

AMENDED IN ASSEMBLY MAY 5, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1085

Introduced by Assembly Member Gatto

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1085, as amended, 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. *The bill would state findings and declarations of the Legislature in this regard.*

(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.~~

~~This bill would require a conservator to provide notice of a conservatee’s death by mailing a copy of the notice to specified persons, as provided. The bill would require an attorney-in-fact, if directed by the principal in a power of attorney for health care, upon the death of the principal, to inform those individuals whose names are provided by the principal for that purpose.~~

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. *The Legislature finds and declares that every*
2 *adult in this state has the right to visit with, and receive mail and*
3 *telephone or electronic communication from, whomever he or she*
4 *so chooses, unless a court has specifically ordered otherwise.*

5 SECTION 1.

6 SEC. 2. Section 2351 of the Probate Code is amended to read:
7 2351. (a) Subject to subdivision (b), the guardian or
8 conservator, but not a limited conservator, has the care, custody,
9 and control of, and has charge of the education of, the ward or
10 conservatee. This control shall not extend to personal rights
11 retained by the conservatee, including, but not limited to, the right
12 to receive visitors, telephone calls, and personal mail, unless
13 specifically limited by court order. *The court may issue an order*
14 *that specifically grants the conservator the power to enforce the*
15 *conservatee’s rights to receive visitors, telephone calls, and*

1 *personal mail, or that directs the conservator to allow those*
2 *visitors, telephone calls, and personal mail.*

3 (b) Where the court determines that it is appropriate in the
4 circumstances of the particular conservatee, the court, in its
5 discretion, may limit the powers and duties that the conservator
6 would otherwise have under subdivision (a) by an order stating
7 either of the following:

8 (1) The specific powers that the conservator does not have with
9 respect to the conservatee's person and reserving the powers so
10 specified to the conservatee.

11 (2) The specific powers and duties the conservator has with
12 respect to the conservatee's person and reserving to the conservatee
13 all other rights with respect to the conservatee's person that the
14 conservator otherwise would have under subdivision (a).

15 ~~(e) In accordance with subdivisions (a) and (b), an order under~~
16 ~~this section may be issued that specifically grants the conservator~~
17 ~~the power to limit or enforce the conservatee's right to receive~~
18 ~~visitors, telephone calls, and personal mail.~~

19 ~~(d)~~

20 (c) An order under this section (1) may be included in the order
21 appointing a conservator of the person or (2) may be made,
22 modified, or revoked upon a petition subsequently filed, notice of
23 the hearing on the petition having been given for the period and
24 in the manner provided in Chapter 3 (commencing with Section
25 1460) of Part 1.

26 ~~(e)~~

27 (d) The guardian or conservator, in exercising his or her powers,
28 may not hire or refer any business to an entity in which he or she
29 has a financial interest except upon authorization of the court. Prior
30 to authorization from the court, the guardian or conservator shall
31 disclose to the court in writing his or her financial interest in the
32 entity. For the purposes of this subdivision, "financial interest"
33 shall mean (1) an ownership interest in a sole proprietorship, a
34 partnership, or a closely held corporation, or (2) an ownership
35 interest of greater than 1 percent of the outstanding shares in a
36 publicly traded corporation, or (3) being an officer or a director
37 of a corporation. This subdivision shall apply only to conservators
38 and guardians required to register with the Statewide Registry
39 under Chapter 13 (commencing with Section 2850).

40 ~~SEC. 2.— Section 2361 is added to the Probate Code, to read:~~

1 ~~2361. A conservator shall inform relatives of a conservatee, as~~
 2 ~~described in subdivision (b) of Section 1821, whenever a~~
 3 ~~conservatee dies or is admitted to a medical facility for acute care~~
 4 ~~for a period of three days or more. If the conservatee dies, the~~
 5 ~~conservator shall inform the relatives of any funeral arrangements~~
 6 ~~and the location of the conservatee’s final resting place.~~

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

8 ~~4691. An attorney-in-fact shall inform relatives of the principal,~~
 9 ~~as described in subdivision (b) of Section 1821, whenever the~~
 10 ~~principal dies or is admitted to a medical facility for acute care for~~
 11 ~~three days or more. If the principal dies, the attorney-in-fact shall~~
 12 ~~inform the relatives of any funeral arrangements and the location~~
 13 ~~of the principal’s final resting place.~~

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

15 ~~4766. A petition may be filed under this part for any one or~~
 16 ~~more of the following purposes:~~

17 ~~(a) Determining whether or not the patient has capacity to make~~
 18 ~~health care decisions.~~

19 ~~(b) Determining whether an advance health care directive is in~~
 20 ~~effect or has terminated.~~

21 ~~(c) Determining whether the acts or proposed acts of an agent~~
 22 ~~or surrogate are consistent with the patient’s desires as expressed~~
 23 ~~in an advance health care directive or otherwise made known to~~
 24 ~~the court or, where the patient’s desires are unknown or unclear,~~
 25 ~~whether the acts or proposed acts of the agent or surrogate are in~~
 26 ~~the patient’s best interest.~~

27 ~~(d) Declaring that the authority of an agent or surrogate is~~
 28 ~~terminated, upon a determination by the court that the agent or~~
 29 ~~surrogate has made a health care decision for the patient that~~
 30 ~~authorized anything illegal or upon a determination by the court~~
 31 ~~of both of the following:~~

32 ~~(1) The agent or surrogate has violated, has failed to perform,~~
 33 ~~or is unfit to perform, the duty under an advance health care~~
 34 ~~directive to act consistent with the patient’s desires or, where the~~
 35 ~~patient’s desires are unknown or unclear, is acting (by action or~~
 36 ~~inaction) in a manner that is clearly contrary to the patient’s best~~
 37 ~~interest.~~

38 ~~(2) At the time of the determination by the court, the patient~~
 39 ~~lacks the capacity to execute or to revoke an advance health care~~
 40 ~~directive or disqualify a surrogate.~~

1 ~~(e) Compelling a third person to honor individual health care~~
2 ~~instructions or the authority of an agent or surrogate.~~

3 ~~(f) Authorizing an agent or surrogate to limit or enforce the~~
4 ~~principal's right to receive visitors, telephone calls, and personal~~
5 ~~mail.~~

6 *SEC. 3. Section 2361 is added to the Probate Code, to read:*

7 *2361. A conservator shall provide notice of a conservatee's*
8 *death by mailing a copy of the notice to all persons entitled to*
9 *notice under Section 1460 and by filing a proof of service with the*
10 *court, unless otherwise ordered by the court.*

11 *SEC. 4. Section 4691 is added to the Probate Code, to read:*

12 *4691. If directed by the principal in a power of attorney for*
13 *health care, an attorney-in-fact shall, upon the death of the*
14 *principal, inform those individuals whose names are provided by*
15 *the principal to the attorney-in-fact for that purpose.*