

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2343

Introduced by Assembly Member Caballero

February 21, 2008

An act to amend Sections ~~2923, 15660.5, 15680 of, and~~ *and 15688 of*, to add Sections ~~7605, 15660.6, and 15689 to, 1456.2 and 7605 to,~~ *and to repeal and add Section 15660.5 of*, the Probate Code, relating to public administrators and conservators.

LEGISLATIVE COUNSEL'S DIGEST

AB 2343, as amended, Caballero. Public administrators and conservators.

(1) Existing law requires the public guardian of a county to comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators.

This bill would require, on or before January 1, 2010, that the public conservator and administrator of a county to comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(2) Existing law provides a method for filling a vacancy if a trust has no trustee or the trust requires a vacancy in the office of cotrustee to be filled. Existing law provides that, if other specified methods of appointing a trustee to fill a vacancy fail, a court may appoint a trustee on the petition of any interested person. Existing law prohibits the public guardian being appointed as a trustee unless the court finds, on

reasonable inquiry, that no other qualified person is willing to act as trustee. Existing law creates in each county the office of public administrator.

~~This bill would prohibit permit a public guardian or public administrator from being to be appointed as a successor trustee unless only if certain conditions are met. The bill would prohibit appointment of a public administrator unless the court finds, after reasonable inquiry, that no other qualified person is willing to act as trustee. The bill would prohibit the public administrator from being appointed unless, at the time of the appointment, the entire trust is to be distributed outright or he or she consents. The bill would require that the public guardian or public administrator receive notice prior to the hearing to appoint him or her as trustee, or prior to appointment as a temporary trustee, and would provide that prohibit appointment of the public guardian or public administrator may refuse the appointment as a cotrustee without his or her consent. The bill would require that the public administrator be the sole trustee, and be appointed only for the duty of terminating the trust and distributing the trust assets. The bill would prohibit the public administrator from being required to act as trustee of any new trusts created by the initial trust. The bill would impose on the public administrator the same liability and limitations on liability as imposed on trustees generally. The bill would specify the expenses and compensation that a public guardian, public administrator, and his or her attorney is are to receive for acting as a successor trustee, under specified circumstances, including a minimum compensation of \$1,000, to be paid from trust property to the public administrator and his or her attorney. The bill would require that the public administrator receive a bond fee, calculated pursuant to a specified method, to be deposited in the country treasury. The bill would provide that if a public guardian is appointed as a trustee, as specified, the court is required to establish a reasonable rate of compensation for serving as the trustee.~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 ~~SECTION 1. Section 2923 of the Probate Code is amended to~~
2 ~~read:~~

3 ~~2923. (a) On or before January 1, 2008, the public guardian~~
4 ~~shall comply with the continuing education requirements that are~~
5 ~~established by the California State Association of Public~~
6 ~~Administrators, Public Guardians, and Public Conservators.~~

7 ~~(b) On or before January 1, 2010, the public conservator shall~~
8 ~~comply with the continuing education requirements that are~~
9 ~~established by the California State Association of Public~~
10 ~~Administrators, Public Guardians, and Public Conservators.~~

11 ~~SECTION 1. Section 1456.2 is added to the Probate Code, to~~
12 ~~read:~~

13 ~~1456.2. On or before January 1, 2010, the public conservator~~
14 ~~shall comply with the continuing education requirements that are~~
15 ~~established by the California State Association of Public~~
16 ~~Administrators, Public Guardians, and Public Conservators.~~

17 ~~SEC. 2. Section 7605 is added to the Probate Code, to read:~~

18 ~~7605. On or before January 1, 2010, the public administrator~~
19 ~~shall comply with the continuing education requirements that are~~
20 ~~established by the California State Association of Public~~
21 ~~Administrators, Public Guardians, and Public Conservators.~~

22 ~~SEC. 3. Section 15660.5 of the Probate Code is amended to~~
23 ~~read:~~

24 ~~15660.5. The public guardian shall not be appointed as a trustee~~
25 ~~of any trust pursuant to subdivision (d) of Section 15660, unless~~
26 ~~the court finds, based on reasonable inquiry, that no other qualified~~
27 ~~person is willing to act as trustee. At the time the public guardian~~
28 ~~is appointed pursuant to this section, the court shall establish a~~
29 ~~reasonable rate of compensation for serving as trustee.~~

30 ~~SEC. 4. Section 15660.6 is added to the Probate Code, to read:~~

31 ~~15660.6. The public administrator shall not be appointed as~~
32 ~~successor trustee of any trust pursuant to subdivision (d) of Section~~
33 ~~15660 unless all the requirements of this section are satisfied.~~

34 ~~(a) Notwithstanding any provision in the decedent's trust,~~
35 ~~appointment by the court shall automatically impose the conditions~~
36 ~~of this section on the terms of the trust and the administration of~~
37 ~~the trust.~~

