committee, or comparable fiduciary in the place of residence and if no proceeding for guardianship or conservatorship of the nonresident is pending or contemplated in this state, the nonresident fiduciary may petition to have property owned by the nonresident removed to the place of residence.

(b) The petition for removal of property of the nonresident shall be filed in the superior court of the county in which the nonresident is or has been temporarily present or in which the property of the nonresident, or the principal part thereof, is situated.

**Comment.** Section 3800 continues the substance of portions of former Section 1572. The reference to the "state of residence" has been changed to "place of residence" since the place of residence may be a foreign nation as well as a foreign state.

#### CROSS-REFERENCES

Clerk sets petition for hearing, § 1451

Petition must be verified, § 1450

Transfer of assets of pending guardianship to another jurisdiction, §§ 2800-2806

### § 3801. Notice

3801. (a) The petition shall be made upon 15 days' notice, by mail or personal delivery, to all of the following persons:

(1) The executor or administrator or other person in whose possession the property may be.



(2) Persons in this state, known to the petitioner, who are obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident.

(b) The petition shall be made upon such additional notice, if any, as the court may order.

**Comment.** Section 3801 continues the substance of the first sentence of former Section 1573 except that 15 rather than 10 days' notice is required.

### § 3802. Certificate of nonresident fiduciary

3802. (a) The nonresident fiduciary shall produce and file one of the following certificates:

(1) A certificate that the fiduciary is entitled, by the laws of the place of appointment of the fiduciary, to the possession of the estate of the nonresident. The certificate shall be under the hand of the clerk and seal of the court from which the appointment of the fiduciary was derived and shall show a transcript of the record of appointment and that the fiduciary has entered upon the discharge of the duties of the fiduciary.

(2) A certificate that the fiduciary is entitled, by the laws of the place of residence, to custody of the estate of the nonresident, without the appointment of any court. The certificate shall be under the hand of the clerk and seal of either (i) the court in the place of residence having jurisdiction of estates of persons that have a guardian, conservator, committee, or comparable fiduciary or (ii) the highest court in the place of residence.

(b) In the case of a foreign country, the certificate shall be accompanied by a final statement certifying the genuineness of the signature and official position of (1) the court clerk making the original certificate or (2) any foreign official who has certified either the genuineness of the signature and official position of the court clerk making the original certificate or the genuineness of the signature and official position of another foreign official who has executed a similar certificate in a chain of such certificates beginning with a certificate of the genuineness of the signature and official position of the clerk making the original certificate. The final statement may be made only

by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States.

**Comment.** Section 3802 continues the substance of the last sentence of former Section 1573. The persons authorized to attest the certificate in the case of a foreign country are expanded in conformity with Evidence Code Section 1530 (statement certifying genuineness of attestation to accuracy of copy of a writing).

### § 3803. Order for removal

3803. (a) Upon the petition, if the court determines that removal of the property will not conflict with any restriction or limitation on the property or impair the right of the nonresident to the property or the rights of creditors or claimants in this state, the court shall make an order granting to the nonresident fiduciary leave to remove the property of the nonresident to the place of residence unless good cause to the contrary is shown.

(b) The order is authority to the fiduciary to sue for and receive the property in his or her own name for the use and benefit of the nonresident.

(c) The order is a discharge of the executor, administrator, or other person in whose possession the property may be at the time the order is made and of the person obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident, upon filing with the clerk of the court the receipt of the nonresident fiduciary for the property and transmitting a duplicate receipt, or a certified copy of the receipt, to the court, if any, from which the nonresident fiduciary received his or her appointment.

**Comment.** Section 3803 continues the substance of former Section 1574 and a portion of former Section 1572.

**OPERATIVE DATE**

**SEC. 4.** (a) Except as provided in subdivisions (b) and (c), this act becomes operative on January 1, 1981.

(b) Section 1491 of the Probate Code as enacted by this act becomes operative on the effective date of this act.

(c) On and after the effective date of this act, the courts may adopt any rules necessary so that this act may become operative on January 1, 1981.



## CONFORMING ADDITIONS, AMENDMENTS, AND REPEALS

The Law Revision Commission prepared a bill to make the necessary revisions (amendments, additions, and repeals) of existing codes to conform them to the new guardianship-conservatorship law.<sup>1</sup> This bill was enacted as Chapter 730 of the Statutes of 1979.

To save printing costs, the entire text of the conforming revisions bill is not set out below. Instead, only those sections of the bill that are of special significance are set out.

In the material that follows, for each section of the conforming revisions bill:

- (1) A section heading for the section is set out.
- (2) The text of the code section being amended, added, or repealed is then set out in some cases.
- (3) The Comment to the section being amended, added, or repealed is then set out.

Unless otherwise indicated, the Comment is taken from the Law Revision Commission *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978). The Comments designated "Legislative Committee Comment—Assembly" are taken from the Assembly Judiciary Committee report noted in the Assembly Journal for May 9, 1979.

### **Business & Professions Code § 9890.63 (amended). Estate certificate of convenience**

**Comment.** Section 9890.63 is amended to delete the reference to a declaration of incompetence. Such a declaration is no longer made in a guardianship proceeding, and under Section 9890.63 the mere appointment of a conservator of the estate invokes the section.

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<sup>1</sup> The significant provisions of this bill are noted at various points in the discussion of the provisions of the guardianship-conservatorship law in the preliminary portion of this publication. See, e.g., discussion in text accompanying notes 15-16 and 30 *supra* and notes 142 and 217 *supra*.

**Business & Professions Code § 9890.64 (amended). Estate certificate of convenience**

**Comment.** Section 9890.64 is amended to delete the reference to a guardian of an incompetent person. The provisions relating to guardianship of an incompetent person (former Prob. Code §§ 1460-1463) have been repealed.

**Business & Professions Code § 17919 (amended). Execution of fictitious business name statement by representative**

**Legislative Committee Comment—Assembly**

**Comment.** Section 17919 is amended to delete the reference to a guardian of an incompetent and to substitute references to appointment of a conservator, to conservatorship, and to conservatee for the former references to "incompetency" and to an "incompetent." This conforms to the revision of guardianship-conservatorship law.

**Civil Code § 32 (repealed). Custody of minors and persons of unsound mind**

**Comment.** Section 32 is repealed as obsolete.

**Civil Code § 40 (amended). Incapacity of person of unsound mind**

40. Subject to Section 1871 of the Probate Code, and subject to Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, after his incapacity has been judicially determined a person of unsound mind can make no conveyance or other contract, nor delegate any power or waive any right, until his restoration to capacity. Subject to Sections 1873 to 1876, inclusive, of the Probate Code, the establishment of a conservatorship under Division 4 (commencing with Section 1400) of the Probate Code is a judicial determination of the incapacity of the conservatee for the purposes of this section.

**Legislative Committee Comment—Assembly**

**Comment.** Section 40 is amended to conform to the new guardianship-conservatorship statute. Under the new statute, the appointment of a conservator is an adjudication that the conservatee lacks the legal capacity to bind or obligate the conservatorship estate. Prob. Code § 1872. The court may,

however, broaden the conservatee's capacity after notice and hearing. Prob. Code §§ 1873-1874.

The provision relating to the presumption of legal capacity of a person discharged from an insane asylum is deleted as unnecessary. It is superseded by provisions of the Lanterman-Petris-Short Act. See, *e.g.*, Welf. & Inst. Code §§ 5331, 5368.

**Civil Code § 206.5 (technical amendment). Proceeding for release from obligation to support parent**

**Comment.** Section 206.5 is amended to delete the references to a guardian of the parent of an adult since, under Division 4 of the Probate Code, conservatorship is the appropriate protective proceeding for an adult. See Prob. Code §§ 1510, 1514, 1800. The other amendments merely improve the wording of the section and make no substantive change.

**Civil Code § 1155 (technical amendment). Definitions**

**Comment.** Section 1155 is amended to substitute a new reference for the former reference to former Section 1430.5 of the Probate Code.

**Civil Code § 1242 (amended). Conveyance or encumbrance of homestead**

**Comment.** Section 1242 is amended to substitute a reference to Section 1243.5 in place of the former reference to the provisions of the Probate Code. The other revisions in the section are technical and not substantive.

**Civil Code § 1243 (technical amendment). Abandonment of homestead**

**1243.** Except as provided in Section 1243.5, a homestead can be abandoned only by:

1. A declaration of abandonment executed and acknowledged by the husband and wife, jointly or by separate instruments, if the claimant is married.

2. A declaration of abandonment or a conveyance by the claimant if unmarried.

3. A declaration of abandonment or a conveyance by the grantee named in a conveyance by which one spouse conveys the homestead

to the other spouse without expressly reserving his or her homestead rights.

4. A conveyance or conveyances by both spouses as provided in Section 1242.

5. A declaration of abandonment or a conveyance by the claimant alone in the case of a married person's separate homestead.

**Comment.** Section 1243 is amended to substitute a reference to Section 1243.5 in place of the former reference to the provisions of the Probate Code.

**Civil Code § 1243.5 (added). Spouse with conservator or lacking legal capacity**

1243.5. Where one or both spouses either has a conservator of the estate or lacks legal capacity for a transaction described in Section 1242 or 1243, the procedure for conveying or encumbering or abandoning the homestead of a married person (other than a married person's separate homestead) is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

**Comment.** Section 1243.5 replaces the former references to provisions of the Probate Code that were contained in Sections 1242 and 1243. See also Prob. Code § 3012 (legal capacity).

**Civil Code § 2939-½ (amended and renumbered). Satisfaction of mortgage by foreign executors, administrators, guardians, and other fiduciaries**

**Comment.** Section 2939-½ is renumbered as Section 2939.5 and is amended to add the last sentence since foreign jurisdictions may have conservators, committees, or comparable fiduciaries that serve the function of guardian of minors or adults.

**Civil Code § 4426 (amended). Limitation of actions for judgment of nullity of marriage**

**Comment.** Section 4426 is amended to add the reference to a conservator in subdivision (a) and to substitute the reference to a conservator for the former reference to a guardian in subdivision (c).

**Civil Code § 4510 (amended). Dissolution of marriage for incurable insanity**

**Comment.** Section 4510 is amended to substitute the references to a guardian or conservator of an insane spouse for



the former references to a general guardian or a guardian of the person of the insane spouse and to add a new provision defining "guardian or conservator." A guardian or conservator of the person is interested in the issues relating to dissolution of the marital relationship, while a guardian or conservator of the estate is interested in the property and support issues. See, *e.g.*, 24 Am. Jur.2d *Divorce and Separation* § 274 (1966).

### **Civil Code § 4600 (amended). Order for child custody**

**Comment.** Section 4600 is amended to add the last sentence to subdivision (a) and to make a few nonsubstantive changes. The addition of the last sentence to subdivision (a) makes clear that a nomination under the new Probate Code provisions is to be considered and given due weight, regardless of the nature of the custody proceeding.

### **Civil Code § 5128 (amended). Spouse with conservator or lacking legal capacity**

**5128. (a)** Where one or both of the spouses either has a conservator of the estate or lacks legal capacity to manage and control community property, the procedure for management and control (which includes disposition) of the community property is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

**(b)** Where one or both spouses either has a conservator of the estate or lacks legal capacity to give consent to a gift of community personal property or a disposition of community personal property without a valuable consideration as required by Section 5125 or to a sale, conveyance, or encumbrance of community personal property for which a consent is required by Section 5125, the procedure for such gift, disposition, sale, conveyance, or encumbrance is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

**(c)** Where one or both spouses either has a conservator of the estate or lacks legal capacity to join in executing a lease, sale, conveyance, or encumbrance of community real property or any interest therein as required by Section 5127, the procedure for such lease, sale, conveyance, or encumbrance is that prescribed in Part 6 (commencing with Section 3000) of Division 4 of the Probate Code.

**Comment.** Subdivision (a) of Section 5128 makes provisions of the Probate Code applicable when one or both spouses has a conservator of the estate or lacks legal capacity to manage and control community property (which includes the disposition of

community property). See, *e.g.*, Prob. Code § 3051. Subdivisions (b) and (c) make provisions of the Probate Code applicable when one or both spouses has a conservator of the estate or lacks legal capacity for a transaction requiring joinder or consent under Section 5125 or 5127 of the Civil Code. See, *e.g.*, Prob. Code § 3071. See also Prob. Code § 3012 (legal capacity).

**Code of Civil Procedure § 153 (amended). Documents to which court seal must be affixed**

**Comment.** Section 153 is amended to add the certificate of appointment of a conservator to the exceptions stated in subdivision 4.

**Code of Civil Procedure § 166 (amended). Powers of judge at chambers and out of court**

**Comment.** Section 166 is amended to add authority for the judge to suspend the powers of a conservator and to issue letters of temporary conservatorship. See Prob. Code §§ 2250–2251, 2258, 2654. Other technical revisions are also made.

**Code of Civil Procedure § 170 (amended). Grounds and procedure for disqualification of judge**

**Comment.** Section 170 is amended to add the reference to conservator in subdivision 3.

**Code of Civil Procedure § 304 (amended). Bonds to which chapter applies**

**Comment.** Section 304 is amended to delete the reference to guardians. Bonds to which this chapter applies are in the name of and payable to the State of California where it is not otherwise provided. Code Civ. Proc. § 304.1. However, the bond of a guardian is in favor of the ward and all persons interested in the guardianship estate. See Prob. Code § 2320.

**Code of Civil Procedure § 372 (amended). Minors or incompetent persons as parties**

**Comment.** Section 372 is amended to change the reference in Section 372 to former Section 1510 of the Probate Code to reflect the revision and recodification of that provision. Other technical revisions to Section 372 are also made.

**Code of Civil Procedure § 395.1 (amended). Venue of certain actions against executor, administrator, guardian, conservator, or trustee**

**Comment.** Section 395.1 is amended to add the reference to a conservator.

**Code of Civil Procedure § 602 (amended). Challenge of juror for cause**

**Comment.** Section 602 is amended to add the reference to conservator and conservatee in subdivision (4).

**Code of Civil Procedure § 641 (amended). Grounds for objection to referee**

**Comment.** Section 641 is amended to add the reference to conservator and conservatee in subdivision 3.

**Code of Civil Procedure § 732 (amended). Action for waste**

**Comment.** Section 732 is amended to add the reference to a conservator.

**Code of Civil Procedure § 751.09 (amended). Plaintiff's affidavit**

**Comment.** Section 751.09 is amended to add the references to conservator and conservatorship.

**Code of Civil Procedure § 751.21 (amended). Person holding possession in the right of another as party**

**Comment.** Section 751.21 is amended to add the reference to a conservator.

**Code of Civil Procedure § 751.28 (amended). Notice and affidavit by person holding possession in the right of another**

**Comment.** Section 751.28 is amended to add the reference to a conservator.

**Code of Civil Procedure § 872.010 (technical amendment). Definitions**

**Comment.** Section 872.010 is amended to delete subdivision (b) (“guardian” includes conservator) as unnecessary. The term “guardian” is used in Sections 873.040 and 873.690, and those sections are amended to include specific references to a conservator. Subdivisions (c) through (f) of Section 872.010 are redesignated as subdivisions (b) through (e), respectively.

**Code of Civil Procedure § 873.040 (amended). Appointment of person selected by parties**

**Comment.** Section 873.040 is amended to substitute a reference to a party for whom a conservator of the estate has been appointed for the former reference to an incompetent. When a person for whom a conservator has been appointed is a party to litigation, he or she must appear by the conservator or by a guardian ad litem. Code Civ. Proc. § 372. When the conservator has made the appearance, the conservator should be the one to take any procedural steps in the litigation, including the giving of consent to the appointment of a referee under Section 873.040.

**Code of Civil Procedure § 873.690 (technical amendment). Persons ineligible to purchase at sale**

**Comment.** Section 873.690 is amended to add the reference to conservator and conservatee. This makes no substantive change since formerly Section 872.010 defined “guardian” to include conservator.

**Code of Civil Procedure § 1018 (amended). Agent for service of process; substituted service**

**Comment.** Section 1018 is amended to add the reference to a conservator in subdivisions (a) and (b).

**Code of Civil Procedure § 1700.3 (amended). “Fiduciary” defined**

**Comment.** Section 1700.3 is amended to add the reference to conservators.

**Code of Civil Procedure § 1704 (amended). Notice of hearing**

**Comment.** Section 1704 is amended to add the reference to conservatorships.

**Code of Civil Procedure § 1704.1 (amended). Court's finding as to notice**

**Comment.** Section 1704.1 is amended to add the reference to conservatorship.

**Code of Civil Procedure § 1913 (amended). Effect of judicial record of another state**

**Comment.** Section 1913 is amended to add the reference to a conservator.

**Code of Civil Procedure § 1953.05 (amended). Record of proceeding in rem**

**Comment.** Section 1953.05 is amended to add the reference to conservatorship.

**Corporations Code § 413 (amended). Liability for unpaid balance of subscription price**

**Comment.** Section 413 is amended to add the reference to a conservator.

**Corporations Code § 605 (amended). Shares deemed "held of record"**

**Comment.** Section 605 is amended to add the reference to conservators in paragraph (3) of subdivision (a).

**Elections Code § 707.5 (amended). Disqualification from voting**

**Comment.** Section 707.5 is amended to correct the cross-references to the Probate Code in view of the revision of guardianship-conservatorship law. Subdivision (b) is revised to limit its application to proceedings under the Welfare and Institutions Code, since the court determines matters relating to capacity in Probate Code conservatorships. See Prob. Code § 1890 and the Comment thereto.

