

ASSEMBLY BILL

No. 609

Introduced by Assembly Members Lieber and Ruskin

February 17, 2005

An act to amend Sections 2951 and 2952 of the Probate Code, relating to guardianships.

LEGISLATIVE COUNSEL'S DIGEST

AB 609, as introduced, Lieber. Public guardian: adult protective services.

(1) Existing law authorizes the public guardian, upon receipt of a declaration from a peace officer indicating that an elder person is unable to manage his or her financial resources or to resist fraud or undue influence, among other specified factors, to rely on that information and take immediate possession and control of the property of the elder person. Under existing law, a declaration prepared in accordance with those provisions is required to be signed by both a peace officer and a supervisor from the county's adult protective services agency.

This bill would provide that a declaration also may be signed by a representative of the county's adult protective services agency. The bill would additionally revise the term "declaration" as it is used in those provisions of law to include documents signed by a representative of the county's adult protective services agency. The bill would also require that declaration to be transmitted to the appropriate financial institution within 24 hours of it being signed.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2951 of the Probate Code is amended to
2 read:

3 2951. The definitions contained in this section shall govern
4 the construction of this chapter, unless the context requires
5 otherwise.

6 (a) “Declaration” means a document that substantially
7 complies with the requirements of Section 2954, and is signed by
8 both a peace officer and a supervisor *or other representative*
9 from the county’s adult protective services agency and provided
10 to the public guardian in accordance with subdivision (b) of
11 Section 2952.

12 (b) “Elder person” means any person residing in this state, 65
13 years of age or older.

14 (c) “Financial abuse” means a situation described in Section
15 15610.30 of the Welfare and Institutions Code.

16 (d) “Financial abuse POST training” means an elder financial
17 abuse training course certified by the Commission on Peace
18 Officer Standards and Training.

19 (e) “Financial institution” means any bank, savings and loan,
20 thrift, industrial loan company, credit union, or any branch of any
21 of these institutions doing business in the state, as defined by
22 provisions of the Financial Code.

23 (f) “Peace officer” means a sheriff, deputy sheriff, municipal
24 police officer, or a peace officer authorized under subdivision (b)
25 of Section 830.1 of the Penal Code, duly sworn under the
26 requirements of state law, who satisfies any of the following
27 requirements:

28 (1) The sheriff, deputy sheriff, municipal police officer, or
29 peace officer authorized under subdivision (b) of Section 830.1
30 of the Penal Code has completed or participated as a lecturer in a
31 financial abuse POST training program within the last 36
32 months. The completion of the course may be satisfied by
33 telecourse, video training tape, or other instruction. The training
34 shall, at a minimum, address relevant elder abuse laws,
35 recognition of financial abuse and fraud, assessment of mental
36 competence in accordance with the standards set forth in Part 17
37 (commencing with Section 810) of the Probate Code, reporting
38 requirements and procedures for the investigation of financial

1 abuse and related crimes, including neglect, and civil and
2 criminal procedures for the protection of victims. The course
3 may be presented as part of a training program that includes other
4 subjects or courses.

5 (2) The sheriff, deputy sheriff, municipal police officer, or
6 peace officer authorized under subdivision (b) of Section 830.1
7 of the Penal Code, has consulted with a sheriff, deputy sheriff,
8 municipal police officer, or peace officer authorized under
9 subdivision (b) of Section 830.1 of the Penal Code, who satisfies
10 the requirements of paragraph (1) concerning the declaration
11 defined in subdivision (a) and obtained the signature of that
12 sheriff, deputy sheriff, municipal police officer, or peace officer
13 authorized under subdivision (b) of Section 830.1 of the Penal
14 Code on a declaration that substantially complies with the form
15 described in Section 2954.

16 (g) “Property” means all personal property and real property
17 of every kind belonging to, or alleged to belong to, the elder.

18 SEC. 2. Section 2952 of the Probate Code is amended to read:

19 2952. (a) A peace officer may issue a declaration, as
20 provided in Section 2954, concerning an elder person if all of the
21 following conditions are satisfied:

22 (1) There is probable cause to believe that the elder person is
23 substantially unable to manage his or her financial resources or to
24 resist fraud or undue influence.

25 (2) There exists a significant danger that the elder person will
26 lose all or a portion of his or her property as a result of fraud or
27 misrepresentations or the mental incapacity of the elder person.

28 (3) There is probable cause to believe that a crime is being
29 committed against the elder person.

30 (4) The crime is connected to the inability of the elder person
31 to manage his or her financial resources or to resist fraud or
32 undue influence, and that inability is the result of deficits in the
33 elder person’s mental functions.

34 (5) The peace officer has consulted with an individual
35 qualified to perform a mental status examination.

36 (b) If the requirements of subdivision (a) are satisfied, the
37 peace officer may provide a signed declaration to the public
38 guardian of the county. The declaration provided by the peace
39 officer under this subdivision shall be signed by both the peace
40 officer and a supervisor *or other representative* from the county’s

1 adult protective services agency. The declaration shall be
2 transmitted to the public guardian *and the appropriate financial*
3 *institution* within 24 hours of its being signed, and may be
4 transmitted by facsimile.