1 ~~(b) Notice, governed by Part 2 (commencing with Section 1200)~~
2 ~~of Division 3, shall be given to the public administrator prior to~~
3 ~~the hearing to appoint the public administrator as trustee.~~

4 ~~(e) The public administrator may refuse to accept the~~
5 ~~appointment as trustee. If the public administrator refuses~~
6 ~~appointment as successor trustee, the provisions of Section 15660.5~~
7 ~~shall apply.~~

8 ~~(d) The public administrator shall only be appointed for the~~
9 ~~purpose of terminating the trust and distributing the trust assets.~~

10 ~~(e) At the time of appointment, the settlor shall be deceased and~~
11 ~~the trust, according to its terms, shall be ready for termination and~~
12 ~~the assets distributed.~~

13 ~~(f) The public administrator shall be sole trustee.~~

14 ~~(g) The public administrator shall not be required to act as~~
15 ~~trustee of any new trusts created under terms of the trust.~~

16 ~~(h) A public administrator acting as successor trustee shall have~~
17 ~~the same liability and limitations on liability as provided to other~~
18 ~~trustees.~~

19 ~~SEC. 5. Section 15680 of the Probate Code is amended to read:~~

20 ~~15680. (a) Subject to subdivision (b) or (d), if the trust~~
21 ~~instrument provides for the trustee's compensation, the trustee is~~
22 ~~entitled to be compensated in accordance with the trust instrument.~~

23 ~~(b) Upon proper showing, the court may fix or allow greater or~~
24 ~~lesser compensation than could be allowed under the terms of the~~
25 ~~trust in any of the following circumstances:~~

26 ~~(1) Where the duties of the trustee are substantially different~~
27 ~~from those contemplated when the trust was created.~~

28 ~~(2) Where the compensation in accordance with the terms of~~
29 ~~the trust would be inequitable or unreasonably low or high.~~

30 ~~(3) In extraordinary circumstances calling for equitable relief.~~

31 ~~(e) An order fixing or allowing greater or lesser compensation~~
32 ~~under subdivision (b) applies only prospectively to actions taken~~
33 ~~in administration of the trust after the order is made.~~

34 ~~(d) A public administrator who is appointed as a successor~~
35 ~~trustee, pursuant to Section 15660.6, shall receive compensation~~
36 ~~pursuant to Section 15689.~~

37 ~~SEC. 6. Section 15689 is added to the Probate Code, to read:~~

38 ~~15689. Notwithstanding any other provision of this article and~~
39 ~~the terms of the trust, a public administrator who is appointed as~~

1 a successor trustee of a trust pursuant to Section 15660.6 shall be
2 paid from the trust property for all of the following:

3 (a) ~~Reasonable expenses incurred in the administration of the~~
4 ~~trust.~~

5 (b) ~~Except as provided in subdivision (c), the compensation~~
6 ~~payable to the public administrator, and the attorney for the public~~
7 ~~administrator, if any, for the filing of an application pursuant to~~
8 ~~this division and for performance of any duty or service connected~~
9 ~~to the appointment as successor trustee shall be, based on the value~~
10 ~~of the trust assets on the date of appointment, that amount set out~~
11 ~~in Part 7 (commencing with Section 10800) of Division 7.~~

12 (c) ~~The public administrator is entitled to a minimum~~
13 ~~compensation of one thousand dollars (\$1,000) for serving as~~
14 ~~successor trustee.~~

15 (d) ~~An annual bond fee in the amount of twenty-five dollars~~
16 ~~(\$25) plus one-fourth of 1 percent of the amount of the trust assets~~
17 ~~greater than ten thousand dollars (\$10,000). The amount charged~~
18 ~~shall be deposited in the county treasury.~~

19 *SEC. 3. Section 15660.5 of the Probate Code is repealed.*

20 ~~15660.5. The public guardian shall not be appointed as a trustee~~
21 ~~of any trust pursuant to subdivision (d) of Section 15660, unless~~
22 ~~the court finds, based on reasonable inquiry, that no other qualified~~
23 ~~person is willing to act as trustee.~~

24 *SEC. 4. Section 15660.5 is added to the Probate Code, to read:*

25 *15660.5. (a) The court may appoint as trustee of a trust the*
26 *public guardian or public administrator of the county in which*
27 *the matter is pending subject to the following requirements:*

28 *(1) Neither the public guardian nor the public administrator*
29 *shall be appointed as trustee unless the court finds, after*
30 *reasonable inquiry, that no other qualified person is willing to act*
31 *as trustee or the public guardian, public administrator, or his or*
32 *her representative consents.*

33 *(2) The public administrator shall not be appointed as trustee*
34 *unless either of the following is true:*

35 *(A) At the time of the appointment and pursuant to the terms of*
36 *the trust, the entire trust is then to be distributed outright.*

37 *(B) The public administrator consents.*

38 *(3) Neither the public guardian or the public administrator shall*
39 *be appointed as a cotrustee unless the public guardian, public*
40 *conservator, or his or her representative consents.*

1 (4) Neither the public guardian nor the public administrator
2 shall be appointed as general trustee without a hearing and notice
3 to the agency and other interested persons as provided in Section
4 17203.