**Elections Code § 707.6 (technical amendment). Review of conservatee's ability to complete voter affidavit**

**Comment.** Section 707.6 is amended to correct the cross-references to the Probate Code in view of the revision of guardianship-conservatorship law.

**Financial Code § 764 (amended). Deposits on court order**

**Comment.** Section 764 is amended to add the reference to a conservator.

**Financial Code § 2057 (amended). Effect of superintendent's approval**

**Comment.** Section 2057 is amended to add the references to conservatorships.

**Financial Code § 2058 (amended). Purchase of shares of another bank or trust company**

**Comment.** Section 2058 is amended to add the references to conservatorships.

**Financial Code § 2073 (amended). Effect of merger**

**Comment.** Section 2073 is amended to add the references to conservatorships.

**Financial Code § 2095 (amended). Effect of conversion, merger, consolidation, or purchase**

**Comment.** Section 2095 is amended to add the references to conservatorships.

**Financial Code § 3110.1 (amended). Sale by superintendent**

**Comment.** Section 3110.1 is amended to add the references to conservatorships.

**Financial Code § 6408.5 (technical amendment). Investment in account in an insured savings and loan association**

**Comment.** Section 6408.5 is amended to refer to Probate Code Section 1406, defining "account in an insured savings and loan association," which continues the definition under the former Probate Code provision.

**Financial Code § 7605 (amended). Issuance of shares and investment certificates to trustee, guardian, or conservator**

**Comment.** Section 7605 is amended to add the references to conservators and conservatees.

**Financial Code § 7606 (amended). Payment on death of trustee, guardian, or conservator**

**Comment.** Section 7606 is amended to add the references to a conservator and to conservatorship.

**Financial Code § 8452 (amended). Liability on shares held in trust**

**Comment.** Section 8452 is amended to add the reference to conservators and to a conservatee.

**Financial Code § 11207 (amended). Shares of insured institution as legal investment**

**Comment.** Section 11207 is amended to add the references to conservators.

**Government Code § 6102 (amended). No fee in certain cases**

**Comment.** Section 6102 is amended to add the reference to a conservator.

**Government Code § 6107 (amended). No fee in certain veterans' matters**

**Comment.** Section 6107 is amended to add the reference to a conservator.

**Government Code § 6606 (amended). Deposit of inmates' funds**

**Comment.** Section 6606 is amended to add the reference to conservators.

**Government Code § 6860 (amended). Farm loan bonds as legal investment**

**Comment.** Section 6860 is amended to add the reference to conservators.

**Government Code § 21207 (technical amendment). Payment of minor's benefits**

**Comment.** Section 21207 is amended to refer to Probate Code Section 1406, defining "account in an insured savings and loan association," which continues the definition of former Probate Code Section 1510, and to delete as unnecessary the reference to the definition "guardian of the estate" found in former Section 1510 ("guardian of the estate" includes "conservator of the estate").

**Government Code § 21382 (amended). When survivor allowance payable**

**Comment.** Section 21382 is amended to add the reference to a conservator.

**Government Code § 21382.2 (amended). Amount of survivor allowance payable**

**Comment.** Section 21382.2 is amended to add the reference to a conservator.

**Government Code § 27706 (technical amendment). Duties of public defender**

**Comment.** Section 27706 is amended to delete the reference to Division 5 of the Probate Code (which has been repealed) and to make other technical revisions.



**Government Code § 39585 (amended). Refund of tax erroneously levied**

**Comment.** Section 39585 is amended to add the reference to a conservator.

**Government Code § 56050 (amended). “Legal representative” defined**

**Comment.** Section 56050 is amended to add the reference to a conservator.

**Government Code § 69649 (amended). Superior court sessions away from regular location**

**Comment.** Section 69649 is amended to add the reference to conservatorship.

**Government Code § 70015 (amended). Additional filing fees in certain counties**

**Comment.** Section 70015 is amended to add the reference to conservatorship in subdivision (d).

**Government Code § 70053 (amended). Additional filing fees in certain instances**

**Comment.** Section 70053 is amended to add the reference to conservatorship in subdivision (e).

**Health & Safety Code § 416.1 (technical amendment). Application of Probate Code provisions**

**Comment.** Section 416.1 is amended to delete the first sentence and to revise the reference to the guardianship-conservatorship provisions of the Probate Code which are now consolidated in Division 4 of that code.

**Health & Safety Code § 416.7 (technical amendment). Attendance at hearing**

**Legislative Committee Comment—Assembly**

**Comment.** Section 416.7 is amended to refer to Section 1825 of the Probate Code which replaced the Probate Code provisions formerly referred to in Section 416.7.

**Health & Safety Code § 416.8 (technical amendment).  
Evaluation report**

**Comment.** Section 416.8 is amended to revise the reference to the guardianship and conservatorship provisions of the Probate Code to reflect the consolidation of those provisions in Division 4 of that code.

**Health & Safety Code § 416.9 (amended). Appointment of Director of Developmental Services as guardian or conservator**

**Legislative Committee Comment—Assembly**

**Comment.** Section 416.9 is amended to substitute a reference to Section 1812 of the Probate Code which replaced the Probate Code section formerly referred to in Section 416.9, to make clear that an appointment of the Director of Developmental Services as conservator does not of itself render the conservatee incompetent, and to add the last two sentences to the section. These procedures are an exception to the rule in probate conservatorships that, unless the court orders otherwise, the appointment of a conservator renders the conservatee legally incompetent. See Prob. Code §§ 1872-1873.

**Health & Safety Code § 416.95 (amended). Information to proposed ward or conservatee**

**Comment.** Section 416.95 is amended to delete the reference to appointment of a guardian as an adjudication of incompetence. The former provisions for appointment of a guardian for an incompetent adult (Prob. Code §§ 1460-1463) have been repealed.

**Health & Safety Code § 416.14 (amended). Duties of director**

**Legislative Committee Comment—Assembly**

**Comment.** Section 416.14 is amended to delete former subdivision (c) which referred to guardianship for an incompetent person and to revise new subdivision (c)—formerly subdivision (b)—to eliminate the provision that the Director of Developmental Services could be appointed conservator for a developmentally disabled person not judicially determined to be legally incompetent. A developmentally disabled person may be

adjudicated to be legally incompetent in such a conservatorship proceeding. Health & Safety Code § 416.9. The former provisions for appointment of a guardian for an incompetent person (Prob. Code §§ 1460-1463) have been repealed.

The last sentence of former subdivision (b) (appointment of conservator not finding of incompetency) is preserved in Section 416.9.

**Health & Safety Code § 416.16 (technical amendment).  
Powers and duties of director as guardian or conserva-  
tor**

**Comment.** Section 416.16 is amended to revise the reference to the guardianship and conservatorship provisions of the Probate Code in view of the consolidation of those provisions in Division 4 of that code.

**Health & Safety Code § 416.23 (amended). Consent  
required for care, treatment, supervision, or control**

**Comment.** Section 416.23 is amended to add the reference to a conservator.

**Health & Safety Code § 1453 (amended). Patients'  
personal deposit fund**

**Comment.** Section 1453 is amended to add the references to a conservator.

**Health & Safety Code § 2291.2 (amended). Algae  
research, control, and monitoring projects**

**Comment.** Section 2291.2 is amended to add the references to conservators and conservatees.

**Health & Safety Code § 7151.5 (amended). Persons who  
may make anatomical gift**

**Comment.** Section 7151.5 is amended to add the reference to a conservator in subdivision (e).

**Health & Safety Code § 24175 (amended). Consent to  
medical experiment**

**Comment.** Section 24175 is amended to delete former subdivision (b) which related to an adult incompetent person

under guardianship. The Probate Code provisions relating to guardianship of an adult incompetent have been repealed in connection with the revision of guardianship-conservatorship law. Section 24175 is also amended to adopt by reference the Probate Code procedures for obtaining consent where the patient is subject to a Probate Code conservatorship. Other technical revisions are also made.

**Health & Safety Code § 33663 (amended). Legal investments**

**Comment.** Section 33663 is amended to add the reference to conservators.

**Health & Safety Code § 33783 (amended). Legal investments**

**Comment.** Section 33783 is amended to add the reference to guardians and conservators.

**Health & Safety Code § 34369 (amended). Legal investments**

**Comment.** Section 34369 is amended to add the reference to conservators.

**Health & Safety Code § 37649 (amended). Legal investments**

**Comment.** Section 37649 is amended to add the reference to guardians and conservators.

**Health & Safety Code § 37939 (amended). Legal investments**

**Comment.** Section 37939 is amended to add the reference to guardians and conservators.

**Health & Safety Code § 44546 (amended). Certification of bonds as legal investments**

**Comment.** Section 44546 is amended to add the reference to guardians and conservators.

**Health & Safety Code § 51375 (amended). Legal investments**

**Comment.** Section 51375 is amended to add the reference to conservators.

**Insurance Code § 1686 (amended). Estate certificate of convenience**

**Comment.** Section 1686 is amended to substitute the reference to a conservator for the former reference to a guardian of an incompetent person in subdivision (c). The provisions relating to guardianship of an incompetent person (Prob. Code §§ 1460-1463) have been repealed.

**Insurance Code § 1693 (amended). Estate certificate of convenience**

**Comment.** Section 1693 is amended to substitute references to conservatorship for guardianship of an incompetent person. The provisions relating to guardianship of an incompetent person (Prob. Code §§ 1460-1463) have been repealed.

**Insurance Code § 10112 (technical amendment). Insurance of minors**

**Comment.** Section 10112 is amended to correct the cross-references to the Probate Code in view of the revision of guardianship-conservatorship law.

**Insurance Code § 12392 (amended). Doing business as trust company**

**Comment.** Section 12392 is amended to add the reference to a conservator.

**Insurance Code § 12528 (amended). Legal investments**

**Comment.** Section 12528 is amended to add the reference to a conservator.

**Insurance Code § 12629.47 (amended). Authority of certain persons holding securities or certificates of mortgage insurer**

**Comment.** Section 12629.47 is amended to add the reference to a conservator.

**Labor Code § 1700.20a (amended). Estate certificate of convenience**

**Legislative Committee Comment—Assembly**

**Comment.** Section 1700.20a is amended to delete the reference to a declaration of incompetence. The provisions relating to guardianship of an incompetent person (Prob. Code §§ 1460-1463) have been repealed, and under Section 1700.20a the appointment of a conservator of the estate invokes the section.

**Labor Code § 1700.20b (amended). Estate certificate of convenience**

**Comment.** Section 1700.20b is amended to delete the reference to a guardian of an incompetent person. The provisions relating to guardianship of an incompetent person (Prob. Code §§ 1460-1463) have been repealed.

**Labor Code § 5408 (amended). Where injured employee is a minor or incompetent**

**Comment.** Section 5408 is amended to add the references to a conservator of the estate and to delete the reference to a "general" guardian.

**Military & Veterans Code § 1046 (amended). Veterans' Home as guardian, conservator, or other fiduciary**

**Comment.** Section 1046 is amended to add the references to a conservator and conservatorship.

**Military & Veterans Code § 1219 (amended). Bonds as legal investments**

**Comment.** Section 1219 is amended to add the reference to conservators.

**Penal Code § 1074 (amended). Causes for challenge for implied bias**

**Comment.** Section 1074 is amended to add the reference to conservator and conservatee in subdivision 2.

**Probate Code § 1 (technical amendment). Title of code**

**Comment.** Section 1 is amended to delete the obsolete reference to four divisions of the Probate Code.

**Probate Code § 22.1 (technical amendment). Invalidity of certain bequests or devises to nonprofit charitable corporation**

**Comment.** Section 22.1 is amended to delete the obsolete cross-references to the guardianship and conservatorship provisions in view of the revision of guardianship—conservatorship law. The provision for appointment of a nonprofit charitable corporation as guardian or conservator is now contained in Section 2104.

**Probate Code § 190.2 (technical amendment). Disclaimer on behalf of minor, incompetent person, conservatee, or decedent**

**Comment.** Section 190.2 is amended to delete the reference to an incompetent and to the guardian of an incompetent. The former Probate Code provisions for guardianship of an adult incompetent have been repealed. The former references in Section 190.2 to an “infant” have been changed to a “minor” in keeping with modern usage.

**Probate Code § 202 (amended). Administration of community property**

**Legislative Committee Comment—Assembly**

**Comment.** Section 202 is amended to change the reference to conservator of the “property” to conservator of the “estate.”

**Probate Code § 541.1 (technical amendment). Deposit in a controlled account**

**Comment.** Section 541.1 is amended to substitute a reference to Probate Code Section 1406 which continues the definition of

“account in an insured savings and loan association” under the former Probate Code provision.

**Probate Code § 585 (technical amendment). Deposits by executor or administrator**

**Comment.** Section 585 is amended to substitute a reference to Probate Code Section 1406 which continues the definition of “account in an insured savings and loan association” under the former Probate Code provision.

**Probate Code § 630 (technical amendment). Summary probate proceedings**

**Comment.** Section 630 is amended to change conservator of the “property” to conservator of the “estate” and to delete the reference to a guardian of an insane or incompetent person. The former provisions for guardianship of an insane or incompetent person have been repealed.

**Probate Code § 650 (amended). Petition concerning community property**

**Comment.** Section 650 is amended to add subdivision (d), to letter the remaining paragraphs as subdivisions, and to change the reference to a conservator of the “property” to a conservator of the “estate.” A guardian or conservator contemplating action under this section may seek instructions from the guardianship or conservatorship court. See Section 2403.

**Probate Code § 704.2 (technical amendment). Claims for payment of debts of deceased spouse**

**Comment.** Section 704.2 is amended to substitute conservator of the estate for conservator of the property to conform to the terminology used in the guardianship-conservatorship law.

**Probate Code § 704.4 (technical amendment). Claims for payment of debts of surviving spouse for which community property is liable**

**Comment.** Section 704.4 is amended to substitute conservator of the estate for conservator of the property to conform to the terminology used in the conservatorship law.



**Probate Code § 932 (amended). Presentation of accounts of deceased or incompetent executor or administrator**

**Comment.** Section 932 is amended to substitute the references to conservator for the references to guardian since conservatorship is the appropriate protective proceeding for an adult. See Sections 1510, 1514, 1800.

**Probate Code § 1200 (amended). Notice of hearing**

**Comment.** Section 1200 is amended to add the last paragraph to insure that the general notice provisions of guardianship-conservatorship law will be used in all guardianship-conservatorship proceedings rather than the provisions of this section. See also Section 1469 and the Comment thereto.

**Probate Code § 1233 (technical amendment). Rules of practice; evidence in uncontested proceedings**

**Comment.** Section 1233 is amended to delete the reference to incompetent persons in view of the repeal of provisions relating to guardianship of incompetent adults.

