

ASSEMBLY BILL

No. 627

Introduced by Assembly Member Katz

February 21, 1995

An act to add Division 2.5 (commencing with Section 297) to the Family Code, to add Section 1261 to the Health and Safety Code, and to amend Sections 1460, 1811, 1812, 1820, 1821, 1822, 1829, 1861, 1863, 1871, 1873, 1874, 1891, 1895, 2212, 2213, 2357, 2423, 2430, 2504, 2572, 2580, 2614.5, 2622, 2651, 2653, 2681, 2682, 2687, 2700, 2803, 2805, and 6240 of, and to add Section 37 to, the Probate Code, relating to human relationships.

LEGISLATIVE COUNSEL'S DIGEST

AB 627, as introduced, Katz. Domestic partnership: registration, termination, and rights thereof.

(1) Existing law sets forth the requirements of a valid marriage, and specifies the rights and obligations of spouses during marriage.

This bill would define “domestic partners” and provide for the registration of domestic partnerships with the Secretary of State. The bill would also specify procedures for the termination of domestic partnerships. The bill would prohibit a person who has filed a Declaration of Domestic Partnership from filing a new declaration until at least 6 months has elapsed from the date that a Notice of Termination of Domestic Partnership was filed with the Secretary of State in connection with the termination of the most recent domestic

partnership, except where the previous domestic partnership ended because one of the partners died.

The bill would require the Secretary of State to prepare forms for the registration and termination of domestic partnerships, and distribute these forms to each county clerk. The bill would require the Secretary of State to establish by regulation and charge fees for processing these forms. The bill would require these forms to be available to the public at the office of the Secretary of State and each county clerk. By increasing the duties of the county clerk, the bill would impose a state-mandated local program.

This bill would provide that any domestic partnership entered into outside of this state, which would be valid by the laws of the jurisdiction under which the partnership was created, shall be valid in this state.

(2) Existing law does not specify requirements concerning patient visitation in all health facilities.

This bill would require a health facility to allow a patient's domestic partner and other specified persons to visit a patient, except under specified conditions.

(3) Existing law provides for the establishment of conservatorships.

This bill would revise and recast these provisions regarding conservatorships to provide for the participation of a domestic partner of the conservatee or proposed conservatee in these proceedings. The bill would require preference for selection of a conservator be given to the domestic partner and a person nominated by the domestic partner. The bill would require that a petition for conservatorship set forth the names and addresses of the domestic partner of the proposed conservatee or the names and addresses of any children of a predeceased domestic partner. The bill would require notice of a conservatorship hearing to be sent to the domestic partner of the proposed conservatee and would authorize the domestic partner to appear at the hearing in support or opposition to the petition. This bill would make conforming changes.

(4) Existing law prescribes a statutory will form.

This bill would revise the statutory will form to, among other things, provide for the inclusion of a domestic partner



among the beneficiaries to whom the testator may indicate a desire to leave his or her principal residence, automobiles, household, and personal effects, or residuary estate.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Division 2.5 (commencing with Section
2 297) is added to the Family Code, to read:

3

4 DIVISION 2.5. DOMESTIC PARTNERSHIP

5

6 PART 1. DEFINITIONS

7

8 297. (a) Domestic partners are two adults who have
9 chosen to share one another's lives in an intimate and
10 committed relationship of mutual caring.

11 (b) A domestic partnership shall be established when
12 all of the following requirements are met:

13 (1) Both persons have a common residence.

14 (2) Both persons agree to be jointly responsible for
15 each other's basic living expenses during the domestic
16 partnership.

17 (3) Neither person is married or a member of another
18 domestic partnership.



1 (4) The two persons are not related by blood in a way
2 which would prevent them from being married to each
3 other in this state.

4 (5) Both persons are at least 18 years of age.

5 (6) Both file a Declaration of Domestic Partnership
6 with the Secretary of State pursuant to this division.

7 (c) "Have a common residence" means that two
8 people share the same place to live. It is not necessary that
9 the legal right to possess the place be in both of their
10 names. Two people may live together even if one or both
11 have additional places to live. Domestic partners do not
12 cease to live together if one leaves the shared place but
13 intends to return.

14 (d) "Basic living expenses" means basic food and
15 shelter. It also means any other cost, such as medical care,
16 if some or all of the cost is paid as a benefit because a
17 person is another person's domestic partner.

18 (e) "Joint responsibility" means that each partner
19 agrees to provide for the other partner's basic living
20 expenses if the partner is unable to provide for herself or
21 himself. Anyone to whom these expenses are owed can
22 enforce this responsibility.

23 24 PART 2. REGISTRATION 25

26 298. (a) The Secretary of State shall prepare forms
27 entitled "Declaration of Domestic Partnership," and
28 "Notice of Termination of Domestic Partnership" to
29 meet the requirements of this division. These forms shall
30 require the signature and seal of a notary public to be
31 binding and valid.

32 (b) (1) The Secretary of State shall distribute these
33 forms to each county clerk. These forms shall be available
34 to the public at the office of the Secretary of State and
35 each county clerk.

36 (2) The Secretary of State shall, by regulation,
37 establish fees for the actual costs of processing each of
38 these forms, and shall charge these fees to persons filing
39 the forms.

