

AMENDED IN ASSEMBLY APRIL 10, 2014

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 ~~1003~~ 15212 of the Probate Code, relating to guardians ad litem.

LEGISLATIVE COUNSEL'S DIGEST

AB 1520, as amended, Gatto. Guardians ad ~~litem~~. *litem: animals.*

Existing law establishes requirements for the establishment and termination of a trust for the care of an animal.

Existing law 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 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~~ *an animal who is either an estate asset or part of a trust res, if the court makes the same determination for which a trust has been established if the court determines that representation of the interest otherwise would be inadequate.*

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 15212 of the Probate Code is amended
2 to read:

3 15212. (a) Subject to the requirements of this section, a trust
4 for the care of an animal is a trust for a lawful noncharitable
5 purpose. Unless expressly provided in the trust, the trust terminates
6 when no animal living on the date of the settlor’s death remains
7 alive. The governing instrument of the animal trust shall be
8 liberally construed to bring the trust within this section, to presume
9 against the merely precatory or honorary nature of the disposition,
10 and to carry out the general intent of the settlor. Extrinsic evidence
11 is admissible in determining the settlor’s intent.

12 (b) A trust for the care of an animal is subject to the following
13 requirements:

14 (1) Except as expressly provided otherwise in the trust
15 instrument, the principal or income shall not be converted to the
16 use of the trustee or to any use other than for the benefit of the
17 animal.

18 (2) Upon termination of the trust, the trustee shall distribute the
19 unexpended trust property in the following order:

20 (A) As directed in the trust instrument.

21 (B) If the trust was created in a nonresiduary clause in the
22 settlor’s will or in a codicil to the settlor’s will, under the residuary
23 clause in the settlor’s will.

24 (C) If the application of subparagraph (A) or (B) does not result
25 in distribution of unexpended trust property, to the settlor’s heirs
26 under Section 21114.

27 (3) For the purposes of Section 21110, the residuary clause
28 described in subparagraph (B) of paragraph (2) shall be treated as
29 creating a future interest under the terms of a trust.

30 (c) The intended use of the principal or income may be enforced
31 by a person designated for that purpose in the trust instrument or,
32 if none is designated, by a person appointed by a court. In addition
33 to a person identified in subdivision (a) of Section 17200, any
34 person interested in the welfare of the animal or any nonprofit
35 charitable organization that has as its principal activity the care of
36 animals may petition the court regarding the trust as provided in
37 Chapter 3 (commencing with Section 17200) of Part 5.

1 (d) If a trustee is not designated or no designated or successor
2 trustee is willing or able to serve, a court shall name a trustee. A
3 court may order the transfer of the trust property to a
4 court-appointed trustee, if it is required to ensure that the intended
5 use is carried out and if a successor trustee is not designated in the
6 trust instrument or if no designated successor trustee agrees to
7 serve or is able to serve. A court may also make all other orders
8 and determinations as it shall deem advisable to carry out the intent
9 of the settlor and the purpose of this section.

10 (e) The accountings required by Section 16062 shall be provided
11 to the beneficiaries who would be entitled to distribution if the
12 animal were then deceased and to any nonprofit charitable
13 corporation that has as its principal activity the care of animals
14 and that has requested these accountings in writing. However, if
15 the value of the assets in the trust does not exceed forty thousand
16 dollars (\$40,000), no filing, report, registration, periodic
17 accounting, separate maintenance of funds, appointment, or fee is
18 required by reason of the existence of the fiduciary relationship
19 of the trustee, unless ordered by the court or required by the trust
20 instrument.

21 (f) Any beneficiary, any person designated by the trust
22 instrument or the court to enforce the trust, or any nonprofit
23 charitable corporation that has as its principal activity the care of
24 animals may, upon reasonable request, inspect the animal, the
25 premises where the animal is maintained, or the books and records
26 of the trust.

27 (g) A trust governed by this section is not subject to termination
28 pursuant to subdivision (b) of Section 15408.

29 (h) Section 15211 does not apply to a trust governed by this
30 section.

31 (i) *The court may, on its own motion or on request of the trustee*
32 *or other interested person, appoint a guardian ad litem to represent*
33 *the interest of the animal if the court determines that representation*
34 *of the interest otherwise would be inadequate. The reasonable*
35 *expenses of the guardian ad litem, including compensation and*
36 *attorney's fees, shall be determined by the court and paid as the*
37 *court orders, either out of the trust or from another source as the*
38 *court orders.*

39 (i)

1 (j) For purposes of this section, “animal” means a domestic or
2 pet animal for the benefit of which a trust has been established.

3 SECTION 1. ~~Section 1003 of the Probate Code is amended to~~
4 ~~read:~~

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

- 11 ~~(A) A minor.~~
- 12 ~~(B) An incapacitated person.~~
- 13 ~~(C) An unborn person.~~
- 14 ~~(D) An unascertained person.~~
- 15 ~~(E) A person whose identity or address is unknown.~~
- 16 ~~(F) A designated class of persons who are not ascertained or~~
17 ~~are not in being.~~

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

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

27 ~~(c) The reasonable expenses of the guardian ad litem, including~~
28 ~~compensation and attorney’s fees, shall be determined by the court~~
29 ~~and paid as the court orders, either out of the property of the estate~~
30 ~~involved or by the petitioner or from another source as the court~~
31 ~~orders.~~