**Public Utilities Code § 22707 (amended). Legal investments**

**Comment.** Section 22707 is amended to add the reference to conservators.

**Revenue & Taxation Code § 612 (amended). Assessment of person in representative capacity**

**Comment.** Section 612 is amended to add the reference to a conservator.

**Revenue & Taxation Code § 982 (amended). Assessment of undistributed or unpartitioned property of deceased persons**

**Comment.** Section 982 is amended to add the reference to conservators.

**Revenue & Taxation Code § 5140 (amended). Persons who may bring refund action**

**Comment.** Section 5140 is amended to add the reference to a conservator.

**Revenue & Taxation Code § 18403 (amended). When taxpayer unable to make own return**

**Comment.** Section 18403 is amended to add the reference to a conservator.

**Streets & Highways Code § 5021 (amended). "Owner" defined**

**Comment.** Section 5021 is amended to add the reference to a conservator.

**Streets & Highways Code § 10011 (amended). Owner**

**Comment.** Section 10011 is amended to add the reference to a conservator.

**Vehicle Code § 20012 (amended). Reports confidential**

**Comment.** Section 20012 is amended to add the reference to a conservator.

**Water Code § 9334 (amended). Vote of fiduciary**

**Comment.** Section 9334 is amended to add the reference to conservators.

**Water Code § 9403 (amended). Legal investment**

**Comment.** Section 9403 is amended to add the reference to conservators in subdivision (d).

**Water Code § 20527.5 (amended). Voting in Jackson Valley Irrigation District**

**Comment.** Section 20527.5 is amended to add the reference to a conservator.

**Water Code § 20527.6 (amended). Voting in Camp Far West Irrigation District**

**Comment.** Section 20527.6 is amended to add the reference to a conservator of the estate.

**Water Code § 20527.7 (amended). Voting in Montague Water Conservation District**

**Comment.** Section 20527.7 is amended to add the reference to a conservator.

**Water Code § 20527.8 (amended). Voting in Cordua Irrigation District**

**Comment.** Section 20527.8 is amended to add the reference to a conservator.

**Water Code § 20527.9 (amended). Voting in Provident Irrigation District**

**Comment.** Section 20527.9 is amended to add the reference to a conservator.

**Water Code § 20566 (amended). Signing petition by fiduciary**

**Comment.** Section 20566 is amended to add the reference to a conservator.

**Water Code § 39055 (amended). Signing petition and voting by fiduciary**

**Comment.** Section 39055 is amended to add the reference to conservators.

**Water Code § 39058 (amended). Signing petitions or protests and voting by fiduciary**

**Comment.** Section 39058 is amended to add the references to a conservator and to conservatorship.

**Water Code § 41003 (amended). Fiduciary as holder of title**

**Comment.** Section 41003 is amended to add the reference to a conservator.

**Water Code § 50170 (amended). Signing petitions and voting by fiduciary or corporation**

**Comment.** Section 50170 is amended to add the reference to conservators.

**Water Code § 52228 (amended). Legal investment**

**Comment.** Section 52228 is amended to add the reference to conservators.

**Welfare & Institutions Code § 4120 (amended). Determination of residence**

**Comment.** Section 4120 is amended to add the references to a conservator.

**Welfare & Institutions Code § 4426 (amended). Order for commitment of mentally retarded person**

**Comment.** Section 4426 is amended to add the references to a conservator.

**Welfare & Institutions Code § 4460 (amended). Residency requirement**

**Comment.** Section 4460 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 4508 (amended). Provisional placement**

**Comment.** Section 4508 is amended to delete the reference to a guardian of an adult developmentally disabled person. The former Probate Code provisions for guardianship of an adult have been repealed.

**Welfare & Institutions Code § 4535 (amended). Organization and procedures of state council**

**Comment.** Section 4535 is amended to add the reference to conservators.

**Welfare & Institutions Code § 4576 (amended). Selection of board appointees**

**Comment.** Section 4576 is amended to add the reference to conservators.

**Welfare & Institutions Code § 4586 (amended). Chairperson and committees of area board**

**Comment.** Section 4586 is amended to add the reference to conservators.

**Welfare & Institutions Code § 4642 (amended). Initial intake and assessment services**

**Comment.** Section 4642 is amended to add the reference to conservatorship.

**Welfare & Institutions Code § 4655 (amended). Consent to medical, dental, and surgical treatment**

**Comment.** Section 4655 is amended to delete the reference to a guardian of an adult developmentally disabled person. The former Probate Code provisions for guardianship of an adult have been repealed.

**Welfare & Institutions Code § 4700 (amended). Fair hearing procedure**

**Comment.** Section 4700 is amended to add the reference to conservators.

**Welfare & Institutions Code § 4701 (amended). Minimum requirements for fair hearing procedure**

**Comment.** Section 4701 is amended to add the reference to a conservator in subdivision (a), and to delete the reference to guardianship of an adult developmentally disabled person in subdivision (c). The former Probate Code provisions for guardianship of an adult have been repealed.

**Welfare & Institutions Code § 4725 (amended). Right to representation in appeals procedure**

**Comment.** Section 4725 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 4800 (amended). Right to habeas corpus hearing upon request for release**

**Comment.** Section 4800 is amended to delete the references to a guardian of an adult developmentally disabled person. The former Probate Code provisions for guardianship of an adult have been repealed.

**Welfare & Institutions Code § 4801 (amended). Habeas corpus procedure**

**Comment.** Section 4801 is amended to delete the references to a guardian of an adult. The former Probate Code provisions for guardianship of an adult have been repealed.

**Welfare & Institutions Code § 4802 (amended). Removal of patient**

**Comment.** Section 4802 is amended to delete the reference to a guardian of an adult developmentally disabled person. The former Probate Code provisions for guardianship of an adult have been repealed.

**Welfare & Institutions Code § 4825 (amended). Appointment of director as guardian or conservator; admission of adult on application of parent, guardian, or conservator**

**Comment.** Section 4825 is amended to delete the reference to a guardian of an adult developmentally disabled person. The former Probate Code provisions for guardianship of an adult have been repealed.

**Welfare & Institutions Code § 5350 (technical amendment). Appointment of conservator for gravely disabled person**

**Comment.** Section 5350 is amended to correct the references to the Probate Code in view of the guardianship-conservatorship revision.

**Welfare & Institutions Code § 5352 (technical amendment). Recommendation by professional person in charge**

**Comment.** Section 5352 is amended to delete the references to the Probate Code in view of the revision of guardianship-conservatorship law. Under Section 5350 of the Welfare and Institutions Code, the procedure for establishing, administering, and terminating conservatorship under this chapter is the same as that provided in Division 4 (commencing with Section 1400) of the Probate Code.

**Welfare & Institutions Code § 5357 (technical amendment). Powers of conservator and disabilities of conservatee**

**Comment.** Section 5357 is amended to revise the cross-references to the Probate Code in view of the revision of guardianship-conservatorship law in the Probate Code.

**Welfare & Institutions Code § 5360 (technical amendment). Recommendation by officer providing conservatorship investigation**

**Comment.** Section 5360 is amended to correct the cross-reference to the Probate Code in view of the revision of guardianship-conservatorship law.

**Welfare & Institutions Code § 6000 (amended). Voluntary admission**

**Comment.** Section 6000 is amended to add the references to a conservator of a minor since a conservator may be appointed for the person of a married minor under the Probate Code as well as under the Welfare and Institutions Code. Prob. Code § 1800.

**Welfare & Institutions Code § 6502 (amended). Petition for commitment**

**Comment.** Section 6502 is amended to add the reference to a conservator in subdivision (a).

**Welfare & Institutions Code § 6504 (amended). Notice of hearing**

**Comment.** Section 6504 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 6506 (amended). Custody pending hearing**

**Comment.** Section 6506 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 6508 (amended). Witness' fees and expenses**

**Comment.** Section 6508 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 6717 (amended). Costs**

**Comment.** Section 6717 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 7104 (amended). Reliance on faith healing in lieu of medical or psychiatric treatment**

**Comment.** Section 7104 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 7254 (amended). Sterilization**

**Comment.** Section 7254 is amended to add the references to a conservator.

**Welfare & Institutions Code § 7275 (amended). Liability for care**

**Comment.** Section 7275 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 7279 (amended). Payment for care**

**Comment.** Section 7279 is amended to add the references to a conservator and to conservatorship.



**Welfare & Institutions Code § 7280 (amended). Payments for future personal needs**

**Comment.** Section 7280 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 7281 (amended). Patients' personal deposit fund**

**Comment.** Section 7281 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 7282 (amended). Action to enforce payment**

**Comment.** Section 7282 is amended to add the references to a conservator.

**Welfare & Institutions Code § 7284 (amended). Appointment of department as guardian, conservator, or administrator**

*Legislative Committee Comment—Assembly*

**Comment.** Section 7284 is amended to add the references to a conservator and to substitute "superior court of any county" for "court of competent jurisdiction" to permit the department to continue its practice of filing petitions in Los Angeles County or Sacramento County.

**Welfare & Institutions Code § 7285 (amended). Investment of funds**

**Comment.** Section 7285 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 7286 (amended). Common trusts**

**Comment.** Section 7286 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 7287 (amended). Death of ward or conservatee**

**Comment.** Section 7287 is amended to add the reference to conservatorship.

**Welfare & Institutions Code § 7288 (amended). Disposition of patient's personal property**

**Comment.** Section 7288 is amended to add the references to a conservator and to conservatorship.

**Welfare & Institutions Code § 7289 (amended). Collection of funds due to patient**

**Comment.** Section 7289 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 7290 (amended). Special agreement for care**

**Comment.** Section 7290 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 7305 (amended). Consent required for transfer**

**Comment.** Section 7305 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 7514 (amended). Transfer of patient**

**Comment.** Section 7514 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 7518 (amended). Consent to medical, dental, and surgical treatment**

**Comment.** Section 7518 is amended to delete the reference to a guardian of an adult. The former Probate Code provisions for guardianship of an adult have been repealed.

**Welfare & Institutions Code § 8006 (technical amendment). Appointment of public guardian as guardian or conservator**

**Comment.** Section 8006 is amended to change the former reference to "special" letters of guardianship to letters of "temporary" guardianship to conform to the new Probate Code terminology. See Prob. Code § 2251.

**Welfare & Institutions Code § 8012 (technical amendment). Disposition of assets on death of ward or conservatee**

**Comment.** Section 8012 is amended to substitute a reference to Section 2631 of the Probate Code for the reference to former Section 1911 of the Probate Code (superseded by Section 2631).

**Welfare & Institutions Code § 8102 (amended). Confiscation of firearm**

**Comment.** Section 8102 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 14124.71 (amended). Action against third person or carrier liable for injury to Medical recipient**

**Comment.** Section 14124.71 is amended to add the references to a conservator.

**Welfare & Institutions Code § 14124.73 (amended). Notice and consolidation of action or claim**

**Comment.** Section 14124.73 is amended to add the reference to a conservator.

**Welfare & Institutions Code § 14124.79 (amended). Notice to director or Attorney General**

**Comment.** Section 14124.79 is amended to add the references to a conservator.

**Welfare & Institutions Code § 17007 (amended). Fees and expenses of certain guardianships and conservatorships**

**Comment.** Section 17007 is amended to add the references to a conservator, a conservatee, and conservatorship.

**Welfare & Institutions Code § 17403 (amended). Claim by county against indigent**

**Comment.** Section 17403 is amended to add the reference to a conservator and to substitute a reference to Probate Code

Section 2541 for the reference to former Probate Code Section 1530 (superseded by Section 2541).

**Welfare & Institutions Code § 19451 (amended). Limitation of article**

**Comment.** Section 19451 is amended to add the reference to a conservator.

## APPENDIX

### DISPOSITION OF FORMER GUARDIANSHIP AND CONSERVATORSHIP LAW

**Note.** A Comment to each section of the former guardianship law (Division 4 (commencing with Section 1400) of the Probate Code) and conservatorship law (Division 5 (commencing with Section 1701) of the Probate Code) is set out below. The former guardianship and conservatorship law will be repealed when the new guardianship-conservatorship law becomes operative on January 1, 1981. The disposition of each section of the former law is indicated in the Comment. Unless otherwise indicated, the Comment is taken from the Law Revision Commission *Recommendation Relating to the Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978). The Comments designated "Legislative Committee Comment—Assembly" are taken from the Assembly Judiciary Committee report noted in the Assembly Journal for May 9, 1979; the Comments designated "Legislative Committee Comment—Senate" are taken from the Senate Journal for July 20, 1979.

#### DIVISION 4. GUARDIAN AND WARD

##### CHAPTER 1. THE RELATIONSHIP AND RULES GOVERNING ITS CREATION

**§ 1400 (repealed). Definition of relationship; applicability of trust law; control by court**

**Comment.** The first and second sentences of former Section 1400 are not continued. However, under Section 2351, the guardian of the person has "the care" of the ward and, under Section 2401, the guardian of the estate has "the management and control of the estate."

The portion of the third sentence of former Section 1400 relating to appointment of a nonprofit corporation as guardian is continued in Section 2104; however, the provision for appointment of a natural person as guardian is not continued as unnecessary, and the provision for appointment of a trust company as guardian of the estate only has been omitted as unnecessary because it duplicated a provision contained in Section 480.

The fourth sentence is continued in subdivision (b) of Section 2104. The fifth sentence is continued in Section 2101. The sixth sentence is continued in Section 2102.

**§ 1401 (repealed). General and special guardians defined**

**Comment.** Former Section 1401 is not continued since the terms "general guardian" and "special guardian" are not used in Division 4 as revised.

**§ 1402 (repealed). Guardian of estate; appointment by will or deed**

**Comment.** Former Section 1402 is superseded by Sections 1501 and 1502. See also Section 1489 (transitional provision).

**§ 1403 (repealed). Guardian of person and estate; appointment by will or deed**

**Comment.** Former Section 1403 is superseded by Sections 1500 and 1502. See also Section 1489 (transitional provision).

**§ 1404 (repealed). Guardian of person and estate of incompetent; appointment by parent or spouse**

**Comment.** Former Section 1404 is not continued since, under Division 4 as revised, a guardian may no longer be appointed for an adult. The provision of conservatorship law comparable to former Section 1404 is subdivision (b) of Section 1811 which provides for "nomination" of a conservator rather than "appointment."

**§ 1405 (repealed). General guardian of minors or incompetents; appointment by court; multiple guardians; deposit of moneys in small estates; confirmation of appointments by will or deed**

**Comment.** The provision of the first sentence of former Section 1405 for appointment of a guardian by the "superior court" is continued in Section 2200 (jurisdiction). The remainder of the first sentence of former Section 1405 is superseded by subdivision (a) of Section 1514 ("if it appears necessary or convenient, the court may appoint").

The provision of the second sentence of former Section 1405 permitting the court to appoint more than one guardian is continued in subdivision (a) of Section 2105. The provision permitting either a separate bond from each or a joint and several bond is continued in Section 2326.

The third sentence is superseded by subdivision (b) of Section 2105. The fourth sentence is superseded by Section 2328. See also Section 2456. The fifth sentence is superseded by subdivision (a) of Section 1510 (petition for appointment), by Section 1511 (notice), and by subdivisions (b)–(d) of Section 1514 and Section 4600 of the Civil Code (appointment of guardian).

**§ 1405.1 (repealed). Deposited property; exclusion in computing amount of bond**

**Comment.** The first two paragraphs of former Section 1405.1 are continued in Section 2328. See also Section 2456. The last sentence is superseded by Section 1406 (definition of "account in an insured savings and loan association").

**§ 1406 (repealed). Guardian of minor; rules for appointment**

**Comment.** The first sentence of former Section 1406 is superseded by subdivisions (b) (guardian of the person) and (e) (guardian of the estate) of Section 1514. The second and third sentences are not continued although, under Section 1510, a minor 14 years of age or older may petition for appointment of his or her own guardian. See also Section 1514 (court shall consider minor's preference as to guardian of the estate); Civil Code § 4600 (court shall consider and give due weight to child's wishes in making an award of custody).

**§ 1406.5 (repealed). Nomination by minor; restriction**

**Comment.** Former Section 1406.5 is not continued. See the Comment to former Section 1406.

**§ 1407 (repealed). Order of preference in appointment**

**Comment.** Former Section 1407 is superseded by subdivisions (b) (guardian of the person) and (e) (guardian of the estate) of Section 1514.

**§ 1408 (repealed). Guardian of minor; rights as between parents**

**Comment.** Former Section 1408 is superseded by subdivisions (b) (guardian of the person) and (e) (guardian of the estate) of Section 1514. Where the guardianship is of the person, subdivision (b) of Section 1514 applies the provisions of Civil Code Section 4600 which provides for custody to "either parent according to the best interests of the child."

**§ 1409 (repealed). Effect of abandoning child; preferred right of manager of orphan asylum**

**Comment.** Former Section 1409 is not continued. However, the neglect or indifference of a parent toward the child is a factor to be considered by the court in deciding the question of the child's custody. *Guardianship of Pankey*, 38 Cal. App.3d 919, 113 Cal. Rptr. 858 (1974).

**§ 1410 (repealed). Marriage of guardian**

**Comment.** Former Section 1410 is not continued. The rule stated by former Section 1410 is obvious and does not require codification.

**CHAPTER 2. WHEN GUARDIANSHIP NOT NECESSARY**

**§ 1430 (repealed). Minors having estate under \$2,500; payment to parent of amount up to \$2,000**

**Comment.** The first portion of the first sentence of former Section 1430 is superseded by Section 3401. The last portion of the first sentence is continued in Section 3402. The second sentence is continued in Section 3400 except that the reference to the "California Gifts of Securities to Minors Act" is not continued. That act was repealed by 1959 Cal. Stats. ch. 709, § 1. Minors who received gifts prior to its repeal have reached majority. Accordingly, the reference to the act is obsolete.