(c) The Declaration of Domestic Partnership shall require each person who wants to become a domestic partner to (1) state that he or she meets the requirements of Section 297 at the time the form is signed, (2) provide a mailing address, (3) sign the form under penalty of perjury, and (4) have a notary public notarize his or her signature.

298.5. (a) Two persons desiring to become domestic partners may complete and file a Declaration of Domestic Partnership with the Secretary of State.

(b) No person who has filed a Declaration of Domestic Partnership may file a new Declaration of Domestic Partnership until at least six months after the date that a Notice of Termination of Domestic Partnership was filed with the Secretary of State pursuant to subdivision (b) of Section 299 in connection with the termination of the most recent domestic partnership. This prohibition does not apply if the previous domestic partnership ended because one of the partners died.

PART 3. TERMINATION

299. (a) A domestic partnership is terminated when any one of the following occurs:

(1) One partner gives or sends to the other partner a written notice that he or she is terminating the partnership.

(2) One of the domestic partners dies.

(3) One of the domestic partners marries.

(4) The domestic partners no longer have a common residence.

(b) Upon termination of a domestic partnership, at least one former partner shall file a Notice of Termination of Domestic Partnership with the Secretary of State. The partner who files the Notice of Termination of Domestic Partnership shall send a copy of the notice to the last known address of the other partner.

(c) A former domestic partner who has given a copy of a Declaration of Domestic Partnership to any third party in order to qualify for any benefit or right shall,

1 within 60 days of termination of the domestic partnership,
2 give or send to the third party, at the last known address
3 of the third party, written notification that the domestic
4 partnership has been terminated. A third party who
5 suffers a loss as a result of failure by the domestic partner
6 to send this notice shall be entitled to seek recovery from
7 the partner who was obligated to send it for any actual loss
8 resulting thereby.

9 (d) Failure to file the Notice of Termination of
10 Domestic Partnership required in subdivision (b) or to
11 provide the third party notice required in subdivision (c)
12 shall not delay or prevent the termination of the domestic
13 partnership.

14 PART 4. LEGAL EFFECT

15
16 299.5. (a) The obligations that two people have to
17 each other as a result of creating a domestic partnership
18 are those described in Section 297. Registration as a
19 domestic partner under this division shall not be evidence
20 of, or establish, any rights existing under law other than
21 those expressly provided to domestic partners in this
22 division, Section 1261 of the Health and Safety Code, or
23 the Probate Code relating to bequests, conservatorships,
24 health facility visitation rights, and support for basic
25 living expenses.

26
27 The provisions relating to domestic partners provided
28 in this division, Section 1261 of the Health and Safety
29 Code, and the Probate Code shall not diminish any right
30 under any other provision of law.

31 (b) Upon the termination of a domestic partnership,
32 the partners, from that time forward, shall incur none of
33 the obligations to each other as domestic partners that are
34 created by this division, Section 1261 of the Health and
35 Safety Code, or the Probate Code relating to domestic
36 partners.

37 (c) Any domestic partnership entered into outside of
38 this state, which would be valid by the laws of the
39 jurisdiction under which the partnership was created,
40 shall be valid in this state.

1 SEC. 2. Section 1261 is added to the Health and Safety
2 Code, to read:

3 1261. (a) A health facility shall allow a patient's
4 domestic partner, the children of the patient's domestic
5 partner, and the domestic partner of the patient's parent
6 or child to visit, unless one of the following is met:

7 (1) No visitors are allowed.

8 (2) The facility reasonably determines that the
9 presence of a particular visitor would endanger the
10 health or safety of a patient, member of the health facility
11 staff, or other visitor to the health facility, or would
12 significantly disrupt the operations of a facility.

13 (3) The patient has indicated to health facility staff
14 that the patient does not want this person to visit.

15 (b) This section may not be construed to prohibit a
16 health facility from otherwise establishing reasonable
17 restrictions upon visitation, including restrictions upon
18 the hours of visitation and number of visitors.

19 (c) As used in this section, "domestic partner" has the
20 meaning provided in Section 37 of the Probate Code.

21 SEC. 3. Section 37 is added to the Probate Code, to
22 read:

23 37. "Domestic partner" means a person who has filed
24 a "Declaration of Domestic Partnership" with the
25 Secretary of State pursuant to Division 2.5 (commencing
26 with Section 297) of the Family Code.

27 SEC. 4. Section 1460 of the Probate Code is amended
28 to read:

29 1460. (a) Subject to Sections 1202 and 1203, if notice
30 of hearing is required under this division but the
31 applicable provision does not fix the manner of giving
32 notice of hearing, the notice of the time and place of the
33 hearing shall be given at least 15 days before the day of
34 the hearing as provided in this section.

35 (b) Subject to subdivision (e), the petitioner (which
36 includes for the purposes of this section a person filing a
37 petition, report, or account) shall cause the notice of
38 hearing to be mailed to each of the following persons:

39 (1) The guardian or conservator.

1 (2) The ward if 12 years of age or older or the
2 conservatee.

3 (3) The spouse of the ward or conservatee, if the ward
4 or conservatee has a spouse, *or the domestic partner of*
5 *the conservatee, if the conservatee has a domestic*
6 *partner.*

7 (4) Any interested person who has appeared in the
8 particular matter to which the hearing relates.

9 (5) For any hearing on a petition to terminate a
10 guardianship, to accept the resignation of, or to remove
11 the guardian, the persons described in subdivision (c) of
12 Section 1510.

