

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1288

Introduced by Assembly Member Gordon
(Principal coauthor: Assembly Member Beall)

February 18, 2011

~~An act to amend Section 2352.5 of the Probate Code, relating to conservatorships.~~ *An act to amend Sections 2900 and 2901 of the Probate Code, relating to public guardians and conservators.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1288, as amended, Gordon. ~~Conservatees: personal residences.~~ *Public guardians and conservators: authority: property held in trust.*

Existing law authorizes a county public guardian or conservator to take temporary possession or control of real and personal property of a person in the county who requires a guardian or conservator, as specified, if the property is subject to loss, injury, waste, or misappropriation. Existing law authorizes a public guardian to issue a written certification for purposes of taking possession or control of property in this regard, which may be recorded and which is effective for 15 days after the date of issuance. Existing law requires a financial institution or other person, without inquiring into the truth of the written certification and without court order being issued, to provide the public guardian information concerning property held in the sole name of the proposed ward or conservatee and to surrender to the public guardian property of the proposed ward or conservatee that is subject to loss, injury, waste, or misappropriation. Existing law immunizes the financial institution or other person from any liability for any act or omission of the public guardian with respect to the property.

This bill would extend the authority of a public guardian or conservator to take temporary possession of property, and the corresponding obligation of a financial institution or other person to provide property, as described above, to property held in trust for a potential ward or conservatee. The bill would also extend to 30 days the period that the written certification issued for purposes of taking possession or control of property is effective.

~~Existing law provides for the establishment of conservatorships and permits a conservator to establish the residence of the conservatee within the state without permission of the court. Existing law creates a presumption that the personal residence of the conservatee at the time a conservatorship proceeding commences is the least restrictive appropriate residence of the conservatee.~~

~~This bill would make a nonsubstantive, technical change to these provisions.~~

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 2900 of the Probate Code is amended to*
 2 *read:*

3 2900. (a) If the public guardian or public conservator
 4 determines that the requirements for appointment of a guardian or
 5 conservator of the estate are satisfied and the public guardian or
 6 public conservator intends to apply for appointment, the public
 7 guardian or public conservator may take possession or control of
 8 real or personal property of, *or property held in trust for*, a person
 9 domiciled in the county that is subject to loss, injury, waste, or
 10 misappropriation, and, subject to subdivision (b), may deny use
 11 of, access to, or prohibit residency in, the real or personal property,
 12 by anyone who does not have a written rental agreement or other
 13 legal right to the use of, or access to, the property.

14 (b) The authority provided to the public guardian and public
 15 conservator in subdivision (a) includes the authority to terminate
 16 immediately the occupancy of anyone living in the home of an
 17 intended ward or conservatee, other than the intended ward or
 18 conservatee, and the authority to remove any such occupant
 19 residing therein, subject to the following requirements:

1 (1) The public guardian or public conservator shall first
2 determine that the person whose occupancy is to be terminated
3 has no written rental agreement or other legal right to occupancy,
4 and has caused, contributed to, enabled, or threatened loss, injury,
5 waste, or misappropriation of the home or its contents. In making
6 this determination, the public guardian or public conservator shall
7 contact the intended ward or conservatee and the occupant, advise
8 them of the proposed removal and the grounds therefor, and
9 consider whatever information they provide.

10 (2) At the time of the removal, the public guardian or public
11 conservator shall advise the intended ward or conservatee and the
12 occupant that a hearing will be held as provided in paragraph (3).

13 (3) The public guardian or public conservator shall file a petition
14 regarding removal, showing the grounds therefor, to be set for
15 hearing within 10 days of the filing of the petition and within 15
16 days of the removal. The person removed and the intended ward
17 or conservatee shall be personally served with a notice of hearing
18 and a copy of the petition at least five days prior to the hearing,
19 subject to Part 2 (commencing with Section 1200) of Division 3.
20 The right of the public guardian or public conservator to deny
21 occupancy by the removed person to the premises shall terminate
22 15 days after removal, unless extended by the court at the hearing
23 on the petition. The court shall not grant an extension unless the
24 public guardian or public conservator has filed a petition for
25 appointment as guardian or conservator of the estate.

26 (c) If the public guardian or public conservator takes possession
27 of the residence of an intended ward or conservatee under this
28 section, then for purposes of Section 602.3 of the Penal Code, the
29 public guardian or public conservator shall be the owner's
30 representative.

