

AMENDED IN ASSEMBLY APRIL 16, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2014

Introduced by Assembly Member Tran

February 15, 2008

An act to amend Sections 1063, 2400, and 2600 of, and to add Section 2401.1 to, the Probate Code, relating to guardians and conservators.

LEGISLATIVE COUNSEL'S DIGEST

AB 2014, as amended, Tran. Conservators and guardians: property in foreign jurisdictions.

Existing law requires that a guardian or conservator, or limited conservator to the extent specifically and expressly provided in a court's order, use ordinary care and diligence in the management and control of the estate of the ward or conservatee. Existing law specifies the powers and duties of a guardian or conservator in this regard. Existing law requires that a guardian or conservator at the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered, to present an accounting of the assets of the estate of the ward or conservatee. Existing law limits the authority of a guardian or conservator to the jurisdiction of the government under which that person was invested with authority, except as specified.

This bill, in reference to the powers and duties of a guardian or conservator of the estate and in reference to the inventory and accounts of the guardianship or conservatorship estate, would define estate to mean all of the ward's or conservatee's personal property, wherever located, and real property located in this state. The bill would also require a guardian or conservator to use ordinary care and diligence

with respect to any real property located in a foreign jurisdiction, of which the guardian or conservator has actual knowledge *to determine whether the ward or conservatee owns property in a foreign jurisdiction and to preserve and protect that property.* The bill would require a guardian or conservator who has actual knowledge of any real property of a conservatee or ward in a foreign jurisdiction to include in an accounting a schedule that identifies the real property, provides a good faith estimate of the fair market value of the real property, and states what action, if any, will or has been taken to preserve and protect the real property, *including a recommendation whether an ancillary proceeding is necessary to preserve and protect the real property.*

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 1063 of the Probate Code is amended to
- 2 read:
- 3 1063. (a) In all accounts, there shall be an additional schedule
- 4 showing the estimated market value of the assets on hand as of the
- 5 end of the accounting period, and a schedule of the estimated
- 6 market value of the assets on hand as of the beginning of the
- 7 accounting period for all accounts subsequent to the initial account.
- 8 The requirement of an estimated value of real estate, a closely held
- 9 business, or other assets without a ready market, may be satisfied
- 10 by a good faith estimate by the fiduciary.
- 11 (b) If there were purchases or other changes in the form of assets
- 12 occurring during the period of the account, there shall be a schedule
- 13 showing these transactions. However, no reporting is required for
- 14 transfers between cash or accounts in a financial institution or
- 15 money market mutual funds as defined in subdivision (d) of Section
- 16 8901.
- 17 (c) If an estate of a decedent or a trust will be distributed to an
- 18 income beneficiary, there shall be a schedule showing an allocation
- 19 of receipts and disbursements between principal and income.
- 20 (d) If there is specifically devised property, there shall be an
- 21 additional schedule accounting for income, disbursements, and
- 22 proceeds of sale pursuant to Section 12002 and subdivision (a) of
- 23 Section 16340.

1 (e) If any interest has been paid or is to be paid under Section
2 12003, 12004, or 12005, or subdivision (b) of Section 16340, there
3 shall be a schedule showing the calculation of the interest.

4 (f) If the accounting contemplates a proposed distribution, there
5 shall be a schedule setting forth the proposed distribution, including
6 the allocation of income required under Section 12006. If the
7 distribution requires an allocation between trusts, the allocation
8 shall be set forth on the schedule, unless the allocation is to be
9 made by a trustee after receipt of the assets. If the distribution
10 requires valuation of assets as of the date of distribution, the
11 schedule shall set forth the fair market value of those assets.

12 (g) If, at the end of the accounting period, there are liabilities
13 of the estate or trust, except current or future periodic payments,
14 including rent, salaries, utilities, or other recurring expenses, there
15 shall be a schedule showing all of the following:

16 (1) All liabilities which are a lien on estate or trust assets.

17 (2) Taxes due but unpaid as shown on filed returns or
18 assessments received subsequent to filing of returns.

19 (3) All notes payable.

20 (4) Any judgments for which the estate or trust is liable.

21 (5) Any other material liability.

22 (h) If the guardian or conservator has ~~actual~~ knowledge of any
23 real property of the conservatee or ward located in a foreign
24 jurisdiction, the guardian or conservator shall include an additional
25 schedule that identifies the real property, provides a good faith
26 estimate of the fair market value of the real property, and states
27 what action, if any, will or has been taken to preserve and protect
28 the real property, *including a recommendation whether an ancillary*
29 *proceeding is necessary to preserve and protect the real property.*

30 ~~SEC. 2. Section 2400 of the Probate Code is amended to read:~~
31 ~~2400. As used in this chapter:~~

32 (a) ~~“Conservator” means the conservator of the estate, or the~~
33 ~~limited conservator of the estate to the extent that the powers and~~
34 ~~duties of the limited conservator are specifically and expressly~~
35 ~~provided by the order appointing the limited conservator.~~

36 (b) ~~“Estate” means all of the conservatee’s or ward’s personal~~
37 ~~property, wherever located, and real property located in this state.~~

38 (c) ~~“Guardian” means the guardian of the estate.~~

39 ~~SEC. 2. Section 2400 of the Probate Code is amended to read:~~
40 ~~2400. As used in this chapter:~~

1 (a) “Conservator” means the conservator of the estate, or the
2 limited conservator of the estate to the extent that the powers and
3 duties of the limited conservator are specifically and expressly
4 provided by the order appointing the limited conservator.

5 (b) “Estate” means all of the conservatee’s or ward’s personal
6 property, wherever located, and real property located in this state.

7 ~~(b)~~

8 (c) “Guardian” means the guardian of the estate.

9 SEC. 3. Section 2401.1 is added to the Probate Code, to read:

10 2401.1. The guardian or conservator shall use ordinary care
11 and diligence ~~with respect to any real property located in a foreign~~
12 ~~jurisdiction, of which the guardian or conservator has actual~~
13 ~~knowledge to determine whether the ward or conservatee owns~~
14 ~~real property in a foreign jurisdiction and to preserve and protect~~
15 ~~that property.~~ What constitutes use of ordinary care and diligence
16 shall be determined by all the ~~circumstances regarding facts and~~
17 ~~circumstances known, or that become known, to the guardian or~~
18 ~~conservator, the value of the real property located in the foreign~~
19 ~~jurisdiction and the particular conservatorship or guardianship,~~
20 ~~and the needs of the ward or conservatee.~~ The guardian or
21 conservator, except as provided in subdivision (a) of Section 1061
22 and in Section 1062, is not charged with, and shall have no duty
23 to inventory, ~~take possession of,~~ or account for the real property
24 located in a foreign jurisdiction, but the guardian or conservator
25 shall, when *presenting the inventory and appraisal and* accounting
26 to the court, include the schedule set forth in subdivision (h) of
27 Section 1063.

28 SEC. 4. Section 2600 of the Probate Code is amended to read:

29 2600. As used in this chapter, unless the context otherwise
30 requires:

31 (a) “Conservator” means (1) the conservator of the estate or (2)
32 the limited conservator of the estate to the extent that the powers
33 and duties of the limited conservator are specifically and expressly
34 provided by the order appointing the limited conservator.

35 ~~((b))~~

36 (b) “Estate” means all of the conservatee’s or ward’s personal
37 property, wherever located, and real property located in this state.

38 (c) “Guardian” means the guardian of the estate.

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