13 (6) For any hearing on a petition to terminate a
14 conservatorship, to accept the resignation of, or to
15 remove the conservator, the persons described in
16 subdivision (b) of Section 1821.

17 (c) The clerk of the court shall cause the notice of the
18 hearing to be posted as provided in Section 1230 if the
19 posting is required by subdivision (c) of Section 2543
20 (sales).

21 (d) Except as provided in subdivision (e), nothing in
22 this section excuses compliance with the requirements
23 for notice to a person who has requested special notice
24 pursuant to Chapter 10 (commencing with Section 2700)
25 of Part 4.

26 (e) The court for good cause may dispense with the
27 notice otherwise required to be given to a person as
28 provided in this section.

29 SEC. 5. Section 1811 of the Probate Code is amended
30 to read:

31 1811. (a) The spouse, *domestic partner*, or an adult
32 child, parent, brother, or sister of the proposed
33 conservatee may nominate a conservator in the petition
34 or at the hearing on the petition.

35 (b) The spouse, *domestic partner*, or a parent of the
36 proposed conservatee may nominate a conservator in a
37 writing signed either before or after the petition is filed
38 and ~~such~~ *that* nomination remains effective
39 notwithstanding the subsequent legal incapacity or death
40 of the spouse, *domestic parter*, or parent, except that a

1 nomination by the spouse becomes void upon dissolution
2 or an adjudication of nullity of their marriage *and a*
3 *nomination by a domestic partner becomes void upon*
4 *termination of the domestic partnership.*

5 SEC. 6. Section 1812 of the Probate Code is amended
6 to read:

7 1812. (a) Subject to Sections 1810 and 1813, the
8 selection of a conservator of the person or estate, or both,
9 is solely in the discretion of the court and, in making the
10 selection, the court is to be guided by what appears to be
11 for the best interests of the proposed conservatee.

12 (b) Subject to Sections 1810 and 1813, of persons
13 equally qualified in the opinion of the court to
14 appointment as conservator of the person or estate or
15 both, preference is to be given in the following order:

16 (1) The spouse *or domestic partner* of the proposed
17 conservatee or the person nominated by the spouse *or*
18 *domestic partner* pursuant to Section 1811.

19 (2) An adult child of the proposed conservatee or the
20 person nominated by the child pursuant to Section 1811.

21 (3) A parent of the proposed conservatee or the
22 person nominated by the parent pursuant to Section 1811.

23 (4) A brother or sister of the proposed conservatee or
24 the person nominated by the brother or sister pursuant
25 to Section 1811.

26 (5) Any other person or entity eligible for
27 appointment as a conservator under this code or, if there
28 is no such person or entity willing to act as a conservator,
29 under the Welfare and Institutions Code.

30 (c) The preference for any nominee for appointment
31 under paragraphs (2), (3), and (4) of subdivision (b) is
32 subordinate to the preference for any other parent, child,
33 brother, or sister in ~~such~~ *that* class.

34 SEC. 7. Section 1820 of the Probate Code is amended
35 to read:

36 1820. (a) A petition for the appointment of a
37 conservator may be filed by any of the following:

38 (1) The proposed conservatee.

39 (2) The spouse *or domestic partner* of the proposed
40 conservatee.

1 (3) A relative of the proposed conservatee.

2 (4) Any interested state or local entity or agency of this
3 state or any interested public officer or employee of this
4 state or of a local public entity of this state.

5 (5) Any other interested person or friend of the
6 proposed conservatee.

7 (b) If the proposed conservatee is a minor, the petition
8 may be filed during his or her minority so that the
9 appointment of a conservator may be made effective
10 immediately upon the minor's attaining the age of
11 majority. An existing guardian of the minor may be
12 appointed as conservator under this part upon the
13 minor's attaining the age of majority, whether or not the
14 guardian's accounts have been settled.

15 (c) A creditor of the proposed conservatee may not
16 file a petition for appointment of a conservator unless the
17 creditor is a person described in paragraph (2), (3), or (4)
18 of subdivision (a).

19 SEC. 8. Section 1821 of the Probate Code is amended
20 to read:

21 1821. (a) The petition shall request that a
22 conservator be appointed for the person or estate, or
23 both, shall specify the name, address, and telephone
24 number of the proposed conservator and the name,
25 address, and telephone number of the proposed
26 conservatee, and state the reasons why a conservatorship
27 is necessary. Unless the petitioner is a bank or other entity
28 authorized to conduct the business of a trust company,
29 the petitioner shall also file supplemental information as
30 to why the appointment of a conservator is required. The
31 supplemental information to be submitted shall include
32 a brief statement of facts addressed to each of the
33 following categories:

34 (1) The inability of the proposed conservatee to
35 properly provide for his or her needs for physical health,
36 food, clothing, and shelter.

37 (2) The location of the proposed conservatee's
38 residence and the ability of the proposed conservatee to
39 live in the residence while under conservatorship.



1 (3) Alternatives to conservatorship considered by the
2 petitioner and reasons why those alternatives are not
3 available.

4 (4) Health or social services provided to the proposed
5 conservatee during the year preceding the filing of the
6 petition, when the petitioner has information as to those
7 services.

8 (5) The inability of the proposed conservatee to
9 substantially manage his or her own financial resources,
10 or to resist fraud or undue influence.