**§ 1430.5 (repealed). Minors having estate of \$2,000 to \$20,000; petition for court to take jurisdiction over disposition; order**

**Comment.** The first paragraph of former Section 1430.5 is superseded by Sections 3410-3413. The requirement that the petition be verified is continued in Section 1450. The definition of "account in an insured savings and loan association" in the last paragraph of former Section 1430.5 is continued in Section 1406, and the definition of "shares of an insured credit union" is continued in Section 1443. The definition of "guardian of the estate" to include "conservator of the estate" is not continued since a conservator of the estate may not be appointed for a minor. See Section 1800.

**§ 1431 (repealed). Minor's disputed claim; compromise or covenant not to sue**

**Comment.** Former Section 1431 is superseded by Section 3500. The requirement that the petition be verified is continued in Section 1450.

**§ 1432 (repealed). Accounting by parent**

**Comment.** Former Section 1432 is continued in Section 3300.

**§ 1433 (repealed). Restriction on appointment of guardian of married minor**

**Comment.** The portion of former Section 1433 relating to a guardian of the person is superseded by Section 1515. The portion relating to a guardian of the estate is superseded by subdivision (a) of Section 1510 which limits guardianships to minors; a conservatorship is the appropriate proceeding when an adult is in need of protective supervision of the estate.

**CHAPTER 2A. MANAGEMENT, CONTROL, AND DISPOSITION  
OF COMMUNITY REAL (OR PERSONAL) PROPERTY AND  
HOMESTEAD PROPERTY OF INSANE  
OR INCOMPETENT PERSONS**

**§ 1435.1 (repealed). Sale, conveyance, assignment, transfer, exchange, or encumbrance**

**Comment.** The first sentence of former Section 1435.1 is superseded by Sections 3071, 3100, 3101, and 3102. The second sentence is superseded by subdivisions (a) and (b) of Section 3051.

**§ 1435.2 (repealed). Incompetency; definitions**

**Comment.** Former Section 1435.2 is continued in substance in paragraph (4) of subdivision (a) of Section 3144. See also Section 3012 and the Comment to Section 3101.

§ 1435.3 (repealed). **Petition for order**

**Comment.** The first sentence of former Section 1435.3 is superseded by subdivision (a) of Section 3111 and the second sentence is superseded by Section 3113.

§ 1435.4 (repealed). **Verification of petition; contents; filing**

**Comment.** The introductory portion of former Section 1435.4 is superseded by Section 3110. Subdivisions (a)–(g) are continued in substance in Section 3121 but that section does not limit the listing of adult relatives to those “in this state.” Subdivision (h) is superseded by Section 3122.

§ 1435.5 (repealed). **Citation; notice of hearing; service; duty of public guardian or administrator; fee**

**Comment.** The first portion of the first paragraph of former Section 1435.5 is continued in Section 1451 and the remainder of that paragraph and the second and third paragraphs, and first sentence of the fourth paragraph are superseded by Section 3130. The substance of the second sentence of the fourth paragraph is continued in subdivision (a) of Section 3140. The fifth paragraph is superseded by subdivision (c) of Section 3131. The first portion of the sixth paragraph is superseded by subdivision (b) of Section 3140 and the last portion of that paragraph is continued in subdivision (d) of Section 3140.

§ 1435.6 (repealed). **State institution patient; mailing copy of notice and petition; time**

**Comment.** The portion of former Section 1435.6 requiring the listing of the name of the institution in the petition is continued in Section 3121, and the portion authorizing the director to appear and represent the spouse at the hearing is continued in subdivision (a) of Section 3140. The remainder of the section is superseded by Section 1461.

§ 1435.7 (repealed). **Presence of alleged incompetent spouse at hearing; appointment of guardian ad litem; fee**

**Comment.** The first paragraph of former Section 1435.7 is superseded by Section 3141. The first portion of the second paragraph is superseded by subdivision (b) of Section 3140 and the last portion of that paragraph is superseded by subdivision (d) of Section 3140.

§ 1435.8 (repealed). **Adjudication; incompetency; property; grant of petition; order**

**Comment.** The substance of former Section 1435.8 is continued with some additions in Section 3144. See the Comment to that section.

§ 1435.9 (repealed). **Bond; conditions; amount; applicable code provisions**

**Comment.** Former Section 1435.9 is continued in substance in Section 3150.

§ 1435.10 (repealed). **Execution and delivery of instruments or documents; recordation of order; validity and effect of sale, etc.**

**Comment.** The first paragraph of former Section 1435.10 is continued in subdivisions (a) and (b) of Section 3151. The second paragraph is continued in Section 3152.

§ 1435.11 (repealed). **Liability of guardian signing notes, etc.**

**Comment.** The substance of former Section 1435.11 is continued in Section 3153.

§ 1435.12 (repealed). **Sale on credit; secured notes; payee of notes; status of proceeds of community or homestead property**

**Comment.** The first paragraph of former Section 1435.12 is continued in subdivision (c) of Section 3151. The substance of the first portion of the second paragraph is continued in subdivision (a) of Section 3020 and the remainder of the second paragraph is superseded by Section 3022.

§ 1435.13 (repealed). **Vacation of transaction for default; authorization of other sale or encumbrance; supplemental petition**

**Comment.** The substance of former Section 1435.13 is continued in Section 3154.

§ 1435.14 (repealed). **Petition to determine restoration to capacity; allegations; jurisdiction; procedure**

**Comment.** Former Section 1435.14 is not continued. The section is replaced by Section 3145.



§ 1435.15 (repealed). **Alternative procedure where guardian of estate appointed; jurisdiction of court; authority of guardian**

**Comment.** Former Section 1435.15 is superseded by Sections 3051–3057 and Sections 3070–3074. The portion of former Section 1435.15 which gave the conservatorship court jurisdiction to determine the validity of a homestead and the character of the property is superseded by Sections 3023 and 3101.

§ 1435.16 (repealed). **Homestead property; dealing with or disposition; investment of proceeds; exemptions**

**Comment.** The first sentence of subdivision (a) of former Section 1435.16 is superseded by subdivision (c) of Section 3051 and Sections 3052 and 3071. The second sentence of subdivision (a) is superseded by subdivisions (a) and (b) of Section 3051 and Sections 3071 and 3072. The first sentence of subdivision (b) is superseded by Sections 3071 and 3072. The second sentence of subdivision (b) is superseded by Sections 3052 and 3071. The first sentence of subdivision (c) insofar as it related to separate property of a spouse having a guardian which was homestead property has been omitted as unnecessary and insofar as it related to community property is superseded by subdivision (d) of Section 3051. The second sentence of subdivision (c) is continued in subdivision (c) of Section 3053 and in subdivision (c) of Section 3071. The first sentence of the fourth paragraph is superseded by Section 3021. The second sentence of the fourth paragraph is superseded by Section 3022.

The requirement of former Section 1435.16 that the conservator be first authorized by order of the court before joining in a transaction where joinder is required is continued and expanded in Section 3072. See the Comment to that section.

§ 1435.17 (repealed). **Community property; dealing with or disposition; effect of proceedings upon character of property or proceeds**

**Comment.** Subdivision (a) of former Section 1435.17 is superseded by subdivision (c) of Section 3051 and by Section 3071. Subdivision (b) is superseded by subdivisions (a) and (b) of Section 3051 and by Section 3071. The substance of the first paragraph of subdivision (c) is continued in subdivision (d) of Section 3051. The substance of the last paragraph of subdivision (c) is continued in subdivision (b) of Section 3020.

The requirement of former Section 1435.17 that the conservator be first authorized by order of the court before joining in a transaction where joinder is required is continued and expanded in Section 3072. See the Comment to that section.

§ 1435.18 (repealed). **Reference to guardian, etc. as including conservator, etc.**

**Comment.** The first portion of former Section 1435.18 is superseded by Sections 3004, 3006, and 3008 and the last portion is superseded by Section 3072.

### CHAPTER 3. APPOINTMENT OF GUARDIANS FOR MINORS

§ 1440 (repealed). **Authority to appoint; petition; guardianship over more than one minor, bond; nonrelative guardian of person; adoption**

**Comment.** The provision in the first sentence of subdivision (a) of former Section 1440 for appointment of a guardian when it “appears necessary or convenient” is continued in subdivision (a) of Section 1514. See also Section 1510(b) (contents of petition). The provision for the “superior court” to appoint a guardian is continued in Section 2200. The venue provisions of the first sentence of subdivision (a) of former Section 1440 are superseded by Sections 2201–2202. The provision that a guardian may be appointed for the “person and estate, or person or estate” is continued in subdivision (a) of Section 1514. The second sentence of subdivision (a) of former Section 1440 is continued in subdivision (a) of Section 1510.

The substance of the first sentence of subdivision (b) is continued in Section 2106. The second sentence is continued in Section 2327.

The substance of subdivision (c) of former Section 1440 is superseded by Sections 1540–1543 except that the portion relating to proof of service has been omitted as unnecessary in view of Section 1468. See the Comment to Section 1542. See also Section

1510(f) (contents of petition generally). The last paragraph of Section 1440 is superseded by the general provision of Section 1512.

§ 1440.1 (repealed). Report on suitability of petitioner

Comment. Former Section 1440.1 is continued in subdivision (a) of Section 1543.

§ 1440.2 (repealed). Copies of report to petitioner

Comment. Former Section 1440.2 is superseded by subdivision (b) of Section 1543.

§ 1440.3 (repealed). When Sections 1440–1440.2 not applicable

Comment. Former Section 1440.3 is superseded by subdivisions (d), (e), and (f) of Section 1540.

§ 1441 (repealed). Notice

Comment. Former Section 1441 is superseded by Section 1511.

§ 1442 (repealed). Order for temporary custody

Comment. Former Section 1442 is superseded by Sections 2250–2258 (temporary guardian).

§ 1443 (repealed). Investigation by probation officer

Comment. Former Section 1443 is superseded by subdivision (a) of Section 1513.

§ 1444 (repealed). Consent by court in absence of parent or guardian to permit hospital or medical care or enlistment in armed services

Comment. Former Section 1444 is continued in Section 3301.

#### CHAPTER 4. APPOINTMENT OF GUARDIANS FOR INSANE OR INCOMPETENT PERSONS

§ 1460 (repealed). Authority to appoint; definitions

Comment. Former Sections 1460–1472 are not continued. These sections related to creation and termination of guardianships for incompetent adults. Under Division 4 as revised, there are no longer guardianships for incompetent adults. Conservatorship is the appropriate proceeding for an adult in need of protective supervision.

§ 1461 (repealed). Petition; contents; setting for hearing and notice; citation; service; attendance at hearing

Comment. See the Comment to former Section 1460.

§ 1461.1 (repealed). Appointment of court investigator; interviews; reports

Comment. See the Comment to former Section 1460.

§ 1461.3 (repealed). Petition; alleged incompetent a patient in state institution; notice to director

Comment. See the Comment to former Section 1460. See also the Comment to Section 1822.

§ 1461.5 (repealed). Informing ward of nature and purpose of proceedings; counsel; exceptions

Comment. See the Comment to former Section 1460.

§ 1462 (repealed). Findings; appointment; copy of order; preferences

Comment. See the Comment to former Section 1460.

§ 1463 (repealed). Nomination of guardian; appointment by court

Comment. See the Comment to former Section 1460. See also Section 1810 and the Comment thereto.

#### CHAPTER 5. RESTORATION TO CAPACITY

§ 1470 (repealed). Petition; persons who may file; formalities and contents

Comment. See the Comment to former Section 1460.

§ 1471 (repealed). **Setting for hearing; jury trial; notice**

Comment. See the Comment to former Section 1460.

§ 1472 (repealed). **Contest; witnesses; findings; adjudication; termination of guardianship**

Comment. See the Comment to former Section 1460.

#### CHAPTER 6. OATHS, BONDS AND LETTERS

§ 1480 (repealed). **Oath and bond**

Comment. Former Section 1480 is superseded by Sections 2300 and 2320.

§ 1480.3 (repealed). **Estate consisting entirely of public benefits**

Legislative Committee Comment—Assembly

**Comment.** Former Section 1480.3 is superseded by Section 2323.

§ 1480.5 (repealed). **Filing cash bond or assigned interest in bank or savings and loan account or posting bearer or endorsed bonds**

Comment. Former Section 1480.5 is continued in Section 2331.

§ 1480.6 (repealed). **Nonprofit charitable corporation; form of bond**

Comment. Former Section 1480.6 is continued in Section 2325.

§ 1481 (repealed). **Letters; issuance; form**

Comment. Former Section 1481 is superseded by Sections 2310 and 2311.

§ 1483 (repealed). **New bond; discharge of sureties; notice**

Comment. Former Section 1483 is superseded by Section 2334.

§ 1483.1 (repealed). **Reduction of bond; application; accounting; order; new sureties**

Comment. Former Section 1483.1 is superseded by Section 2329. The requirement that the petition shall be verified is continued in Section 1450. The provision for the clerk to set the petition for hearing is continued in Section 1451.

§ 1483.2 (repealed). **Substitution and discharge of surety; petition; citation; service**

Comment. Former Section 1483.2 is superseded by subdivision (a) of Section 2335.

§ 1483.3 (repealed). **Substitution and discharge of surety; hearing; order**

Comment. Former Section 1483.3 is continued in subdivision (b) of Section 2335.

§ 1484 (repealed). **Testamentary guardians; powers and duties**

Comment. The portion of former Section 1484 relating to the powers and duties of testamentary guardians is superseded by Section 2108. The provision of former Section 1484 that every testamentary guardian "must qualify" is superseded by Section 2300.

§ 1485 (repealed). **Testamentary guardians; bond**

Comment. Former Section 1485 is superseded by Section 2324.

§ 1486 (repealed). **Bonds; filing; actions**

Comment. The first portion of former Section 1486 is continued in Section 2332. The last portion of former Section 1486 is continued in subdivision (a) of Section 2333.

§ 1487 (repealed). **Bonds; limitation of actions**

Comment. Former Section 1487 is superseded by subdivisions (b) and (c) of Section 2333.

§ 1488 (repealed). **Release of surety; petition; citation; service**

Comment. Former Section 1488 is superseded by subdivision (a) of Section 2336.

§ 1489 (repealed). **Failure to give new surety; revocation of letters**

Comment. Former Section 1489 is continued in subdivision (b) of Section 2336.

§ 1490 (repealed). **New sureties; liability**

**Comment.** Former Section 1490 is continued in subdivision (c) of Section 2336.

**CHAPTER 7. POWERS AND DUTIES**

§ 1500 (repealed). **Duration of guardianship; education of minor; residence of ward; involuntary civil mental health treatment**

**Legislative Committee Comment—Assembly**

**Comment.** The first portion of the first sentence of former Section 1500 (guardian has care and custody of ward's person) and the second sentence of that section (guardian has charge of minor's education) are superseded by Section 2351. The portion of the first sentence which provided that the guardian has the management of the ward's estate is continued in subdivision (a) of Section 2401. The portion of the first sentence relating to termination of the guardian's duties is superseded by Sections 1600 and 1601. See also Section 2467. The third sentence of former Section 1500 is superseded by Section 2352.

The second paragraph of former Section 1500 is continued in subdivision (a) of Section 2356.

Subdivision (a) of former Section 1500 is not continued. The subdivision related to adults, and guardianships are no longer available for adults. See Section 1510.

Subdivision (b) of former Section 1500 is not continued. Subdivision (c) is superseded by subdivision (c) of Section 2352.

§ 1500.1 (repealed). **Biennial review of guardianship**

**Comment.** Former Section 1500.1 is not continued. The section was apparently limited in its application to adults (see former Section 1500.2), and guardianships are no longer available for adults. See Section 1510. See also Sections 1850–1853.

§ 1500.2 (repealed). **Time for review**

**Comment.** Former Section 1500.2 is not continued. See the Comment to Section 1500.1.

§ 1501 (repealed). **Payment of debts; collection of accounts receivable; compromise and discharge of claims; representation of ward**

**Comment.** The first sentence of former Section 1501 is superseded by Section 2430. The first portion of the second sentence is superseded by Section 2451. The last portion of the second sentence is superseded by Sections 2500–2507. The last sentence is superseded by Section 2462.

§ 1501a (repealed). **Wage claims against ward; payment; court order; proof of claims; disputed claims; insufficiency of assets**

**Comment.** Former Section 1501a is superseded by Sections 2430 and 2431.

§ 1502 (repealed). **Management of estate; application of income; reimbursement for advancements**

**Comment.** The first portion of the first sentence of former Section 1502 (guardian of an estate must manage it frugally and without waste) is superseded by Section 2401 (duty to use ordinary care and diligence in management of estate). The remainder of former Section 1502 is superseded by Section 2420.

