

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1520

Introduced by Assembly Member Gatto

January 16, 2014

An act to amend Section ~~5003~~ *1003* of the Probate Code, relating to ~~nonprobate transfers~~ *guardians ad litem*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1520, as amended, Gatto. ~~Nonprobate transfers.~~ *Guardians ad litem.*

Existing law ~~excepts from probate the transfer on death of various property interests. Existing law permits a holder of this type of property to transfer the property in compliance with a provision for a nonprobate transfer on death that satisfies the terms of the instrument, whether or not the transfer is consistent with the beneficial ownership of the property, as specified~~ *authorizes a court to appoint a guardian ad litem at any stage of a proceeding under the Probate Code to represent the interest of specified persons, if the court determines that representation of the interest otherwise would be inadequate.*

This bill would ~~make nonsubstantive changes to these provisions~~ *authorize a court to appoint a guardian ad litem at any state of a proceeding under the Probate Code to represent the interest of a nonhuman animal who is either an estate asset or part of a trust res, if the court makes the same determination.*

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 1003 of the Probate Code is amended to
2 read:

3 1003. (a) (1) The court may, on its own motion or on request
4 of a personal representative, guardian, conservator, trustee, or other
5 interested person, appoint a guardian ad litem at any stage of a
6 proceeding under this code to represent the interest of any of the
7 following persons, if the court determines that representation of
8 the interest otherwise would be inadequate:

- 9 (1)
- 10 (A) A minor.
- 11 (2)
- 12 (B) An incapacitated person.
- 13 (3)
- 14 (C) An unborn person.
- 15 (4)
- 16 (D) An unascertained person.
- 17 (5)
- 18 (E) A person whose identity or address is unknown.
- 19 (6)
- 20 (F) A designated class of persons who are not ascertained or
21 are not in being.

22 (2) *The court may, on its own motion or on request of a personal*
23 *representative, guardian, conservator, trustee, or other interested*
24 *person, appoint a guardian ad litem at any stage of a proceeding*
25 *under this code to represent the interest of a nonhuman animal*
26 *who is either an estate asset or part of a trust res, if the court*
27 *determines that representation of the interest otherwise would be*
28 *inadequate.*

29 (b) If not precluded by a conflict of interest, a guardian ad litem
30 may be appointed to represent several persons or interests.

31 (c) The reasonable expenses of the guardian ad litem, including
32 compensation and attorney’s fees, shall be determined by the court
33 and paid as the court orders, either out of the property of the estate
34 involved or by the petitioner or from ~~such other~~ *another* source as
35 the court orders.

36 ~~SECTION 1. Section 5003 of the Probate Code is amended to~~
37 read:

1 ~~5003. (a) A holder of property under an instrument of a type~~
2 ~~described in Section 5000 may transfer the property in compliance~~
3 ~~with a provision for a nonprobate transfer on death that satisfies~~
4 ~~the terms of the instrument, whether or not the transfer is consistent~~
5 ~~with the beneficial ownership of the property as between the person~~
6 ~~who executed the provision for transfer of the property and other~~
7 ~~persons having an interest in the property or their successors, and~~
8 ~~whether or not the transfer is consistent with the rights of the person~~
9 ~~named as beneficiary.~~

10 ~~(b) Except as provided in this subdivision, notice or other~~
11 ~~information shown to have been available to the holder of the~~
12 ~~property does not affect the right of the holder to the protection~~
13 ~~provided by subdivision (a). The protection provided by~~
14 ~~subdivision (a) does not extend to a transfer made after either of~~
15 ~~the following events:~~

16 ~~(1) The holder of the property has been served with a contrary~~
17 ~~court order.~~

18 ~~(2) The holder of the property has been served with a written~~
19 ~~notice of a person claiming an adverse interest in the property.~~
20 ~~However, this paragraph does not apply to a pension plan to the~~
21 ~~extent the transfer is a periodic payment pursuant to the plan.~~

22 ~~(c) The protection provided by this section does not affect the~~
23 ~~rights of the person who executed the provision for transfer of the~~
24 ~~property and other persons having an interest in the property or~~
25 ~~their successors in disputes among themselves concerning the~~
26 ~~beneficial ownership of the property.~~

27 ~~(d) The protection provided by this section is not exclusive of~~
28 ~~any protection provided the holder of the property by any other~~
29 ~~provision of law.~~

30 ~~(e) A person shall not serve notice under paragraph (2) of~~
31 ~~subdivision (b) in bad faith. If the court in an action or proceeding~~
32 ~~relating to the rights of the parties determines that a person has~~
33 ~~served notice under paragraph (2) of subdivision (b) in bad faith,~~
34 ~~the court shall award against the person the cost of the action or~~
35 ~~proceeding, including a reasonable attorney's fee, and the damages~~
36 ~~caused by the service.~~