11 The facts required to address the categories set forth in
12 paragraphs (1) to (5), inclusive, shall be set forth by the
13 petitioner when he or she has knowledge of the facts or
14 by the declarations or affidavits of other persons having
15 knowledge of those facts.

16 Where any of the categories set forth in paragraphs (1)
17 to (5), inclusive, are not applicable to the proposed
18 conservatorship, the petitioner shall so indicate and state
19 on the supplemental information form the reasons
20 therefor.

21 The Judicial Council shall develop a supplemental
22 information form for the information required pursuant
23 to paragraphs (1) to (5), inclusive, after consultation with
24 individuals or organizations approved by the Judicial
25 Council, who represent public conservators, court
26 investigators, the State Bar, specialists with experience in
27 performing assessments and coordinating
28 community-based services, and legal services for the
29 elderly and disabled.

30 The supplemental information form shall be separate
31 and distinct from the form for the petition. The
32 supplemental information shall be confidential and shall
33 be made available only to parties, persons given notice of
34 the petition who have requested this supplemental
35 information or who have appeared in the proceedings,
36 their attorneys, and the court. The court shall have
37 discretion at any other time to release the supplemental
38 information to other persons if it would serve the interests
39 of the conservatee. The county clerk shall make provision

1 for limiting disclosure of the supplemental information
2 exclusively to persons entitled thereto under this section.

3 (b) The petition shall set forth, so far as they are known
4 to the petitioner, the names and addresses of the spouse
5 *or domestic partner*, and of the relatives of the proposed
6 conservatee within the second degree. If no spouse *or*
7 *domestic partner* of the proposed conservatee, or
8 relatives of the proposed conservatee within the second
9 degree are known to the petitioner, the petition shall set
10 forth, so far as they are known to the petitioner, the names
11 and addresses of the following persons who, for the
12 purposes of Section 1822, shall all be deemed to be
13 relatives:

14 (1) A spouse *or domestic partner* of a predeceased
15 parent of a proposed conservatee.

16 (2) The children of a predeceased spouse *or domestic*
17 *partner* of a proposed conservatee.

18 (3) The siblings of the proposed conservatee's parents,
19 if any, but if none, then the natural and adoptive children
20 of the proposed conservatee's parents' siblings.

21 (4) The natural and adoptive children of the proposed
22 conservatee's siblings.

23 (c) If the petition is filed by a person other than the
24 proposed conservatee, the petition shall state whether or
25 not the petitioner is a creditor or debtor, or the agent of
26 a creditor or debtor, of the proposed conservatee.

27 (d) If the proposed conservatee is a patient in or on
28 leave of absence from a state institution under the
29 jurisdiction of the State Department of Mental Health or
30 the State Department of Developmental Services and
31 that fact is known to the petitioner, the petition shall state
32 that fact and name the institution.

33 (e) The petition shall state, so far as is known to the
34 petitioner, whether or not the proposed conservatee is
35 receiving or is entitled to receive benefits from the
36 Veterans Administration and the estimated amount of
37 the monthly benefit payable by the Veterans
38 Administration for the proposed conservatee.

39 (f) The petition may include an application for any
40 order or orders authorized under this division, including,

1 but not limited to, orders under Chapter 4 (commencing
2 with Section 1870).

3 (g) The petition may include a further statement that
4 the proposed conservatee is not willing to attend the
5 hearing on the petition, does not wish to contest ~~he~~ *the*
6 establishment of the conservatorship, and does not object
7 to the proposed conservator or prefer that another person
8 act as conservator.

9 (h) In the case of an allegedly developmentally
10 disabled adult the petition shall set forth the following:

11 (1) The nature and degree of the alleged disability, the
12 specific duties and powers requested by or for the limited
13 conservator, and the limitations of civil and legal rights
14 requested to be included in the court's order of
15 appointment.

16 (2) Whether or not the proposed limited conservatee
17 is or is alleged to be developmentally disabled.

18 Reports submitted pursuant to Section 416.8 of the
19 Health and Safety Code meet the requirements of this
20 section, and conservatorships filed pursuant to Article 7.5
21 (commencing with Section 416) of Part 1 of Division 1 of
22 the Health and Safety Code are exempt from providing
23 the supplemental information required by this section, so
24 long as the guidelines adopted by the State Department
25 of Developmental Services for regional centers require
26 the same information which is required pursuant to this
27 section.

28 SEC. 9. Section 1822 of the Probate Code is amended
29 to read:

30 1822. (a) At least 15 days before the hearing on the
31 petition for appointment of a conservator, notice of the
32 time and place of the hearing shall be given as provided
33 in this section. The notice shall be accompanied by a copy
34 of the petition. The court may not shorten the time for
35 giving the notice of hearing under this section.

36 (b) Notice shall be mailed to the following persons:

37 (1) The spouse, if any, *or domestic partner, if any*, of
38 the proposed conservatee at the address stated in the
39 petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(e) If the proposed conservatee is a person with developmental disabilities, at least 30 days before the day of the hearing on the petition, the petitioner shall mail a notice of the hearing and a copy of the petition to the regional center identified in Section 1827.5.

SEC. 10. Section 1829 of the Probate Code is amended to read:

1829. Any of the following persons may appear at the hearing to support or oppose the petition:

(a) The proposed conservatee.

(b) The spouse *or domestic partner* of the proposed conservatee.

(c) A relative of the proposed conservatee.