- § 1503 (repealed). **Compelling payment of support or debts**  
 Comment. Former Section 1503 is superseded by Section 2404.
- § 1504 (repealed). **Ward having parents living; support, maintenance and education**  
 Comment. Former Section 1504 is superseded by Section 2422.
- § 1505 (repealed). **Ward having spouse living; support**  
 Comment. Former Section 1505 is superseded by Section 2422.
- § 1506 (repealed). **Partition; authority from court**  
 Comment. Former Section 1506 is continued in Section 2463.
- § 1507 (repealed). **Partition; order granting authority; procedure from obtaining**  
 Comment. The first sentence of former Section 1507 is superseded by subdivisions (a) and (b) of Section 2463. The requirement in the second sentence of former Section 1507 that the clerk shall set the petition for hearing is continued in Section 1451. The provision for notice is superseded by subdivision (b) of Section 2463 and by Section 2506.
- § 1508 (repealed). **Partition; defense**  
 Comment. Former Section 1508 is continued in subdivision (c) of Section 2463.
- § 1509 (repealed). **Attorney's fees; approval of contract; amount fixed by court**  
 Comment. Former Section 1509 is continued in Section 3302.
- § 1510 (repealed). **Payment under compromise, covenant, order or judgment affecting minor, insane or incompetent person; jurisdiction**  
 Comment. The first paragraph of former Section 1510 is superseded by Sections 3600, 3610, and 3611. The second paragraph is superseded by Section 3612. The third paragraph is superseded by Sections 3600–3602. The fourth paragraph is continued in Section 1406. The fifth paragraph is continued in Section 1443. The sixth paragraph is continued in Section 1446. The substance of the seventh paragraph is continued in Sections 3600–3603 and 3610–3611 by express reference in those sections to a conservator or conservatorship as well as to a guardian or guardianship. See also Section 3603 (reference to “incompetent person”) continuing a portion of the seventh paragraph. See also Section 1490 (references to “account in an insured savings and loan association,” “shares of an insured credit union,” or “single-premium deferred annuity” in other statutes of this state).
- § 1511 (repealed). **Attorney's fees; payment by judgment debtor to minor's attorney**  
 Comment. Former Section 1511 is superseded by Section 3601.
- § 1512 (repealed). **Additional conditions of guardianship; authority of court to impose**  
 Comment. Former Section 1512 is continued in Sections 2358 and 2402.
- § 1513 (repealed). **Deposits or investments; effect; withdrawals**  
 Comment. The first and second sentences of former Section 1513 are superseded by Section 2453. See the Comment to Section 2453. See also Section 2456. The last sentence is superseded by Sections 1406 and 1443.
- § 1514 (repealed). **Deposit of assets with trust company; reduction of bond**  
 Comment. Former Section 1514 is continued in Section 2454.
- § 1514.5 (repealed). **Deposit of securities in securities depository**  
 Comment. Former Section 1514.5 is continued in Section 2455.
- § 1515 (repealed). **Dedication or conveyance of property, easements or access rights**  
 Comment. Former Section 1515 is continued in Section 2556.
- § 1515.5 (repealed). **Acceptance of deed in lieu of foreclosure or trustee's sale**  
 Comment. Former Section 1515.5 is continued in Section 2464.
- § 1516 (repealed). **Instructions to guardian; petition; notice of hearing; copy to director**  
 Comment. The first two sentences of former Section 1516 are superseded by Sections 2359 and 2403. The last sentence is superseded by Section 1461.

- § 1517 (repealed). **Corporate shares; voting rights; proxies; waiver of notice of and consent to meetings**  
 Comment. Former Section 1517 is continued in Section 2458.
- § 1518 (repealed). **Application of funds to effect or maintain in force insurance contract of minor**  
 Comment. Former Section 1518 is superseded by subdivision (e) of Section 2459.
- § 1519 (repealed). **Sale or purchase of property; accounting and review; liability of guardian**  
 Comment. Former Section 1519 is superseded by Section 2625.
- § 1520 (repealed). **Deposit of securities in securities depository**  
 Comment. Former Section 1520 is continued in Section 2455.

#### CHAPTER 8. SALES, MORTGAGES, LEASES AND CONVEYANCES

- § 1529 (repealed). **Community and homestead property; applicable code provisions**  
 Comment. Former Section 1529 is continued in Section 2407.
- § 1530 (repealed). **Sale or encumbrance of ward's property; when authorized; authorization, confirmation or direction by court**  
 Comment. The first portion of former Section 1530 (when guardian may sell property) is superseded by subdivision (b) of Section 2420 and by Section 2541. The portion relating to encumbering real property is superseded by subdivision (b) of Section 2420 and by Section 2551. The last portion, requiring the authorization, confirmation, or direction of the court is continued in Sections 2540 and 2550.
- § 1530a (repealed). **Compromise and settlement of claims or suits; extension, renewal or modification of obligations; petition; notice; hearing; order; recording; effect of conveyance**  
 Comment. The first paragraph of former Section 1530a is superseded by Sections 2500–2507. The provision in the first sentence of the second paragraph that the clerk shall set the petition for hearing is continued in Section 1451, and the provision concerning notice is superseded by Section 2506. The remainder of the second paragraph is superseded by Sections 2111 and 2528.
- § 1532 (repealed). **Sales for cash or part deferred payments; court approval; security for deferred payments; sale of joint interests**  
 Comment. Former Section 1532 is superseded by Section 2542.
- § 1533 (repealed). **Borrowing money; refinancing; financing improvements and repairs; joinder with co-owners; deficiencies upon foreclosure or trustee's sale**  
 Comment. Former Section 1533 is superseded by Sections 2551 and 2552.
- § 1534 (repealed). **Discretion to sell at auction or privately; formalities of sales**  
 Comment. Former Section 1534 is superseded by Section 2543. See also Section 2111 (transfer or conveyance of property pursuant to court order) and the Comment to that section.
- § 1534a (repealed). **Real estate transactions; additional bond**  
 Comment. Former Section 1534a is continued in Section 2330.
- § 1535 (repealed). **Ward in state hospital; notice to state director**  
 Comment. Former Section 1535 is superseded by Section 1461.
- § 1536 (repealed). **Proceeds of sale**  
 Comment. Former Section 1536 is superseded by Section 2547.
- § 1537 (repealed). **Conveyance to comply with contract; court authorization; procedure**  
 Comment. Former Section 1537 is superseded by Sections 2520–2528.

- § 1537.5 (repealed). **Conveyance of property of another held by ward**  
 Comment. Former Section 1537.5 is superseded by Sections 2520–2528.
- § 1538 (repealed). **Promissory notes; documents of encumbrance; contracts relating to real estate; court authorization; procedure**  
 Comment. Former Section 1538 is superseded by Sections 2546 (mines and mining claims), 2551 (borrowing money and giving security therefor), and 2553 (leases).
- § 1538.5 (repealed). **Leases; contents of authorization order**  
 Comment. Former Section 1538.5 is continued in Section 2554.
- § 1538.6 (repealed). **Lease of realty without court order; conditions**  
 Comment. Former Section 1538.6 is superseded by Section 2555.
- § 1539 (repealed). **Recovery of property sold by guardian; limitation of actions**  
 Comment. Former Section 1539 is continued in Section 2548.
- § 1540 (repealed). **Exchange of property**  
 Comment. Former Section 1540 is superseded by Section 2557.

#### CHAPTER 9. INVENTORY AND ACCOUNTING

- § 1550 (repealed). **Inventory and appraisal; time for filing; oath; appraisal; exception; copy to director; subsequently discovered, inherited or acquired property**

##### Legislative Committee Comment—Senate

*Comment.* The first sentence of subdivision (a) of former Section 1550 is continued in subdivision (a) of Section 2610. The second sentence is superseded by Section 2612. The substance of the requirement of the third sentence that the guardian shall “make oath to the inventory” is continued in subdivision (b) of Section 2610. The remainder of the third sentence and all of the fourth sentence are continued in subdivision (c) of Section 2610. The fifth sentence is superseded by Section 2611. The sixth sentence is superseded by Section 2613.

Subdivision (b) of former Section 1550 is superseded by subdivision (d) of Section 2610.

- § 1550.1 (repealed). **Objections to appraisals; notice of hearing; service; hearing; costs**  
 Comment. Former Section 1550.1 is superseded by Section 2614.
- § 1551 (repealed). **Inventory; failure to file; liability**  
 Comment. The first portion of the first sentence of former Section 1551 is superseded by subdivision (b) of Section 2650 (causes for removal of guardian or conservator). The remainder of former Section 1551 is continued in Section 2615.
- § 1552 (repealed). **Suspicion of embezzlement, concealment or fraudulent disposal; examination**  
 Comment. Former Section 1552 is superseded by Section 2616.
- § 1553 (repealed). **Account; settlement and allowance**  
 Comment. Former Section 1553 is superseded by Section 2620.
- § 1554 (repealed). **Ward in state hospital; notice to state director; limitation of actions**  
 Comment. The first sentence of former Section 1554 is continued in Section 2621. The second sentence is continued in subdivision (d) of Section 1461.
- § 1554.1 (repealed). **Waiver of notice in certain cases**  
 Comment. Former Section 1554.1 is superseded by subdivision (c) of Section 1461.

- § 1555 (repealed). Termination of guardianship; continuing jurisdiction to settle accounts; accounts of deceased guardian; accounting by guardian's attorney; fee  
 Comment. The first sentence of former Section 1555 is continued in Section 2630. The remainder of former Section 1555 is continued in Section 2632.
- § 1556 (repealed). Compensation; expenses; disbursements; attorney's fees; court order  
 Comment. The first paragraph of former Section 1556 is superseded by Section 2623. The second paragraph is continued in Section 2640.
- § 1556.1 (repealed). Petition by attorney for compensation  
 Comment. Former Section 1556.1 is continued in Section 2642.
- § 1556.3 (repealed). Investment of cash in interest-bearing accounts or investments authorized by law  
 Comment. Former Section 1556.3 is continued in Section 2624.
- § 1556.5 (repealed). Cost of bond  
 Comment. Former Section 1556.5 is superseded by Section 2623.
- § 1557 (repealed). Investments; application for authority; notice; hearing  
 Comment. The first portion of the first sentence of former Section 1557 is superseded by Section 2570. The last portion of the first sentence of former Section 1557 (court order) is superseded by subdivision (e) of Section 2570 and by Section 2403. The second sentence of former Section 1557 is continued in Section 2573. The first portion of the third sentence (clerk shall set application for hearing by the court) is superseded by Section 1451. The last portion of the third sentence and the first portion of the fourth sentence (notice) are superseded by subdivision (c) of Section 2570. The last portion of the fourth sentence (special notice) is superseded by paragraph (7) of subdivision (a) of Section 2700. The last sentence of former Section 1557 is superseded by Section 1462 and subdivision (c) of Section 2570.
- § 1557.1 (repealed). Purchase of real estate; application for authority; setting for hearing and notice; hearing; order  
 Comment. The first sentence of former Section 1557.1 is superseded by Sections 2570–2572. The first portion of the second sentence (clerk shall set application for hearing by the court) is superseded by Section 1451. The last portion of the second sentence (notice) is superseded by subdivision (c) of Section 2570. The third sentence (special notice) is superseded by paragraph (7) of subdivision (a) of Section 2700. The fourth sentence is superseded by subdivision (c) of Section 2570 and by Section 1462. The fifth sentence is superseded by subdivision (d) of Section 2570. The last sentence is superseded by subdivision (e) of Section 2570 and by the second sentence of Section 2572.
- § 1557.2 (repealed). Orders relating to investments or purchase of real estate; conclusiveness  
 Comment. Former Section 1557.2 is superseded by Section 2103.
- § 1558 (repealed). Distribution of surplus income; application; discretion of court; notice of hearing; notice to director; surplus income defined  
 Comment. The first three sentences of former Section 1558 are superseded by Section 2423. The fourth sentence is continued in Section 1461. The last sentence has been omitted as obsolete.
- § 1559 (repealed). Termination of guardianship of estate on exhaustion of estate  
 Comment. Former Section 1559 is superseded by Section 2626.
- § 1560 (repealed). Death of ward; payment of funeral and last illness expenses by guardian; transfer of remaining assets  
 Comment. Former Section 1560 is continued in Section 2631.
- § 1561 (repealed). Wages of adult ward  
 Comment. Former Section 1561 is superseded by Section 2601.



**CHAPTER 10. NONRESIDENT WARDS****§ 1570 (repealed). Authority to appoint; petition; manner of appointment; extent of guardianship**

**Comment.** The first portion of the first sentence of former Section 1570 (superior court may appoint guardian for nonresident) is superseded by Sections 2200 and 2202. The last portion of the first sentence and all of the second sentence (who may petition) are continued in subdivision (a) of Section 1510 and in subdivision (a) of Section 1820.

The second paragraph of former Section 1570 has been omitted as unnecessary. A guardian or conservator is appointed for a nonresident under Part 2 (commencing with Section 1500) or Part 3 (commencing with Section 1800) of Division 4 in the same manner as for a resident.

The third paragraph is superseded by subdivision (a) of Section 2203.

**§ 1571 (repealed). Powers and duties of guardian; bond**

**Comment.** Former Section 1571 is superseded by Section 2107. See the Comment to that section.

**§ 1572 (repealed). Removal of ward's property from state**

**Comment.** Former Section 1572 is continued in Section 3800 and in subdivision (a) of Section 3803.

**§ 1573 (repealed). Removal of ward's property from state; notice of application; certificate of nonresident guardian**

**Comment.** The first sentence of former Section 1573 is superseded by Section 3801. The second sentence is superseded by Section 3802.

**§ 1574 (repealed). Order for removal**

**Comment.** Former Section 1574 is continued in Section 3803.

**CHAPTER 11. SUSPENSION, REMOVAL AND RESIGNATION****§ 1580 (repealed). Removal; causes**

**Comment.** Former Section 1580 is superseded by Sections 2650–2654. See the Comment to Section 2650. Subdivision (7) of former Section 1580 is superseded by Section 1601.

**§ 1581 (repealed). Removal; notice; surrender of estate; suspension of powers pending hearing**

**Comment.** The first portion of the first sentence of former Section 1581 (notice) is superseded by Section 2652. The remainder of the first sentence is continued in Section 2653. The second sentence is continued in Section 2654.

**§ 1582 (repealed). Resignation; appointments to fill vacancies**

**Comment.** The first portion of former Section 1582 (resignation) is superseded by Section 2660. The last portion of former Section 1582 (appointment of successor guardian) is continued in Section 2110.

**CHAPTER 12. TERMINATION OF GUARDIANSHIP****§ 1590 (repealed). Termination by marriage, majority, court order, or restoration to capacity**

**Comment.** Subdivisions (1) and (2) of former Section 1590 are superseded by Section 1600. The first portion of subdivision (3) is continued in Section 1601. The last portion of subdivision (3) (restoration to capacity) is not continued in guardianship law since guardianship is no longer available for an incompetent adult. See Section 1510.

**§ 1591 (repealed). Joint guardians; survivorship**

**Comment.** Former Section 1591 is continued in subdivision (c) of Section 2105.

**§ 1592 (repealed). Settlement of accounts and release by ward; validity**

**Comment.** Former Section 1592 is continued in subdivision (a) of Section 2627.

§ 1593 (repealed). Discharge one year after ward's majority

Comment. Former Section 1593 is continued in subdivision (b) of Section 2627.

### CHAPTER 13. NOTICES AND PROCEDURE

§ 1600 (repealed). Request for special notice; persons entitled to request; proceedings subject to request

Comment. Former Section 1600 is superseded by Section 2700.

§ 1601 (repealed). Request for special notice; contents

Comment. The first portion of former Section 1601 (request shall give post office address) is superseded by subdivision (b) of Section 2700. The remainder of former Section 1601 is superseded by Section 2702.

§ 1602 (repealed). Request for special notice; proof of compliance

Comment. Former Section 1602 is continued in Section 2703.

§ 1603 (repealed). Transfer of proceeding to another county or state; application; discharge of guardian

Comment. The provision of former Section 1603 for transfer of the proceedings to another county is continued in Section 2211. The provision for transfer to another state is superseded by Sections 2801 and 2806. The provision for discharge of the guardian is superseded by Section 2806. The procedural provisions (manner of transfer and notice) are superseded by Sections 2212–2216 (transfer to another county) and by Sections 2802–2808 (transfer of assets out of state).

§ 1606 (repealed). Practice and procedure; law governing

Comment. Former Section 1606 is superseded by Section 2100.

§ 1606.5 (repealed). Right to counsel

Comment. Former Section 1606.5 is not continued in guardianship law. The section applied to guardianships of an incompetent adult. Guardianships are no longer available for an incompetent adult. See Section 1510. For the comparable conservatorship provisions, see Sections 1471 (right to counsel), 1472 (compensation of court-appointed counsel), and 1827 (law and procedure applicable to hearing).

§ 1607 (repealed). Guardian ad litem

Comment. Former Section 1607 is continued in Section 1455.