5 (c) (1) Upon receiving a signed declaration from a peace
6 officer, the public guardian is authorized to rely on the
7 information contained in the declaration to take immediate
8 possession or control of any real or personal property belonging
9 to the elder person referred to in the declaration, including any
10 property that is held jointly between the elder person and a third
11 party that is subject to loss, injury, waste, or misappropriation,
12 and may issue a written recordable certification of that fact
13 pursuant to this section. The written recordable certification shall
14 substantially comply with the following form:

15
16
17 "CERTIFICATE OF AUTHORITY
18

19
20 THIS IS AN OFFICIAL CERTIFICATE ENTITLING THE
21 PUBLIC GUARDIAN TO TAKE POSSESSION OF ANY AND
22 ALL PROPERTY BELONGING TO THE FOLLOWING
23 INDIVIDUAL:

24
25 (Name of Victim) _____
26

27
28 This Certificate of Authority has been issued by the Public
29 Guardian pursuant to and in compliance with the Financial Abuse
30 of Mentally Impaired Elders statute, Chapter 4 (commencing
31 with Section 2950) of Part 5 of Division 4 of the California
32 Probate Code. Under California law, this Certificate of Authority
33 authorizes the Public Guardian to take possession or control of
34 property belonging to the above-named individual.

35
36 SPECIAL NOTE TO FINANCIAL INSTITUTIONS:
37 State law requires that upon receiving a copy of this Certificate
38 of Authority, financial institutions shall provide the public
39 guardian with information concerning property held by the

1 above-named individual and surrender the property to the Public
2 Guardian if requested.

3

4 This Certificate of Authority shall only be valid when signed and
5 dated by the Public Guardian or a deputy Public Guardian of the
6 County of _____ and affixed with the official seal of the Public
7 Guardian below.

8

9 Signature of Public Guardian:

10 Date:

11 Official Seal”

12

13 (2) The mere issuance of the declaration provided by this
14 section shall not require the public guardian to take possession or
15 control of property and shall not require the public guardian to
16 make a determination that the requirements for the appointment
17 of a conservator are satisfied.

18 (3) The authority provided to the public guardian in paragraph
19 (1) includes the authority to deny use of, access to, or prohibit
20 residency in the home of the elder, by anyone who does not have
21 a written rental agreement or other legal right to the use of, or
22 access to, the residence, and, subject to the requirements of
23 subdivision (b) of Section 2900, the authority to terminate the
24 occupancy of anyone living in the home of the elder person, and
25 the authority to remove that occupant residing therein.

26 (4) The public guardian shall serve, or cause to be served, a
27 copy of the certification issued pursuant to this section on the
28 elder person by mail within 24 hours of the execution of the
29 certification, or as soon thereafter as is practical, in the manner
30 provided in Chapter 4 (commencing with Section 413.10) of
31 Title 5 of Part 2 of the Code of Civil Procedure.

32 (5) Receipt of a certification issued under this section
33 constitutes sufficient acquittance to financial institutions and
34 others in possession of an elder person’s property to provide
35 information and surrender property of the elder person to the
36 public guardian. Any financial institution or other person who
37 provides information or surrenders property pursuant to this
38 section shall be discharged from any liability for any act or
39 omission of the public guardian with respect to the property.

1 (6) A public guardian acting in good faith is not liable when
 2 taking possession or control of property pursuant to this section.
 3 (7) A certification issued pursuant to this section is valid for
 4 15 days after the date of issuance. Upon ex parte petition to the
 5 superior court, the public guardian may seek additional 15-day
 6 certifications. The court shall grant that petition only if it
 7 determines that the additional certification is necessary to protect
 8 the elder from financial abuse and the elder’s property from loss,
 9 injury, waste, or misappropriation.
 10 (d) (1) If the public guardian takes possession of an elder
 11 person’s property pursuant to this section, the public guardian
 12 shall attempt to find agents pursuant to the use of durable powers
 13 of attorney or successor trustees nominated in trust instruments,
 14 or other persons having legal authority under existing legal
 15 instruments, to manage the elder person’s estate.
 16 (2) If the public guardian is unable to find any appropriate
 17 person to manage the elder person’s estate pursuant to paragraph
 18 (1), the public guardian shall attempt to find appropriate family
 19 members willing to manage the elder person’s estate. If no
 20 documents exist appointing appropriate fiduciaries, the public
 21 guardian shall follow the priorities set forth in Article 2
 22 (commencing with Section 1810) of Chapter 1 of Part 3.
 23 (3) The public guardian shall take the steps described in
 24 paragraphs (1) and (2) within 15 days of taking possession of an
 25 elder person’s property pursuant to this section.
 26 (e) Nothing in this section prevents the county’s adult
 27 protective services agency from conducting an investigation
 28 regarding the elder person named in the declaration and
 29 providing appropriate services, in coordination with any actions
 30 taken with the public guardian under this section or an
 31 investigation conducted by law enforcement regarding the elder
 32 person.

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