(d) Any interested person or friend of the proposed conservatee.

SEC. 11. Section 1861 of the Probate Code is amended to read:

1861. (a) A petition for the termination of the conservatorship may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse, *domestic partner*, or any ~~interested person or~~ relative or friend of the conservatee *or other interested person*.

(b) The petition shall state facts showing that the conservatorship is no longer required.

SEC. 12. Section 1863 of the Probate Code is amended to read:

1 1863. (a) The court shall hear and determine the
2 matter according to the law and procedure relating to the
3 trial of civil actions, including trial by jury if demanded.
4 The conservator, the conservatee, or the spouse, *or*
5 *domestic partner*, or any relative or friend of the
6 conservatee or other interested person may appear and
7 support or oppose the petition.

8 (b) If the court determines that the conservatorship is
9 no longer required or that grounds for establishment of
10 a conservatorship of the person or estate, or both, no
11 longer exist, the court shall make ~~such a~~ *this* finding and
12 shall enter judgment terminating the conservatorship
13 accordingly.

14 (c) At the hearing, or thereafter on further notice and
15 hearing, the conservator may be discharged and the bond
16 given by the conservator may be exonerated upon the
17 settlement and approval of the conservator's final
18 account by the court.

19 (d) Termination of conservatorship does not preclude
20 a new proceeding for appointment of a conservator on
21 the same or other grounds.

22 SEC. 13. Section 1871 of the Probate Code is amended
23 to read:

24 1871. Nothing in this article shall be construed to deny
25 a conservatee any of the following:

26 (a) The right to control an allowance provided under
27 Section 2421.

28 (b) The right to control wages or salary to the extent
29 provided in Section 2601.

30 (c) The right to make a will.

31 (d) The right to enter into transactions to the extent
32 reasonable to provide the necessities of life to the
33 conservatee and the spouse and minor children *of the*
34 *conservatee and to provide the basic living expenses, as*
35 *defined in Section 297 of the Family Code, to the domestic*
36 *partner* of the conservatee.

37 SEC. 14. Section 1873 of the Probate Code is amended
38 to read:

39 1873. (a) In the order appointing the conservator or
40 upon a petition filed under Section 1874, the court may by

1 order authorize the conservatee, subject to Section 1876,
2 to enter into ~~such~~ transactions or types of transactions as
3 may be appropriate in the circumstances of the particular
4 conservatee and conservatorship estate. The court, by
5 order, may modify the legal capacity a conservatee would
6 otherwise have under Section 1872 by broadening or
7 restricting the power of the conservatee to enter into
8 ~~such~~ transactions or types of transactions as may be
9 appropriate in the circumstances of the particular
10 conservatee and conservatorship estate.

11 (b) In an order made under this section, the court may
12 include ~~such~~ limitations or conditions on the exercise of
13 the authority granted to the conservatee as the court
14 determines to be appropriate including, but not limited
15 to, the following:

16 (1) A requirement that for specific types of
17 transactions or for all transactions authorized by the
18 order, the conservatee obtain prior approval of the
19 transaction by the court or conservator before exercising
20 the authority granted by the order.

21 (2) A provision that the conservator has the right to
22 avoid any transaction made by the conservatee pursuant
23 to the authority of the order if the transaction is not one
24 into which a reasonably prudent person might enter.

25 (c) The court, in its discretion, may provide in the
26 order that, unless extended by subsequent order of the
27 court, the order or specific provisions of the order
28 terminate at a time specified in the order.

29 (d) An order under this section continues in effect
30 until the earliest of the following times:

31 (1) The time specified in the order, if any.

32 (2) The time the order is modified or revoked.

33 (3) The time the conservatorship of the estate is
34 terminated.

35 (e) An order under this section may be modified or
36 revoked upon petition filed by the conservator,
37 conservatee, the spouse *or domestic partner* of the
38 conservatee, or any relative or friend of the conservatee,
39 or any interested person. Notice of the hearing on the
40 petition shall be given for the period and in the manner



1 provided in Chapter 3 (commencing with Section 1460)
2 of Part 1.

3 SEC. 15. Section 1874 of the Probate Code is amended
4 to read:

5 1874. (a) After a conservator has been appointed, a
6 petition requesting an order under Section 1873 may be
7 filed by any of the following:

8 (1) The conservator.

9 (2) The conservatee.

10 (3) The spouse, *domestic partner*, or any relative or
11 friend of the conservatee.

12 (b) Notice of the hearing on the petition shall be given
13 for the period and in the manner provided in Chapter 3
14 (commencing with Section 1460) of Part 1.

15 SEC. 16. Section 1891 of the Probate Code is amended
16 to read:

17 1891. (a) A petition may be filed under this article
18 requesting that the court make an order under Section
19 1880 or that the court modify or revoke an order made
20 under Section 1880. The petition shall state facts showing
21 that the order requested is appropriate.

22 (b) The petition may be filed by any of the following:

23 (1) The conservator.

24 (2) The conservatee.

25 (3) The spouse, *domestic partner*, or any relative or
26 friend of the conservatee.

27 (c) The petition shall set forth, so far as they are known
28 to the petitioner, the names and addresses of the spouse
29 or *domestic partner* and of the relatives of the
30 conservatee within the second degree.

