

ASSEMBLY BILL

No. 1085

Introduced by Assembly Member Gatto

February 27, 2015

An act to amend Sections 2351 and 4766 of, and to add Sections 2361 and 4691 to, the Probate Code, relating to personal representatives.

LEGISLATIVE COUNSEL'S DIGEST

AB 1085, as introduced, Gatto. Personal representatives: conservators and attorneys-in-fact.

(1) Existing law requires a conservator of a person to be responsible for the care, custody, control, and education of a conservatee, except where the court, in its discretion, limits the powers and duties of the conservator. Existing law also provides that the conservator's control of the conservatee shall not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by a court order.

This bill would provide that a court order may be issued that specifically grants the conservator the power to limit or enforce the conservatee's right to receive visitors, telephone calls, and personal mail.

(2) Existing law additionally authorizes an adult with capacity to execute a power of attorney for health care.

This bill would require a conservator and an attorney-in-fact to promptly inform the relatives of the conservatee or principal whenever the conservatee or principal dies or is admitted to a medical facility for acute care for a period of 3 days or more.

(3) Existing law authorizes a petition to be filed for certain authorized purposes, including to determine whether or not a patient has capacity to make health care decisions, whether an advance health care directive is in effect, whether the acts or proposed acts of an agent or surrogate are consistent with the patients desires as expressed in an advance health care directive, or to declare that the authority of an agent or surrogate is terminated, or to compel a 3rd person to honor individual health care instructions.

This bill would also authorize a petition to be filed to authorize an agent or surrogate to limit or enforce the principal’s right to receive visitors, telephone calls, and personal mail.

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 2351 of the Probate Code is amended to
2 read:

3 2351. (a) Subject to subdivision (b), the guardian or
4 conservator, but not a limited conservator, has the care, custody,
5 and control of, and has charge of the education of, the ward or
6 conservatee. This control shall not extend to personal rights
7 retained by the conservatee, including, but not limited to, the right
8 to receive visitors, telephone calls, and personal mail, unless
9 specifically limited by court order.

10 (b) Where the court determines that it is appropriate in the
11 circumstances of the particular conservatee, the court, in its
12 discretion, may limit the powers and duties that the conservator
13 would otherwise have under subdivision (a) by an order stating
14 either of the following:

15 (1) The specific powers that the conservator does not have with
16 respect to the conservatee’s person and reserving the powers so
17 specified to the conservatee.

18 (2) The specific powers and duties the conservator has with
19 respect to the conservatee’s person and reserving to the conservatee
20 all other rights with respect to the conservatee’s person that the
21 conservator otherwise would have under subdivision (a).

22 (c) *In accordance with subdivisions (a) and (b), an order under*
23 *this section may be issued that specifically grants the conservator*

1 *the power to limit or enforce the conservatee’s right to receive*
2 *visitors, telephone calls, and personal mail.*

3 ~~(e)~~

4 (d) An order under this section (1) may be included in the order
5 appointing a conservator of the person or (2) may be made,
6 modified, or revoked upon a petition subsequently filed, notice of
7 the hearing on the petition having been given for the period and
8 in the manner provided in Chapter 3 (commencing with Section
9 1460) of Part 1.

10 ~~(d)~~

11 (e) The guardian or conservator, in exercising his or her powers,
12 may not hire or refer any business to an entity in which he or she
13 has a financial interest except upon authorization of the court. Prior
14 to authorization from the court, the guardian or conservator shall
15 disclose to the court in writing his or her financial interest in the
16 entity. For the purposes of this subdivision, “financial interest”
17 shall mean (1) an ownership interest in a sole proprietorship, a
18 partnership, or a closely held corporation, or (2) an ownership
19 interest of greater than 1 percent of the outstanding shares in a
20 publicly traded corporation, or (3) being an officer or a director
21 of a corporation. This subdivision shall apply only to conservators
22 and guardians required to register with the Statewide Registry
23 under Chapter 13 (commencing with Section 2850).

24 SEC. 2. Section 2361 is added to the Probate Code, to read:

25 2361. A conservator shall inform relatives of a conservatee, as
26 described in subdivision (b) of Section 1821, whenever a
27 conservatee dies or is admitted to a medical facility for acute care
28 for a period of three days or more. If the conservatee dies, the
29 conservator shall inform the relatives of any funeral arrangements
30 and the location of the conservatee’s final resting place.

31 SEC. 3. Section 4691 is added to the Probate Code, to read:

32 4691. An attorney-in-fact shall inform relatives of the principal,
33 as described in subdivision (b) of Section 1821, whenever the
34 principal dies or is admitted to a medical facility for acute care for
35 three days or more. If the principal dies, the attorney-in-fact shall
36 inform the relatives of any funeral arrangements and the location
37 of the principal’s final resting place.

38 SEC. 4. Section 4766 of the Probate Code is amended to read:

39 4766. A petition may be filed under this part for any one or
40 more of the following purposes:

- 1 (a) Determining whether or not the patient has capacity to make
2 health care decisions.
- 3 (b) Determining whether an advance health care directive is in
4 effect or has terminated.
- 5 (c) Determining whether the acts or proposed acts of an agent
6 or surrogate are consistent with the patient’s desires as expressed
7 in an advance health care directive or otherwise made known to
8 the court or, where the patient’s desires are unknown or unclear,
9 whether the acts or proposed acts of the agent or surrogate are in
10 the patient’s best interest.
- 11 (d) Declaring that the authority of an agent or surrogate is
12 terminated, upon a determination by the court that the agent or
13 surrogate has made a health care decision for the patient that
14 authorized anything illegal or upon a determination by the court
15 of both of the following:
 - 16 (1) The agent or surrogate has violated, has failed to perform,
17 or is unfit to perform, the duty under an advance health care
18 directive to act consistent with the patient’s desires or, where the
19 patient’s desires are unknown or unclear, is acting (by action or
20 inaction) in a manner that is clearly contrary to the patient’s best
21 interest.
 - 22 (2) At the time of the determination by the court, the patient
23 lacks the capacity to execute or to revoke an advance health care
24 directive or disqualify a surrogate.
- 25 (e) Compelling a third person to honor individual health care
26 instructions or the authority of an agent or surrogate.
- 27 (f) *Authorizing an agent or surrogate to limit or enforce the*
28 *principal’s right to receive visitors, telephone calls, and personal*
29 *mail.*