5 (5) Neither the public guardian nor the public administrator
6 shall be appointed as temporary trustee without receiving notice
7 of hearing as provided in Section 1220. The court shall not waive
8 this notice of hearing, but may shorten the time for notice upon a
9 finding of good cause.

10 (b) (1) The public administrator shall not be appointed as
11 trustee under subparagraph (A) of paragraph (2) of subdivision
12 (a) if, after receiving notice as required by this section, the public
13 administrator files a written certification with the court that the
14 public administrator is unable to provide the level of services
15 needed to properly fulfill the obligations of a trustee of the trust.

16 (2) If the public administrator has been appointed as trustee
17 without notice as required in paragraph (3) or (4) of subdivision
18 (a), and the public administrator files a written certification with
19 the court that he or she is unable to provide the level of services
20 needed to properly fulfill the obligations of a trustee of the trust,
21 this shall be good cause for the public administrator to be relieved
22 as trustee.

23 (c) The order of appointment shall provide for an annual bond
24 fee as described in Section 15688.

25 SEC. 5. Section 15680 of the Probate Code is amended to read:

26 15680. (a) Subject to subdivision (b), and except as provided
27 in Section 15688, if the trust instrument provides for the trustee's
28 compensation, the trustee is entitled to be compensated in
29 accordance with the trust instrument.

30 (b) Upon proper showing, the court may fix or allow greater or
31 lesser compensation than could be allowed under the terms of the
32 trust in any of the following circumstances:

33 (1) Where the duties of the trustee are substantially different
34 from those contemplated when the trust was created.

35 (2) Where the compensation in accordance with the terms of
36 the trust would be inequitable or unreasonably low or high.

37 (3) In extraordinary circumstances calling for equitable relief.

38 (c) An order fixing or allowing greater or lesser compensation
39 under subdivision (b) applies only prospectively to actions taken
40 in administration of the trust after the order is made.

1 SEC. 6. Section 15688 of the Probate Code is amended to read:

2 15688. Notwithstanding any other provision of this article and
3 the terms of the trust, a public guardian *or public administrator*
4 who is appointed as a trustee of a trust pursuant to Section 15660.5
5 shall be paid from the trust property for all of the following:

6 (a) Reasonable expenses incurred in the administration of the
7 trust, *including filing and processing services of the clerk of the*
8 *court and expenses incurred by the attorney for the public guardian*
9 *or public administrator.*

10 (b) Compensation for services of the public guardian *or public*
11 *administrator* and the attorney of the public guardian *or public*
12 *administrator*, ~~and for the filing and processing services of the~~
13 ~~clerk of the court in the amount the court determines is just and~~
14 ~~reasonable.~~ *as follows:*

15 (1) *If the public guardian or public administrator is appointed*
16 *as trustee of a trust that provides for the outright distribution of*
17 *the entire trust estate, compensation for the public guardian or*
18 *public administrator, and any attorney for the public guardian or*
19 *public administrator, shall be calculated as that provided to a*
20 *personal representative and attorney pursuant to Part 7*
21 *(commencing with Section 10800) of Division 7, based on the fair*
22 *market value of the assets as of the date of the appointment,*
23 *provided that the minimum amount of compensation for the public*
24 *administrator and the attorney for the public administrator shall*
25 *be one thousand dollars (\$1,000).*

26 (2) *For a trust other than that described in paragraph (1), the*
27 *public guardian or public administrator shall be compensated as*
28 *provided in Section 15680. Compensation shall be consistent with*
29 *compensation allowed for professional fiduciaries or corporate*
30 *fiduciaries providing comparable services.*

31 (3) *Except as provided in paragraph (1), reasonable*
32 *compensation for the attorney for the public guardian or public*
33 *administrator.*

34 (c) An annual bond fee in the amount of twenty-five dollars
35 (\$25) plus one-fourth of 1 percent of the amount of the trust assets
36 greater than ten thousand dollars (\$10,000). The amount charged
37 shall be deposited in the county treasury.

38 SEC. 7. If the Commission on State Mandates determines that
39 this act contains costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made

1 pursuant to Part 7 (commencing with Section 17500) of Division
2 4 of Title 2 of the Government Code.

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5 **CORRECTIONS:**

6 **Title—Lines 1 and 2.**

7 **Text—Page 5.**

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