31 SEC. 17. Section 1895 of the Probate Code is amended
32 to read:

33 1895. (a) The conservatee, the spouse ~~or~~ *the*
34 *domestic partner*, any relative, or *any* friend of the
35 conservatee, the conservator, or any other interested
36 person may appear at the hearing to support or oppose
37 the petition.

38 (b) Except where the conservatee is absent from the
39 hearing and is not required to attend the hearing under
40 the provisions of Section 1893 and any showing required

1 by Section 1893 has been made, the court shall, prior to
2 granting the petition, inform the conservatee of all of the
3 following:

4 (1) The nature and purpose of the proceeding.

5 (2) The nature and effect on the conservatee's basic
6 rights of the order requested.

7 (3) The conservatee has the right to oppose the
8 petition, to be represented by legal counsel if the
9 conservatee so chooses, and to have legal counsel
10 appointed by the court if unable to retain legal counsel.

11 (c) After the court informs the conservatee of the
12 matters listed in subdivision (b) and prior to granting the
13 petition, the court shall consult the conservatee to
14 determine the conservatee's opinion concerning the
15 order requested in the petition.

16 SEC. 18. Section 2212 of the Probate Code is amended
17 to read:

18 2212. The petition for transfer may be filed only by
19 one or more of the following:

20 (a) The guardian or conservator.

21 (b) The ward or conservatee.

22 (c) The spouse of the ward or *the spouse or domestic*
23 *partner of the* conservatee.

24 (d) A relative or friend of the ward or conservatee.

25 (e) Any other interested person.

26 SEC. 19. Section 2213 of the Probate Code is amended
27 to read:

28 2213. The petition for transfer shall set forth all of the
29 following:

30 (a) The county to which the proceeding is to be
31 transferred.

32 (b) The name and address of the ward or conservatee.

33 (c) A brief description of the character, value, and
34 location of the property of the ward or conservatee.

35 (d) The reasons for the transfer.

36 (e) The names and addresses, so far as they are known
37 to the petitioner, of the spouse and of the relatives of the
38 ward *within the second degree*, or *of the spouse or*
39 *domestic partner and of the relatives of the* conservatee
40 within the second degree.

1 (f) The name and address of the guardian or
2 conservator if other than the petitioner.

3 SEC. 20. Section 2357 of the Probate Code is amended
4 to read:

5 2357. (a) As used in this section:

6 (1) “Guardian or conservator” includes a temporary
7 guardian of the person or a temporary conservator of the
8 person.

9 (2) “Ward or conservatee” includes a person for whom
10 a temporary guardian of the person or temporary
11 conservator of the person has been appointed.

12 (b) If the ward or conservatee requires medical
13 treatment for an existing or continuing medical condition
14 which is not authorized to be performed upon the ward
15 or conservatee under Section 2252, 2353, 2354, or 2355,
16 and the ward or conservatee is unable to give an informed
17 consent to ~~such~~ *this* medical treatment, the guardian or
18 conservator may petition the court under this section for
19 an order authorizing ~~such~~ *the* medical treatment and
20 authorizing the guardian or conservator to consent on
21 behalf of the ward or conservatee to ~~such~~ *the* medical
22 treatment.

23 (c) The petition shall state, or set forth by medical
24 affidavit attached thereto, all of the following so far as is
25 known to the petitioner at the time the petition is filed:

26 (1) The nature of the medical condition of the ward or
27 conservatee which requires treatment.

28 (2) The recommended course of medical treatment
29 which is considered to be medically appropriate.

30 (3) The threat to the health of the ward or conservatee
31 if authorization to consent to the recommended course of
32 treatment is delayed or denied by the court.

33 (4) The predictable or probable outcome of the
34 recommended course of treatment.

35 (5) The medically available alternatives, if any, to the
36 course of treatment recommended.

37 (6) The efforts made to obtain an informed consent
38 from the ward or conservatee.

39 (d) Upon the filing of the petition, the court shall
40 notify the attorney of record for the ward or conservatee,

1 if any, or shall appoint the public defender or private
2 counsel under Section 1471, to consult with and represent
3 the ward or conservatee at the hearing on the petition
4 and, if that appointment is made, Section 1472 applies.

5 (e) The hearing on the petition may be held pursuant
6 to an order of the court prescribing the notice to be given
7 of the hearing. The order shall specify the period of notice
8 of the hearing and the period so fixed shall take into
9 account (1) the existing medical facts and circumstances
10 set forth in the petition or in a medical affidavit attached
11 to the petition or in a medical affidavit presented to the
12 court and (2) the desirability, where the condition of the
13 ward or conservatee permits, of giving adequate notice
14 to all interested persons.

15 (f) A copy of the notice of hearing or of the order
16 prescribing notice of hearing, and a copy of the petition,
17 shall be personally served or mailed, as prescribed in the
18 order, on all of the following:

19 (1) The ward or conservatee.

20 (2) The attorney of record for the ward or
21 conservatee, if any, or the attorney appointed by the
22 court to represent the ward or conservatee at the hearing.

23 (3) Such other persons, if any, as the court in its
24 discretion may require in the order, which may include
25 the spouse of the ward, *the spouse or domestic partner of*
26 *the* conservatee, and any known relatives of the ward or
27 conservatee within the second degree.