31 *SEC. 2. Section 2901 of the Probate Code is amended to read:*

32 2901. (a) A public guardian who is authorized to take
33 possession or control of property under this chapter may issue a
34 written certification of that fact. The written certification is
35 effective for ~~15~~ 30 days after the date of issuance.

36 (b) The written recordable certification shall substantially
37 comply with the following form:
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“CERTIFICATE OF AUTHORITY

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

(Name of Individual) _____

This Certificate of Authority has been issued by the Public Guardian pursuant to and in compliance with Chapter 1 (commencing with Section 2900) of Part 5 of Division 4 of the California Probate Code. Under California law, this Certificate of Authority authorizes the Public Guardian to take possession or control of property belonging to, *or held in trust for*, the above-named individual.

SPECIAL NOTE TO FINANCIAL INSTITUTIONS:
State law requires that upon receiving a copy of this Certificate of Authority, financial institutions shall provide the public guardian with information concerning property held by, *or in trust for*, the above-named individual and surrender the property to the Public Guardian if requested.

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

Signature of Public Guardian:
Date:
Official Seal”

(c) The public guardian may record a copy of the written certification in any county in which is located real property of which the public guardian is authorized to take possession or control under this chapter.

1 (d) A financial institution or other person shall, without the
2 necessity of inquiring into the truth of the written certification and
3 without court order or letters being issued:

4 (1) Provide the public guardian information concerning property
5 held in the sole name of, *or held in trust for*, the proposed ward
6 or conservatee.

7 (2) Surrender to the public guardian property of, *or held in trust*
8 *for*, the proposed ward or conservatee that is subject to loss, injury,
9 waste, or misappropriation.

10 (e) Receipt of the written certification:

11 (1) Constitutes sufficient acquittance for providing information
12 and for surrendering property of the proposed ward or conservatee.

13 (2) Fully discharges the financial institution or other person
14 from any liability for any act or omission of the public guardian
15 with respect to the property.

16 SECTION 1. ~~Section 2352.5 of the Probate Code is amended~~
17 ~~to read:~~

18 ~~2352.5.—(a) It shall be presumed that the personal residence of~~
19 ~~the conservatee at the time of commencement of the proceeding~~
20 ~~is the least restrictive appropriate residence for the conservatee.~~
21 ~~In any hearing to determine if removal of the conservatee from his~~
22 ~~or her personal residence is appropriate, that presumption may be~~
23 ~~overcome by a preponderance of the evidence.~~

24 ~~(b) Upon appointment, the conservator shall determine the~~
25 ~~appropriate level of care for the conservatee.~~

26 ~~(1) That determination shall include an evaluation of the level~~
27 ~~of care existing at the time of commencement of the proceeding~~
28 ~~and the measures that would be necessary to keep the conservatee~~
29 ~~in his or her personal residence.~~

30 ~~(2) If the conservatee is living at a location other than his or her~~
31 ~~personal residence at the commencement of the proceeding, that~~
32 ~~determination shall either include a plan to return the conservatee~~
33 ~~to his or her personal residence or an explanation of the limitations~~
34 ~~or restrictions on a return of the conservatee to his or her personal~~
35 ~~residence in the foreseeable future.~~

36 ~~(c) The determination made by the conservator pursuant to~~
37 ~~subdivision (b) shall be in writing, signed under penalty of perjury,~~
38 ~~and submitted to the court no later than 60 days of appointment~~
39 ~~as conservator.~~

1 ~~(d) The conservator shall evaluate the conservatee’s placement~~
2 ~~and level of care if there is a material change in circumstances~~
3 ~~affecting the conservatee’s needs for placement and care.~~
4 ~~(e) (1) This section shall not apply to a conservatee with~~
5 ~~developmental disabilities for whom the Director of Developmental~~
6 ~~Services or a regional center for the developmentally disabled,~~
7 ~~established pursuant to Chapter 5 (commencing with Section 4620)~~
8 ~~of Division 4.5 of the Welfare and Institutions Code, acts as the~~
9 ~~conservator and who receives services from a regional center~~
10 ~~pursuant to the Lanterman Developmental Disabilities Act~~
11 ~~(Division 4.5 (commencing with Section 4500) of the Welfare and~~
12 ~~Institutions Code).~~
13 ~~(2) Services, including residential placement, for a conservatee~~
14 ~~described in paragraph (1) who is a consumer, as defined in Section~~
15 ~~4512 of the Welfare and Institutions Code, shall be identified,~~
16 ~~delivered, and evaluated consistent with the individual program~~
17 ~~plan process described in Article 2 (commencing with Section~~
18 ~~4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions~~
19 ~~Code.~~