### CHAPTER 14. APPEALS

§ 1630 (repealed). Appealable orders

Comment. Former Section 1630 is superseded by Section 2750.

§ 1631 (repealed). Stay of power pending appeal; exception

Comment. Former Section 1631 is superseded by Section 2751.

§ 1632 (repealed). Reversal of order of appointment; validity of guardian's acts

Comment. Former Section 1632 is continued in Section 2752.

### CHAPTER 14.5. SPECIAL GUARDIANS

§ 1640 (repealed). Appointment of special guardian

Comment. Former Section 1640 is superseded by Section 2250.

§ 1641 (repealed). Special letters; issuance; bond

Comment. Former Section 1641 is superseded by Section 2251.

§ 1642 (repealed). Powers and duties

Comment. Former Section 1642 is superseded by Section 2252.

- § 1643 (repealed). **Inventory; appraisal**  
Comment. Former Section 1643 is continued in Section 2255.
- § 1644 (repealed). **Accounts; presentment, settlement and allowance**  
Comment. Former Section 1644 is continued in Section 2256.
- § 1645 (repealed). **Termination of powers**  
Comment. Former Section 1645 is superseded by Section 2257.
- § 1646 (repealed). **Suspension, removal, resignation and discharge**  
Comment. Former Section 1646 is continued in Section 2258.

#### CHAPTER 15. UNIFORM VETERANS' GUARDIANSHIP ACT

- § 1650 (repealed). **Definitions**  
Comment. Former Section 1650 is superseded by Section 2901.
- § 1651 (repealed). **Necessity and manner of appointment**  
Comment. Former Section 1651 is continued in Section 2902.
- § 1652 (repealed). **Petition; filing; authorized petitioners; contents of petition**  
Comment. Former Section 1652 is continued in Section 2903.
- § 1653 (repealed). **Evidence of necessity for guardian of minor**  
Comment. Former Section 1653 is continued in Section 2904.
- § 1654 (repealed). **Evidence of necessity for guardian of incompetent**  
Comment. Former Section 1654 is continued in Section 2905.
- § 1655 (repealed). **Notice**  
Comment. Former Section 1655 is continued in Section 2906.
- § 1656 (repealed). **Fitness of appointee; bond**  
Comment. Former Section 1656 is continued in Section 2907.
- § 1657 (repealed). **Accounting by guardian**  
Comment. Former Section 1657 is continued in Section 2908.
- § 1658 (repealed). **Penalty for failure to account**  
Comment. Former Section 1658 is continued in Section 2909.
- § 1659 (repealed). **Compensation of guardians; allowance of bond premiums**  
Comment. Former Section 1659 is continued in Section 2910.
- § 1660 (repealed). **Investments; deposits**  
Comment. Former Section 1660 is continued in Section 2911. The last sentence of former Section 1660 (definition of "account or accounts in one or more insured savings and loan associations") is continued in Section 1406.
- § 1661 (repealed). **Maintenance and support of person other than ward**  
Comment. Former Section 1661 is continued in Section 2912.
- § 1661.5 (repealed). **Purchase of real estate for ward**  
Comment. Former Section 1661.5 is superseded by Section 2913.
- § 1662 (repealed). **Furnishing copy of public record without charge**  
Comment. Former Section 1662 is continued in Section 2914.
- § 1662.5 (repealed). **Certificate of majority or competency; discharge of guardian and release of sureties**  
Comment. Former Section 1662.5 is superseded by Section 2915.
- § 1663 (repealed). **Commitment to Veterans Administration or other federal agency**  
Comment. Former Sections 1663 and 1664 are not continued. These provisions are superseded by the Lanterman-Petris-Short Act (Welf. & Inst. Code §§ 5000-5404.1).

Under the Lanterman–Petris–Short Act, a conservatee may be treated in a United States government hospital. Welf. & Inst. Code § 5358. See also Welf. & Inst. Code §§ 4123, 5008(c), 5366.1.

§ 1664 (repealed). **Discharge from facility of Veterans Administration; filing certificate; certificate as evidence of competency; effect of certificate**

Comment. Former Section 1664 is not continued. See the Comment to former Section 1663.

§ 1665 (repealed). **Application of chapter**

Comment. Former Section 1665 is continued in Section 2916.

§ 1666 (repealed). **Short title**

Comment. Former Section 1666 is continued in Section 2900.

§ 1667 (repealed). **Construction to effect uniformity**

Comment. Former Section 1667 is continued in Section 2918.

§ 1668 (repealed). **Partial validity**

Comment. Former Section 1668 is continued in Section 11.

§ 1669 (repealed). **Repeal of inconsistent acts; applicability of other laws**

Comment. The first sentence of former Section 1669 is not continued. The second sentence is superseded by Section 2917.

§ 1700 (repealed). **Statutes and code sections repealed**

Comment. Former Section 1700 is omitted as unnecessary. See Gov't Code § 9607.

## DIVISION 5. CONSERVATORSHIP

### CHAPTER 1. DEFINITION OF CONSERVATOR AND STATEMENT OF LAW APPLICABLE

§ 1701 (repealed). **Definition; petition of nonprofit charitable corporation, caption to include corporate officer**

Comment. The first sentence of former Section 1701 is omitted as unnecessary. The reference to a natural person as conservator in the second sentence of former Section 1701 is omitted as unnecessary. The provision for a nonprofit charitable corporation to serve as conservator is continued in subdivision (a) of Section 2104. The provision for a trust company to serve as conservator of the estate is not continued in Division 4 since this provision duplicated the provision contained in Section 480. The third sentence of former Section 1701 is continued in subdivision (b) of Section 2104.

§ 1702 (repealed). **Law governing**

Comment. Former Section 1702 is superseded by Section 2100.

§ 1703 (repealed). **Operation of division; restriction on appointments; petition; election to apply for letters of conservatorship or guardianship**

Comment. Former Section 1703 is omitted as unnecessary. Under Division 4 as revised, guardians may be appointed only for minors. See Section 1510. Conservators may be appointed only for adults except that a conservator of the person may be appointed for a married minor or a minor whose marriage has been dissolved. Section 1800. See also Section 1860.

§ 1704 (repealed). **Succession of conservator**

Comment. The provision of the first sentence of former Section 1704 for an existing guardian to be appointed as conservator is superseded by subdivision (b) of Section 1820. The remainder of former Section 1704 is omitted as unnecessary. See the Comment to former Section 1703.

§ 1705 (repealed). **Succession of guardian**

**Comment.** Former Section 1705 is omitted as unnecessary. See the Comment to former Section 1703.

**CHAPTER 2. CREATION AND TERMINATION**

§ 1751 (repealed). **Reasons for appointment**

**Legislative Committee Comment—Assembly**

**Comment.** The portion of the first sentence of former Section 1751 requiring that the court be satisfied as to the need for the appointment is continued in Section 1800. The portion providing for appointment of a conservator of the person for an adult who is unable to provide for his personal needs for physical health, food, clothing, or shelter is continued in subdivision (a) of Section 1801. The portion providing for appointment of a conservator of the property for an adult who is substantially unable to manage his own financial resources or resist fraud or undue influence is continued in subdivision (b) of Section 1801. The portion providing for appointment of a conservator for an adult for whom a guardian could be appointed is superseded by Section 1872. See also Section 1873. The portion providing for appointment of a conservator for an adult who voluntarily requests the appointment and establishes good cause therefor is continued in Section 1802. The portion providing for appointment of a conservator for an “absentee” is continued in Section 1803.

The second sentence of former Section 1751 is continued in subdivision (b) of Section 1801. The third sentence of former Section 1751 is continued in subdivision (a) of Section 2105.

§ 1751.5 (repealed). **Definitions**

**Comment.** Subdivision (a) of former Section 1751.5 is continued in Section 1403. Subdivision (b) of former Section 1751.5 is continued in Section 1440. See also Section 1490 (reference to “absentee” or “secretary concerned” in other statutes of this state).

§ 1752 (repealed). **Appointment; guiding factors; nomination**

**Comment.** The first sentence of former Section 1752 is continued in subdivision (a) of Section 1812. The second sentence is continued in Section 1810. The last sentence is superseded by the introductory clause of subdivision (b) of Section 1812.

§ 1753 (repealed). **Selection of conservator; preferences**

**Comment.** The first three sentences of former Section 1753 are continued in Section 1812. The last sentence is omitted as unnecessary since a guardian may no longer be appointed for an incompetent adult. See Section 1510.

§ 1754 (repealed). **Petition to appoint conservator; contents**

**Legislative Committee Comment—Assembly**

**Comment.** The first sentence of former Section 1754 is superseded by subdivision (a) of Section 1820 and by subdivision

(a) of Section 1821. The requirement that the petition be verified is continued in Section 1450.

The second sentence of former Section 1754 is continued in subdivision (b) of Section 1821. The third sentence is superseded by Section 1451. The fourth sentence is superseded by subdivisions (a) and (b) of Section 1822 and by Section 1842. The fifth sentence is continued in Section 1842.

The second paragraph of former Section 1754 is superseded by Section 1823. The first sentence of the third paragraph is superseded by Section 1824. The second sentence of the third paragraph is continued in Section 1843.

The first four sentences of the fourth paragraph are continued in Section 1825. The last sentence of the fourth paragraph is superseded by Section 1844.

The portion of the fifth paragraph requiring the court to appoint the court investigator is continued in Section 1454.

The remainder of the fifth paragraph and the sixth paragraph are continued in Section 1826.

The seventh paragraph is superseded by Section 1454.

The first sentence of the eighth paragraph is superseded by subdivisions (c) and (d) of Section 1822. See the Comment to that section. The last sentence of the eighth paragraph is continued in Section 1829.

**§ 1754.1 (repealed). Information to be given to proposed conservatee**

**Comment.** Former Section 1754.1 is superseded by Section 1828.

**§ 1754.5 (repealed). Absentee or proposed conservatee; notice, contents, service; spouse as conservator; evidence**

**Comment.** The provision of the first sentence of former Section 1754.5 relating to required contents of the notice is continued in subdivision (a) of Section 1841. The provision of the first sentence that the notice shall be accompanied by a complete copy of the petition is superseded by Section 1842. The requirement that the petition and notice be delivered only by a method which would be sufficient for service of summons in a civil action is not continued; under Section 1842 the notice and petition are to be mailed.

The portion of the second sentence relating to allegations required in the petition is continued in Section 1813 and subdivision (b) of Section 1841. The requirement that the petition be verified is continued in Section 1450. The portion of the second sentence relating to the finding of the court is continued in Section 1813.

The last sentence of former Section 1754.5 is continued in subdivision (a) of Section 1844.

**§ 1753 (repealed). Duration; petition for termination; contents**

**Comment.** The provision of the first sentence which provided that every conservatorship shall continue until terminated by the death of the conservatee or by order of court is continued in Section 1860. The provision for termination on the death of the conservator is not continued. See the Comment to Section 1860. The provision concerning the duty of the conservator upon the death of the conservatee to see to the custody and conservation of the estate pending delivery to the personal representative is continued in Section 2467.

The second and third sentences of former Section 1755 are continued in Section 1861. The requirement that the petition be verified is continued in Section 1450. The provision that the petition is to the superior court of the county in which the proceedings are pending is continued in Sections 1418 (definition of "court") and 2200 (superior court has jurisdiction).

The portion of the fourth sentence relating to setting the petition for hearing is superseded by Section 1451. The portion relating to notice is continued in subdivision (a) of Section 1862.

The fifth sentence is superseded by subdivision (b) of Section 1862. The sixth and seventh sentences are continued in subdivision (d) of Section 1862. The eighth and ninth sentences are continued in subdivision (a) of Section 1863. The tenth and twelfth sentences are superseded by subdivision (b) of Section 1863. The eleventh sentence is continued in Section 1865. The last sentence is continued in subdivision (c) of Section 1863.

**§ 1755.5 (repealed). Termination of conservatorship of absentee**

**Comment.** The first paragraph of former Section 1755.5 is continued in Section 1864. The second paragraph is superseded by subdivision (d) of Section 1863.

### CHAPTER 2.5. PERSONAL PROPERTY OF ABSENTEES

**§ 1776 (repealed). Definitions**

**Comment.** Former Section 1776 is continued in Section 3700.

**§ 1777 (repealed). Authority to set aside property; amount**

**Comment.** Former Section 1777 is superseded by Section 3701.

**§ 1778 (repealed). Petition to set aside property; eligible persons; verification; contents; evidence**

**Comment.** The provision of former Section 1778 that the petition show that the chapter is applicable is superseded by paragraph (1) of subdivision (a) of Section 3703 and the detailed listing in Section 3703 of the required contents of the petition. The requirement that the petition be verified is continued in Section 1450. The provision for a prayer in the petition has been omitted as unnecessary. The provision concerning who may file the petition is continued in Section 3702. The requirement that the court find that the spouse is an eligible spouse is continued in substance in Section 3705. The remainder of former Section 1778 is continued in Section 3703.

**§ 1779 (repealed). Hearing; notice**

**Comment.** The first sentence of former Section 1779 is superseded by Section 1451. The second, third, and fourth sentences are continued in Section 3704. The last sentence is continued in subdivision (a) of Section 3705.

**§ 1780 (repealed). Order setting aside property; amount**

**Comment.** Former Section 1780 is superseded by subdivisions (b) and (c) of Section 3705.

**§ 1781 (repealed). Jurisdiction; property in excess of \$5,000; interest in realty**

**Comment.** Former Section 1781 is superseded by Section 3706.

**§ 1782 (repealed). Joint tenancy property**

**Comment.** Former Section 1782 is continued in Section 3707.

**§ 1783 (repealed). Accounting**

**Comment.** Former Section 1783 is continued in Section 3708.

### CHAPTER 3. OATH, BOND AND LETTERS

**§ 1801 (repealed). Oath; issuance of letters**

**Comment.** The first sentence of former Section 1801 has been omitted as unnecessary. The second sentence is superseded by subdivision (a) of Section 2300. The third sentence

is continued in Sections 2310 and 2311. The fourth sentence is continued in Section 2312. The last sentence is continued in Section 1830.

§ 1802 (repealed). **Bond; amount; exception**

**Comment.** The first sentence of former Section 1802 is superseded by Section 2321. The second and third sentences are superseded by Section 2320. The fourth sentence is continued in Section 2322. The last sentence is superseded by Section 2326.

§ 1802.5 (repealed). **Nonprofit charitable corporation; form of bond**

**Comment.** Former Section 1802.5 is continued in Section 2325.

§ 1803 (repealed). **Bond; reduction of amount; procedure**

**Comment.** Former Section 1803 is superseded by Section 2329. The requirement that the petition be verified is continued in Section 1450. The provision for the clerk to set the petition for hearing is continued in Section 1451.

§ 1803.5 (repealed). **Cash bond in lieu of surety bond**

**Comment.** Former Section 1803.5 is superseded by Section 2331.

§ 1804 (repealed). **Deposit of conservatee's assets; method of reduction of bond**

**Comment.** Former Section 1804 is superseded by Section 2328.

§ 1805 (repealed). **Bond; filing; suit on bond**

**Comment.** The first portion of former Section 1805 is continued in Section 2332. The last portion is continued in subdivision (a) of Section 2333.

§ 1806 (repealed). **Actions against sureties; limitation**

**Comment.** Former Section 1806 is superseded by subdivisions (b) and (c) of Section 2333.

#### CHAPTER 4. POWERS AND DUTIES

§ 1851 (repealed). **Extent of care and control; place of residence of conservatee; involuntary civil mental health treatment**

**Legislative Committee Comment—Assembly**

**Comment.** The first portion of the first sentence of former Section 1851 is superseded by Section 2351. The last portion of the first sentence is superseded by subdivision (a) of Section 2352. The second paragraph is continued in subdivision (a) of Section 2356.

Subdivision (a) of former Section 1851 is not continued. Subdivision (b) is superseded by subdivision (c) of Section 2352.

§ 1851.1 (repealed). **Review of conservatorship; court investigator's report; termination of conservatorship**

**Comment.** The first sentence of former Section 1851.1 is continued in subdivision (a) of Section 1850. The remainder of the first paragraph and the second paragraph of former Section 1851.1 are continued in Section 1851. The third and fourth paragraphs are continued in Sections 1471 and 1852. The fifth paragraph is superseded by Section 1853. The last paragraph is continued in Section 1865.

§ 1851.2 (repealed). **Time for review**

**Comment.** Former Section 1851.2 is omitted as obsolete.

§ 1852 (repealed). **General powers**

**Comment.** Former Section 1852 is not continued. Under Division 4 as revised, the provisions concerning powers and duties of guardians and conservators of the estate have



been consolidated, and are set forth in Chapter 6 (commencing with Section 2400) of Part 4.