28 (g) Notwithstanding subdivisions (e) and (f), the
29 matter may be submitted for the determination of the
30 court upon proper and sufficient medical affidavits or
31 declarations if the attorney for the petitioner and the
32 attorney for the ward or conservatee so stipulate and
33 further stipulate that there remains no issue of fact to be
34 determined.

35 (h) The court may make an order authorizing the
36 recommended course of medical treatment of the ward
37 or conservatee and authorizing the guardian or
38 conservator to consent on behalf of the ward or
39 conservatee to the recommended course of medical

1 treatment for the ward or conservatee if the court
2 determines from the evidence all of the following:

3 (1) The existing or continuing medical condition of
4 the ward or conservatee requires the recommended
5 course of medical treatment.

6 (2) If untreated, there is a probability that the
7 condition will become life-endangering or result in a
8 serious threat to the physical or mental health of the ward
9 or conservatee.

10 (3) The ward or conservatee is unable to give an
11 informed consent to the recommended course of
12 treatment.

13 (i) Upon petition of the ward or conservatee or other
14 interested person, the court may order that the guardian
15 or conservator obtain or consent to, or obtain and consent
16 to, specified medical treatment to be performed upon the
17 ward or conservatee. Notice of the hearing on the petition
18 under this subdivision shall be given for the period and in
19 the manner provided in Chapter 3 (commencing with
20 Section 1460) of Part 1.

21 SEC. 21. Section 2423 of the Probate Code is amended
22 to read:

23 2423. (a) Upon petition of the conservator, the
24 conservatee, the spouse *or domestic partner* of the
25 conservatee, or a relative within the second degree of the
26 conservatee, the court may by order authorize or direct
27 the conservator to pay and distribute surplus income of
28 the estate or any part of ~~such~~ *the* surplus income (not
29 used for the support, maintenance, and education of the
30 conservatee and of those legally entitled to support,
31 maintenance, or education from the conservatee) to the
32 spouse *or domestic partner* of the conservatee and to ~~such~~
33 relatives within the second degree of the conservatee
34 whom the conservatee would, in the judgment of the
35 court, have aided but for the existence of the
36 conservatorship. The court in ordering payments under
37 this section may impose conditions if the court
38 determines that the conservatee would have imposed
39 ~~such~~ *the* conditions if the conservatee had the capacity to
40 act.

(b) The granting of the order and the amounts and proportions of the payments are discretionary with the court, but the court shall consider all of the following:

(1) The amount of surplus income available after adequate provision has been made for the comfortable and suitable support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee.

(2) The circumstances and condition of life to which the conservatee and the spouse *or domestic partner* and ~~such~~ relatives have been accustomed.

(3) The amount ~~which~~ *that* the conservatee would in the judgment of the court have allowed the spouse *or domestic partner* and ~~such~~ relatives but for the existence of the conservatorship.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 22. Section 2430 of the Probate Code is amended to read:

2430. (a) Subject to subdivisions (b) and (c), the guardian or conservator shall pay the following from any principal and income of the estate:

(1) The debts incurred by the ward or conservatee before creation of the guardianship or conservatorship, giving priority to the debts described in Section 2431 to the extent required by that section.

(2) The debts incurred by the ward or conservatee during the guardianship or conservatorship to provide the necessities of life to the ward or conservatee, and to the spouse and minor children of the ward or conservatee, to the extent the debt is reasonable. *Also, the debts reasonably incurred by the conservatee during the conservatorship to provide the basic living expenses, as defined in Section 297 of the Family Code, to the domestic partner of the conservatee.* The guardian or conservator may deduct the amount of any payments for ~~such~~ *these* debts from any allowance otherwise payable to the ward or conservatee.

(3) In the case of a conservatorship, any other debt incurred by the conservatee during the conservatorship only if the debt satisfies the requirements of any order made under Chapter 4 (commencing with Section 1870) of Part 3.

(4) The reasonable expenses incurred in the collection, care, and administration of the estate, but court authorization is required for payment of compensation to any of the following:

~~(i)~~

(A) The guardian or conservator of the person or estate or both.

~~(ii)~~

(B) An attorney for the guardian or conservator of the person or estate or both.

~~(iii)~~

(C) An attorney for the ward or conservatee.

~~(iv)~~

(D) An attorney for the estate.

~~(v)~~

(E) The public guardian for the costs and fee under Section 2902.

(b) The payments provided for by paragraph (3) of subdivision (a) are not required to be made to the extent ~~such~~ *the* payments would impair the ability to provide necessities of life to the conservatee and the spouse and minor children *of the conservatee and to provide the basic living expenses, as defined in Section 297 of the Family Code, of the domestic partner* of the conservatee.

(c) The guardian or conservator may petition the court under Section 2403 for instructions when there is doubt whether a debt should be paid under this section.

SEC. 23. Section 2504 of the Probate Code is amended to read:

2504. Court approval is required for the compromise or settlement of any of the following:

(a) A claim for the support, maintenance, or education of (1) the ward or conservatee, or (2) a person whom the ward or conservatee is legally obligated to support, maintain, or educate, against any other person

1 (including, but not limited to, the spouse or parent of the
2 ward or the spouse, *domestic partner*, parent, or adult
3 child of the conservatee).

4 (b) A claim of the ward or conservatee for wrongful
5 death.

6 (c) A claim of the ward or conservatee for physical or
7 nonphysical harm to the person.