**§ 1853 (repealed). Additional powers**

**Comment.** Former Section 1853 (additional powers) is superseded by Article 11 (commencing with Section 2590) of Chapter 6 of Part 4 of Division 4. Article 11 is entitled "Independent Exercise of Powers." The first paragraph of former Section 1853 is superseded by Sections 2590 (order granting authority for independent exercise of powers) and 2592 (petition).

The second paragraph of former Section 1853 (listing of powers) is superseded by Section 2591 (powers that may be granted), and by several other sections which confer on the guardian or conservator powers taken from former Section 1853 and make those powers exercisable without court approval unless the power is restricted by the court. See the Comment to Section 2591. These latter powers are found in Sections 2451 (power to collect debts and benefits), 2458 (power to vote shares and securities in person or by proxy), 2459 and 2460 (power to continue or obtain insurance), 2461 (power to pay or compromise taxes), 2462 (power to maintain actions and proceedings—other than partition—and to defend actions and proceedings), 2465 (power to abandon property).

The first sentence of the third paragraph has been omitted as unnecessary. The second sentence is continued in Section 2590. The third sentence is superseded by subdivision (c) of Section 2592. The fourth and fifth sentences are continued in subdivisions (a) and (b) of Section 2594. The last sentence is continued in subdivision (a) of Section 2595.

**§ 1854 (repealed). Withdrawal of additional powers**

**Comment.** The first portion of former Section 1854 (withdrawal of powers) is continued in subdivision (a) of Section 2593. The requirement that the petition be verified is continued in Section 1450. The last portion of former Section 1854 (new letters) is continued in subdivision (c) of Section 2594.

**§ 1855 (repealed). Maintenance and support of conservatee and dependents**

**Comment.** Former Section 1855 is superseded by subdivisions (a) and (b) of Section 2420.

**§ 1856 (repealed). Surplus income; distribution; conditions; notice and hearing**

**Comment.** The first three sentences of former Section 1856 are superseded by Section 2423. The last sentence is continued in Section 1461.

**§ 1857 (repealed). Support of conservatee; source of revenue; liability of third party**

**Comment.** Former Section 1857 is continued in Section 2422.

**§ 1858 (repealed). Payment of debts**

**Comment.** The first four sentences of former Section 1858 are superseded by Section 2430. The last sentence is superseded by Section 2466.

**§ 1859 (repealed). Compelling payment of support or debts**

**Comment.** Former Section 1859 is continued in Section 2404.

**§ 1860 (repealed). Approval of acts of conservator**

**Comment.** Former Section 1860 is superseded by Sections 2359 and 2403.

**§ 1861 (repealed). Allowance for conservatee**

**Comment.** Former Section 1861 is continued in Section 2421.

**§ 1862 (repealed). Sale or purchase of property; accounting and review; liability of conservator**

**Comment.** Former Section 1862 is superseded by Section 2625.

## CHAPTER 5. INVENTORY AND ACCOUNTING

§ 1901 (repealed). Filing inventory and appraisal; subsequently discovered property

Legislative Committee Comment—Senate

*Comment.* The first sentence of subdivision (a) of former Section 1901 is superseded by subdivision (a) of Section 2610. The second sentence is superseded by Section 2612. The substance of the first portion of the third sentence (conservator shall make oath to the inventory) is continued in subdivision (b) of Section 2610. The remainder of the third sentence and all of the fourth sentence are continued in subdivision (c) of Section 2610. The fifth sentence is superseded by Section 2611. The sixth sentence is continued in Section 2613.

Subdivision (b) of former Section 1901 is superseded by subdivision (d) of Section 2610.

§ 1901.5 (repealed). Objections to appraisals; hearing; notices; service; fixing true value  
*Comment.* Former Section 1901.5 is superseded by Section 2614.

§ 1902 (repealed). Failure or refusal to file; consequences

*Comment.* The first portion of the first sentence of former Section 1902 (revocation of letters for failure to file inventory) is superseded by subdivision (b) of Section 2650. The remainder of former Section 1902 is continued in Section 2615.

§ 1903 (repealed). Examination of persons having or claiming interest in or against estate

*Comment.* Former Section 1903 is continued in Section 2616. The requirement that the petition be under oath is continued in Section 1450.

§ 1904 (repealed). Reports; filing dates

*Comment.* Former Section 1904 is continued in Section 2620.

§ 1905 (repealed). Settlement of certain accounts; condition

*Comment.* The first sentence of former Section 1905 is superseded by Section 2621. The second sentence is superseded by subdivision (d) of Section 1461.

§ 1906 (repealed). Certification relieving conservator of duty of giving notice of hearing in certain cases

*Comment.* Former Section 1906 is superseded by subdivision (c) of Section 1461.

§ 1907 (repealed). Termination of conservatorship; continuing jurisdiction to settle accounts; accounts of deceased or incompetent conservator; accounting by attorney; fee

*Comment.* The first sentence of former Section 1907 is continued in Section 2630. The remainder of the first paragraph of former Section 1907 is continued in Section 2632. The last paragraph is continued in subdivision (c) of Section 2104.

§ 1908 (repealed). Expenses of administration

*Comment.* Subdivision (1) of former Section 1908 is superseded by Section 2623. Subdivision (2) is superseded by Section 2623 and subdivision (c) of Section 2104.

§ 1909 (repealed). Termination; causes; exhaustion of estate

*Comment.* Former Section 1909 is superseded by Section 2626.

§ 1910 (repealed). Wages of conservatee

*Comment.* Former Section 1910 is continued in Section 2601.

- § 1911 (repealed). **Death of conservatee; funeral and last illness expenses; disposition of remaining assets**  
 Comment. Former Section 1911 is continued in Section 2631.
- § 1912 (repealed). **Investment of cash in interest-bearing accounts or investments authorized by law**  
 Comment. Former Section 1912 is continued in Section 2624.

#### CHAPTER 6. SUSPENSION, REMOVAL AND RESIGNATION

- § 1951 (repealed). **Causes for removal; notice and hearing**  
 Comment. Former Section 1951 is superseded by Sections 2650-2654. See the Comment to Section 2650.
- § 1952 (repealed). **Causes for suspension**  
 Comment. Former Section 1952 is continued in Section 2654. The requirement that the petition be verified is continued in Section 1450.
- § 1953 (repealed). **Resignation; procedure**  
 Comment. Former Section 1953 is superseded by Section 2660.
- § 1954 (repealed). **Vacancies in office**  
 Comment. Former Section 1954 is continued in Section 2110.
- § 1955 (repealed). **Death of joint conservator; rights of survivor**  
 Comment. Former Section 1955 is superseded by subdivision (c) of Section 2105.
- § 1956 (repealed). **Procedure in absence or disqualification of joint conservator**  
 Comment. Former Section 1956 is continued in subdivision (d) of Section 2105.

#### CHAPTER 7. NOTICES AND PROCEDURE

- § 2001 (repealed). **Method of giving notice**  
 Comment. Former Section 2001 is superseded by Sections 1460 and 1462. See the Comments to those sections.
- § 2002 (repealed). **Special notice**  
 Comment. Former Section 2002 is superseded by Section 2700.
- § 2003 (repealed). **Contents**  
 Comment. The first sentence of former Section 2003 is continued in subdivision (b) of Section 2700. The remainder of former Section 2003 is continued in Section 2701.
- § 2004 (repealed). **Notice of hearing**  
 Comment. Former Section 2004 is superseded by Section 2702.
- § 2005 (repealed). **Proof of service**  
 Comment. Former Section 2005 is continued in Section 2703. See also Section 1468.
- § 2006 (repealed). **Right to counsel; costs**  
 Comment. The first paragraph of former Section 2006 is superseded by Section 1471. The second paragraph is continued in Section 1827 and in subdivision (a) of Section 1863. The last paragraph is superseded by Section 1472.
- § 2007 (repealed). **Compensation of attorneys appointed in counties without public defender**  
 Comment. Former Section 2007 is superseded by subdivision (b) of Section 1472 which applies to conservatorship proceedings. Former Section 2007 is not continued with respect to guardianship proceedings since its application was apparently to guardianships of adult incompetents, and guardianships are no longer available for adults. See Section 1510. See also the Comment to former Section 1606.5.

**CHAPTER 8. JURISDICTION****§ 2051 (repealed). Venue; transfer**

**Comment.** The first sentence of former Section 2051 is superseded by Sections 2200 and 2201. The second sentence is superseded by Section 2202. The first portion of the third sentence is continued in Section 2211. The last portion of the third sentence is superseded by Section 2801.

**§ 2052 (repealed). Petition for transfer; contents**

**Comment.** The first portion of the first sentence of former Section 2052 is continued in Sections 2200 and 2211. The last portion of the first sentence is superseded by Section 2801. The portion of the second sentence relating to the persons who may petition for transfer to another county is superseded by Section 2212. The portion of the second sentence relating to the persons who may petition for transfer to another state is superseded by Section 2802. The portion of the second sentence relating to contents of a petition for transfer to another county is continued in Section 2213. The portion of the second sentence relating to the contents of a petition for transfer to another state is superseded by Section 2803. The requirement that the petition be verified is continued in Section 1450.

**§ 2053 (repealed). Notice and hearing**

**Comment.** The first portion of the first sentence of former Section 2053 (clerk shall set petition for hearing) is continued in Section 1451. The remainder of the first sentence and all of the second sentence are superseded by Sections 2214 (notice of hearing on petition to transfer proceeding to another county) and 2804 (notice of hearing on petition to transfer assets out of state). The third and fourth sentences are continued in Section 2215 as they applied to transfers to another county and are superseded by Sections 2805 and 2806 as the sentences applied to transfers to another state. The fifth sentence is continued in subdivision (a) of Section 2216 as it applied to transfers to another county and is superseded by Section 2807 as it applied to transfers to another state. The last sentence of former Section 2053 is superseded by Section 2807.

**§ 2054 (repealed). Fees of clerk in removal proceedings**

**Comment.** Former Section 2054 is continued in subdivision (b) of Section 2216 insofar as the former section applied to a transfer of the proceedings to another county. Former Section 2054 is not continued insofar as it applied to a transfer of the proceedings to another state. See generally Sections 2800–2808.

**§ 2055 (repealed). Final account; petition for discharge; notice; termination of conservatorship**

**Comment.** Former Section 2055 is superseded by Section 2808.

**CHAPTER 9. APPEALS****§ 2101 (repealed). Authorization; exception**

**Comment.** Former Section 2101 is superseded by Section 2750.

**§ 2102 (repealed). Effect of appeal on powers of conservator; exception; appointment of temporary conservator**

**Comment.** Former Section 2102 is superseded by Section 2751.

**§ 2103 (repealed). Release; exceptions**

**Comment.** Former Section 2103 is superseded by new Section 2103.

**CHAPTER 10. APPLICATION OF UNIFORM VETERAN'S  
GUARDIANSHIP ACT****§ 2151 (repealed). Conservator for veteran; appointment; powers and duties**

**Comment.** Former Section 2151 is superseded by subdivision (b) of Section 2902 and by Section 2917.

**CHAPTER 11. TEMPORARY CONSERVATORS****§ 2201 (repealed). Appointment; duration**

**Comment.** The first paragraph of former Section 2201 is superseded by Section 2250. The second paragraph is continued in subdivision (a) of Section 2253. The first portion of the first sentence of the third paragraph is continued in subdivision (c) of Section 2253 and the last portion of that sentence is superseded by subdivision (d) of Section 2253. The remainder of the third paragraph is continued in subdivision (f) of Section 2253 except the portion relating to the right to counsel which is continued in Section 1471. The fourth paragraph is continued in subdivision (g) of Section 2253. The first sentence of the fifth paragraph is continued in subdivision (h) of Section 2253, and the last four sentences are continued in subdivision (e) of Section 2252.

**§ 2201.5 (repealed). Emergency removal of conservatee from place of residence**

**Comment.** Former Section 2201.5 is superseded by Section 2254.

**§ 2202 (repealed). Issuance of letters; bond**

**Comment.** Former Section 2202 is continued in Section 2251.

**§ 2203 (repealed). Powers and duties**

**Comment.** Former Section 2203 is continued in subdivisions (a) and (c) of Section 2252.

**§ 2204 (repealed). Inventory; final account**

**Comment.** Former Section 2204 is continued in Section 2255.

**§ 2205 (repealed). Date of filing accounts**

**Comment.** Former Section 2205 is continued in Section 2256.

**§ 2206 (repealed). Termination**

**Comment.** Former Section 2206 is continued in Section 2257.

**§ 2207 (repealed). Application of chapter relating to suspension, removal and resignation of conservators**

**Comment.** Former Section 2207 is continued in Section 2258.



# EXHIBIT

## AMENDMENTS AND ADDITIONS MADE BY ASSEMBLY BILL 2898

Editorial note. Set out below are the sections of the guardianship-conservatorship law affected by Assembly Bill 2898 of the 1979-80 Regular Session of the California Legislature. This bill, which related to limited conservatorships, had been reported favorably by the Senate Finance Committee but was awaiting action by the Senate when this publication was sent to the printer. The sections set out below reflect the additions and amendments that would be made by Assembly Bill 2898 as that bill was recommended with amendments by the Senate Finance Committee on July 7, 1980. Later amendments to the bill, if any, are not reflected in the sections set out below.

### § 1410. Conservator

1410. "Conservator" includes a limited conservator.

[Added by 1980 Assembly Bill 2898]

### § 1411. Conservatee

1411. "Conservatee" includes a limited conservatee.

[Added by 1980 Assembly Bill 2898]

### § 1420. Developmental disability

1420. "Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

[Added by 1980 Assembly Bill 2898]

**§ 1431. Proceedings to establish a limited conservatorship**

1431. "Proceedings to establish a limited conservatorship" include proceedings to modify or revoke the powers or duties of a limited conservator.

[Added by 1980 Assembly Bill 2898]

**§ 1471. Mandatory appointment of legal counsel**

1471. (a) If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of such person in the following proceedings under this division:

(1) A proceeding to establish a conservatorship or to appoint a proposed conservator.

(2) A proceeding to terminate the conservatorship.

(3) A proceeding to remove the conservator.

(4) A proceeding for a court order affecting the legal capacity of the conservatee.

(5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.

(b) If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interests of such person in any proceeding listed in subdivision (a) if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee.

(c) In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public



defender or private counsel to represent the proposed limited conservatee. The proposed limited conservatee shall pay the cost for such legal service if he or she is able. This subdivision shall apply irrespective of any medical or psychological inability to attend the hearing on the part of the proposed limited conservatee as allowed in Section 1825.

[Amended by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Definition, proceedings to establish a limited conservatorship, § 1431  
 Duty of public defender to represent indigent person, Gov't Code § 27706  
 Removal of temporary conservatee from place of residence, §§ 2253-2254

### § 1801. Showing required for appointment generally

1801. Subject to Section 1800:

(a) A conservator of the person may be appointed for a person who is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter, except as provided for such person as described in subdivision (d).

(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence, except as provided for such person as described in subdivision (d). Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

(c) A conservator of the person and estate may be appointed for a person described in subdivisions (a) and (b).

(d) A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult.

(1) Such limited conservatorships shall be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations.

(2) The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal

and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator.

(3) The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives and that such services shall be the underlying mandate of this division in its application to adults alleged to be developmentally disabled.

[Amended by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Definition, developmental disability, § 1420

### § 1821. Contents of petition

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name and address of the proposed conservator and the name and address of the proposed conservatee, and shall state the reasons why the appointment is required.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse and of the relatives of the proposed conservatee within the second degree.

(c) If the petition is filed by one other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor of the proposed conservatee.

(d) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(h) In the case of an allegedly developmentally disabled adult a petitioner shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

[Amended by 1980 Cal. Stats. ch. 89 and 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Additional contents of petition for conservatorship of absentee, §§ 1813, 1841  
 Definition, developmental disability, § 1420  
 Independent exercise of powers, § 2592  
 Joint conservators, § 2105  
 Nonprofit charitable corporation as conservator, § 2104  
 One conservator for several conservatees, § 2106  
 Petition must be verified, § 1450

### § 1822. Notice of hearing

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), and (d) of this section. The notice shall be accompanied by a copy of the petition.

(b) Notice shall be mailed to the following persons (other than the petitioner or persons joining in the petition):

(1) The spouse, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(e) If the petition is for the appointment of a limited conservator, the notice or notices required by this section shall be accompanied by a copy of the petition.

(f) The court shall order that notice be given to the regional center identified in Section 1827.5.

[Amended by 1980 Cal. Stats. ch. 89 and 1980 Assembly Bill 2898]

### § 1823. Citation to proposed conservatee

1823. (a) If the petition is filed by a person other than the proposed conservatee, the clerk shall issue a citation directed to the proposed conservatee setting forth the time and place of hearing.

(b) The citation shall include a statement of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1801 and shall state the substance of all of the following:

(1) The proposed conservatee may be adjudged unable to provide for personal needs or to manage financial resources and, by reason thereof, a conservator may be appointed for the person or estate or both.

(2) Such adjudication may affect or transfer to the conservator the proposed conservatee's right to contract, in whole or in part, to manage and control property, to give informed consent for medical treatment, and to fix a residence.

(3) The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration.

(4) The court or a court investigator will explain the nature, purpose, and effect of the proceeding to the

proposed conservatee and will answer questions concerning the explanation.

(5) The proposed conservatee has the right to appear at the hearing and to oppose the petition, and in the case of an alleged developmentally disabled adult, to oppose the petition in part, by objecting to any or all of the requested duties or powers of the limited conservator.

(6) The proposed conservatee has the right to choose and be represented by legal counsel and has the right to have legal counsel appointed by the court if unable to retain legal counsel.

(7) The proposed conservatee has the right to a jury trial if desired.

[Amended by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472

Definitions

Court, § 1418

Court investigator, § 1419

Developmental disability, § 1420

### § 1824. Service on proposed conservatee of citation and petition

1824. The citation and a copy of the petition shall be served on the proposed conservatee at least 30 days before the hearing. Service shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the proposed conservatee is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

[Amended by 1980 Assembly Bill 2898]

### § 1827.5. Assessment and report in case of proposed limited conservatee

1827.5. In the case of any proceeding to establish a limited conservatorship, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and

Institutions Code. Such regional center shall submit a written report of its findings and recommendations to the court with copies to the proposed limited conservatee and to the petitioner. The report shall include a description of the proposed limited conservatee's specific areas, nature, and degree of disability, if any. The findings and recommendations of the regional center shall not be binding upon the court.

[Added by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

##### Definitions

Court, § 1418

Proceedings to establish a limited conservatorship, § 1431

Limited conservatorship, presumption against incompetency, § 1801

#### § 1828. Information to proposed conservatee by court

1828. (a) Except as provided in subdivision (c), prior to the establishment of a conservatorship of the person or estate, or both, the court shall inform the proposed conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The establishment of a conservatorship is a legal adjudication of the conservatee's inability properly to provide for the conservatee's personal needs or to manage the conservatee's own financial resources, or both, depending on the allegations made and the determinations requested in the petition, and the effect of such an adjudication on the conservatee's basic rights.

(3) The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration.

(4) The identity of the proposed conservator.

(5) The nature and effect on the conservatee's basic rights of any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, the specific effects of each limitation requested in such order.

(6) The proposed conservatee has the right to oppose the proceeding, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have

legal counsel appointed by the court if unable to retain legal counsel.

(b) After the court so informs the proposed conservatee and prior to the establishment of the conservatorship, the court shall consult the proposed conservatee to determine the proposed conservatee's opinion concerning all of the following:

- (1) The establishment of the conservatorship.
- (2) The appointment of the proposed conservator.
- (3) Any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, of each limitation requested in such order.

(c) This section does not apply where both of the following conditions are satisfied:

- (1) The proposed conservatee is absent from the hearing and is not required to attend the hearing under the provisions of subdivision (a) of Section 1825.
- (2) Any showing required by Section 1825 has been made.

[Amended by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472

Definitions

Court, § 1418

Developmental disability, § 1420

Disqualification of conservatee from voting, Elec. Code §§ 707.5-707.6

Limited conservatee

Additional information, § 1828.5

Mandatory appointment of legal counsel, § 1471

#### § 1828.5. Procedure on petition for limited conservatorship

1828.5. (a) At the hearing on the petition for appointment of a limited conservator for an allegedly developmentally disabled adult, the court shall do each of the following:

- (1) Inquire into the nature and extent of the general intellectual functioning of the individual alleged to be developmentally disabled.
- (2) Evaluate the extent of the impairment of his or her adaptive behavior.
- (3) Ascertain his or her capacity to care for himself or herself and his or her property.

(4) Inquire into the qualifications, abilities, and capabilities of the person seeking appointment as limited conservator.

(5) If a report by the regional center, in accordance with Section 1827.5, has not been filed in court because the proposed limited conservatee withheld his or her consent to assessment by the regional center, the court shall determine the reason for withholding such consent.

(b) If the court finds that the proposed limited conservatee possesses the capacity to care for himself or herself and to manage his or her property as a reasonably prudent person, the court shall dismiss the petition for appointment of a limited conservator.

(c) If the court finds that the proposed limited conservatee lacks the capacity to perform some, but not all, of the tasks necessary to provide properly for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources, the court shall appoint a limited conservator for the person or the estate or the person and the estate, and shall define the powers and duties of the limited conservator so as to permit the developmentally disabled adult to care for himself or herself or to manage his or her financial resources commensurate with his or her ability to do so.

(d) Prior to the appointment of a limited conservator for the person or estate or person and estate of a developmentally disabled adult, the court shall inform the proposed limited conservatee of the nature and purpose of the limited conservatorship proceeding, that the appointment of a limited conservator for his or her person or estate or person and estate will result in the transfer of certain rights set forth in the petition and the effect of such transfer, the identity of the person who has been nominated as his or her limited conservator, that he or she has a right to oppose such proceeding, and that he or she has a right to have the matter tried by jury. After communicating such information to the person and prior to the appointment of a limited conservator, the court shall consult the person to determine his or her opinion concerning the appointment.



## CROSS-REFERENCES

## Definitions

Court, § 1418

Developmental disability, § 1420

Presumption against incompetency, § 1801

**§ 1829. Persons who may support or oppose petition**

1829. The proposed conservatee, the spouse or any relative or friend of the proposed conservatee, or any other interested person including, but not limited to, any officer or agency of this state, or of the United States, or any authorized representative thereof, may appear at the hearing to support or oppose the petition.

[Amended by 1980 Assembly Bill 2898]

**§ 1830. Contents of order appointing conservator**

1830. (a) The order appointing the conservator shall contain, among other things, the names, addresses, and telephone numbers of:

- (1) The conservator.
- (2) The conservatee's attorney, if any.
- (3) The court investigator, if any.

(b) In the case of a limited conservator for a developmentally disabled adult, any order the court may make shall include the findings of the court specified in Section 1828.5. The order shall specify the powers granted to and duties imposed upon the limited conservator, which powers and duties shall not exceed the powers and duties applicable to a conservator under this code. The order shall also specify the following:

(1) The properties of the limited conservatee to which the limited conservator is entitled to possession and management, giving a description of the properties that will be sufficient to identify them.

(2) The debts, rentals, wages, or other claims due to the limited conservatee which the limited conservator is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess and manage.

(3) The contractual or other obligations which the limited conservator may incur on behalf of the limited conservatee.

(4) The claims against the limited conservatee which the limited conservator may pay, compromise, or defend, if necessary.

(5) Any other powers, limitations, or duties with respect to the care of the limited conservatee or the management of the above-specified property by the limited conservator which the court shall specifically and expressly grant.

[Amended by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Appealable orders, § 2750

#### Definitions

Court investigator, § 1419

Developmental disability, § 1420

#### Limited conservatorships

Limitation on using, § 1801

Presumption against incompetency, § 1801

Order of appointment, additional conditions, §§ 2358, 2402

### § 1851. Visitation and findings by court investigator

1851. (a) When court review is required, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

[Amended by 1980 Assembly Bill 2898]

### § 1860. When conservatorship terminates generally

1860. (a) A conservatorship continues until terminated by the death of the conservatee or by order of the court.

(b) If a conservatorship is established for the person of a married minor, the conservatorship does not terminate if the marriage is dissolved or is adjudged a nullity.

(c) This section shall not apply to limited conservatorships.

[Amended by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

##### Allowance for

Care of estate after conservatee's death, § 2623

Disbursements after termination of conservatorship, § 2623

Care of estate after death of conservatee, § 2467

Definition, court, § 1418

Disposition of estate after death of conservatee, § 2631

Limited conservatorship, termination, §§ 1851, 1860.5

Termination of proceeding upon

Exhaustion of estate, § 2626

Transfer of all assets to foreign guardian or conservator, § 2808

### § 1860.5. Termination of limited conservatorship

1860.5. (a) Every limited conservatorship shall continue until the authority of the conservator is terminated by one of the following:

(1) The death of the limited conservator.

(2) The death of the limited conservatee, subject to the duty of the limited conservator to see to the custody and conservation of the estate pending the delivery thereof to the person or representative of the limited conservatee's estate.

(3) By an order appointing a conservator of the former limited conservatee.

(4) By an order of the court stating that the limited conservatorship is no longer necessary for the limited conservatee and terminating the limited conservatorship.

(b) Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply

by verified petition to the superior court of the county in which the proceedings are pending to have the limited conservatorship terminated or to have specific powers and duties of the limited conservatorship revoked. The petition shall state the facts alleged to establish that the limited conservatorship is no longer required. The petition shall be set for hearing and notice thereof shall be given to the persons in the same manner as provided in this chapter for a petition for the appointment of a limited conservator. The limited conservator in such case, if he or she is not the petitioner or has not joined in the petition, shall be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least five days prior to the hearing. Such service shall be made in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with notice. The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil action, including trial by jury if demanded. If it is determined that the limited conservatorship is no longer required, the limited conservatorship shall cease. If the petition alleges and if it is determined that the limited conservatee is able to properly care for himself or herself and for his or her property, the court shall make such finding and enter judgment accordingly. The limited conservator may at the hearing, or thereafter on further notice and hearing, be discharged and his or her bond exonerated upon the settlement and approval of his final account by the court.

[Added by 1980 Assembly Bill 2898]

**§ 1872. Effect of conservatorship on legal capacity of conservatee**

1872. (a) Except as otherwise provided in this article, the appointment of a conservator of the estate is an adjudication that the conservatee lacks the legal capacity to

enter into or make any transaction that binds or obligates the conservatorship estate.

(b) This section does not apply to limited conservatees.

(c) Except as otherwise provided in the order of the court appointing a limited conservator, the appointment does not limit the legal capacity of the limited conservatee to enter into transactions or types of transactions.

[Amended by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Definition, transaction, § 1870

Effect of conservatorship on capacity to marry, § 1900

Limited conservatorships, §§ 1801, 1821, 1823, 1827.5, 1828, 1828.5, 1830, 1873, 2351.5, 2401, 2405, 3004, 3053

### § 1873. Court order affecting legal capacity of conservatee

1873. (a) In the order appointing the conservator or upon a petition filed under Section 1874, the court may by order authorize the conservatee, subject to Section 1876, to enter into such transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate. The court, by order, may modify the legal capacity a conservatee would otherwise have under Section 1872 by broadening or restricting the power of the conservatee to enter into such transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate.

(b) In an order made under this section, the court may include such limitations or conditions on the exercise of the authority granted to the conservatee as the court determines to be appropriate including, but not limited to, the following:

(1) A requirement that for specific types of transactions or for all transactions authorized by the order, the conservatee obtain prior approval of the transaction by the court or conservator before exercising the authority granted by the order.

(2) A provision that the conservator has the right to avoid any transaction made by the conservatee pursuant to

the authority of the order if the transaction is not one into which a reasonably prudent person might enter.

(c) The court, in its discretion, may provide in the order that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order.

(d) An order under this section continues in effect until the earliest of the following times:

(1) The time specified in the order, if any.

(2) The time the order is modified or revoked.

(3) The time the conservatorship of the estate is terminated.

(e) An order under this section may be modified or revoked upon petition filed by the conservator, conservatee, the spouse of the conservatee, or any relative or friend of the conservatee, or any interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

[Amended by 1980 Assembly Bill 2898]

**§ 1890. Time of making an order concerning capacity of conservatee to consent to medical treatment; petitions for orders under this chapter in case of limited conservatee**

1890. (a) An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

(b) In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when the order applies to a limited conservatee, the order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 (commencing with Section 1820) of Chapter 1.

[Amended by 1980 Assembly Bill 2898]

**§ 2351. Care, custody, control, and education**

2351. (a) Subject to subdivision (b), the guardian or conservator, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee.

(b) Where the court determines that it is appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit the powers and duties that the conservator would otherwise have under subdivision (a) by an order stating:

(1) The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee; or

(2) The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have under subdivision (a).

(c) An order under this section (1) may be included in the order appointing a conservator of the person or (2) may be made, modified, or revoked upon a petition subsequently filed, notice of the hearing on such petition having been given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

[Amended by 1980 Assembly Bill 2898]

**§ 2351.5. Powers of limited conservator**

2351.5. (a) The limited conservator has the care, custody, and control of the limited conservatee, except that a limited conservator shall not have any of the following powers or controls over the limited conservatee unless such powers or controls are specifically requested in the petition for appointment of a limited conservator and granted by the court in its order appointing the limited conservator:

(1) To fix the residence or specific dwelling of the limited conservatee.

(2) Access to the confidential records and papers of the limited conservatee.

(3) To consent or withhold consent to the marriage of the limited conservatee.

(4) The right of the limited conservatee to contract.

(5) The power of the limited conservatee to give or withhold medical consent.

(6) The limited conservatee's right to control his own social and sexual contacts and relationships.

(7) Decisions concerning the education of the limited conservatee.

The limited conservator shall secure for the limited conservatee such habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and as will assist the limited conservatee in the development of maximum self-reliance and independence.

(b) Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply by verified petition to the superior court of the county in which the proceedings are pending to have the limited conservatorship modified by the elimination or addition of any of the powers which must be specifically granted to the limited conservator pursuant to subdivision (a) above. The petition shall state the facts alleged to establish that the limited conservatorship should be modified. The granting or elimination of such powers shall be discretionary with the court.

(c) The petition shall be set for hearing and notice thereof given to the persons in the same manner as is provided in this chapter for a petition for the appointment of a limited conservator. The limited conservator, if he or she is not the petitioner or has not joined in the petition, shall be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least five days prior to the hearing. Such service shall be made in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with such notice. The limited conservator or any relative or friend of the limited



conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil action, including trial by jury if demanded. If any such powers are granted or eliminated, new letters of limited conservatorship shall be issued reflecting such change in the limited conservator's powers.

[Added by 1980 Assembly Bill 2898]

#### § 2400. Definitions

2400. As used in this chapter:

(a) "Conservator" means the conservator of the estate, or the limited conservator of the estate to the extent that the powers and duties of the limited conservator are specifically and expressly provided by the order appointing the limited conservator.

(b) "Guardian" means the guardian of the estate.

[Amended by 1980 Assembly Bill 2898]

#### § 2401. Duty to manage estate using ordinary care and diligence

2401. (a) The guardian or conservator, or limited conservator to the extent specifically and expressly provided in the appointing court's order, has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

(1) Shall exercise a power to the extent that ordinary care and diligence requires that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

[Amended by 1980 Assembly Bill 2898]

#### § 2405. Submitting disputed claim to commissioner, judge pro tempore, or probate judge for summary determination

2405. If the guardian or conservator, or the limited conservator to the extent specifically and expressly

provided in the order appointing the limited conservator, doubts the correctness of any claim against the ward or conservatee or the estate or rejects a claim against the ward or conservatee or the estate, the guardian, conservator, or limited conservator may do either of the following:

(a) Enter into an agreement in writing with the claimant to refer the matter in controversy to a commissioner or referee who is regularly attached to the court and designated in the agreement or to a judge pro tempore designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The commissioner or referee shall have the powers of a judge pro tempore. The designated person shall proceed promptly to hear and determine the matter in controversy by summary procedure, without any pleadings, discovery, or jury trial. The designated person shall make and file a decision in writing in which the facts found and conclusions of law shall be separately stated, and cause a copy thereof to be mailed promptly to the parties. Judgment shall be entered on the decision and shall be as valid and effective as if it had been rendered by a judge of the court in a suit against the guardian or conservator commenced by ordinary process.

(b) Enter into an agreement in writing with the claimant that a judge sitting in probate, pursuant to the agreement and with the written consent of the judge, both filed with the clerk, may hear and determine the matter in controversy pursuant to the procedure provided in subdivision (a).

[Amended by 1980 Assembly Bill 2898]

## § 2600. Definitions

2600. As used in this chapter, unless the context otherwise requires:

(a) "Conservator" means the conservator of the estate, or the limited conservator of the estate to the extent that the powers and duties of the limited conservator are specifically and expressly provided by the order appointing the limited conservator.

(b) "Guardian" means the guardian of the estate.

[Amended by 1980 Assembly Bill 2898]

**§ 3004. Conservator**

3004. "Conservator" means conservator of the estate, or limited conservator of the estate to the extent that the powers and duties of the limited conservator are specifically and expressly provided by the order appointing the limited conservator, and includes the guardian of the estate of a married minor.

[Amended by 1980 Assembly Bill 2898]

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