8 SEC. 24. Section 2572 of the Probate Code is amended
9 to read:

10 2572. An order authorizing the guardian or
11 conservator to purchase real property may authorize the
12 guardian or conservator to join with the spouse of the
13 ward or *the spouse or domestic partner of the*
14 conservatee or with any other person or persons in the
15 purchase of the real property, or an interest, equity, or
16 estate therein, in severalty, in common, in community, or
17 in joint tenancy, for cash or upon a credit or for part cash
18 and part credit. When the court authorizes the purchase
19 of real property, the court may order the guardian or
20 conservator to execute all necessary instruments and
21 commitments to complete the transaction.

22 SEC. 25. Section 2580 of the Probate Code is amended
23 to read:

24 2580. (a) The conservator or other interested person
25 may file a petition under this article for an order of the
26 court authorizing or requiring the conservator to take a
27 proposed action for any one or more of the following
28 purposes:

29 (1) Benefiting the conservatee or the estate.

30 (2) Minimizing current or prospective taxes or
31 expenses of administration of the conservatorship estate
32 or of the estate upon the death of the conservatee.

33 (3) Providing gifts for any purposes, and to any
34 charities, relatives (including the other spouse *or*
35 *domestic partner*), friends, or other objects of bounty, as
36 would be likely beneficiaries of gifts from the
37 conservatee.

38 (b) The action proposed in the petition may include,
39 but is not limited to, the following:



1 (1) Making gifts of principal or income, or both, of the
2 estate, outright or in trust.

3 (2) Conveying or releasing the conservatee's
4 contingent and expectant interests in property, including
5 marital property rights and any right of survivorship
6 incident to joint tenancy or tenancy by the entirety.

7 (3) Exercising or releasing the conservatee's powers as
8 donee of a power of appointment.

9 (4) Entering into contracts.

10 (5) Creating for the benefit of the conservatee or
11 others, revocable or irrevocable trusts of the property of
12 the estate, which trusts may extend beyond the
13 conservatee's disability or life. A special needs trust for
14 money paid pursuant to a compromise or judgment for a
15 conservatee may be established only under Chapter 4
16 (commencing with Section 3600) of Part 8, and not under
17 this article.

18 (6) Transferring to a trust created by the conservator
19 or conservatee any property unintentionally omitted
20 from the trust.

21 (7) Exercising options of the conservatee to purchase
22 or exchange securities or other property.

23 (8) Exercising the rights of the conservatee to elect
24 benefit or payment options, to terminate, to change
25 beneficiaries or ownership, to assign rights, to borrow, or
26 to receive cash value in return for a surrender of rights
27 under any of the following:

28 ~~(i)~~

29 (A) Life insurance policies, plans, or benefits.

30 ~~(ii)~~

31 (B) Annuity policies, plans, or benefits.

32 ~~(iii)~~

33 (C) Mutual fund and other dividend investment plans.

34 ~~(iv)~~

35 (D) Retirement, profit sharing, and employee welfare
36 plans and benefits.

37 (9) Exercising the right of the conservatee to elect to
38 take under or against a will.

1 (10) Exercising the right of the conservatee to disclaim
2 any interest that may be disclaimed under Part 8
3 (commencing with Section 260) of Division 2.

4 (11) Exercising the right of the conservatee ~~(i)–(A)~~ to
5 revoke a revocable trust or ~~(ii)–(B)~~ to surrender the right
6 to revoke a revocable trust, but the court shall not
7 authorize or require the conservator to exercise the right
8 to revoke a revocable trust if the instrument governing
9 the trust ~~(i)–(A)~~ evidences an intent to reserve the right
10 of revocation exclusively to the conservatee, ~~(ii)–(B)~~
11 provides expressly that a conservator may not revoke the
12 trust, or ~~(iii)–(C)~~ otherwise evidences an intent that
13 would be inconsistent with authorizing or requiring the
14 conservator to exercise the right to revoke the trust.

15 (12) Making an election referred to in Section 13502 or
16 an election and agreement referred to in Section 13503.

17 SEC. 26. Section 2614.5 of the Probate Code is
18 amended to read:

19 2614.5. (a) If the guardian or conservator fails to file
20 an inventory and appraisal within the time allowed by law
21 or by court order, upon request of the ward or
22 conservatee, the spouse *of the ward or the spouse or*
23 *domestic partner of the conservatee*, any relative or
24 friend of the ward or conservatee, or any interested
25 person, the court shall order the guardian or conservator
26 to file the inventory and appraisal within ~~such~~ *the* time as
27 the order prescribes or to show cause why the guardian
28 or conservator should not be removed. The person who
29 requested the order shall serve it upon the guardian or
30 conservator in the manner provided in Section 415.10 or
31 415.30 of the Code of Civil Procedure or in ~~such~~ *a* manner
32 as is ordered by the court.

33 (b) If the guardian or conservator fails to file the
34 inventory and appraisal as required by the order within
35 the time prescribed in the order, unless good cause is
36 shown for not doing so, the court, on its own motion or on
37 petition, may remove the guardian or conservator,
38 revoke the letters of guardianship or conservatorship, and
39 enter judgment accordingly, and order the guardian or



1 conservator to file an account and to surrender the estate
2 to the person legally entitled thereto.

3 (c) The procedure provided in this section is optional
4 and does not preclude the use of any other remedy or
5 sanction when an inventory and appraisal is not timely
6 filed.

7 SEC. 27. Section 2622 of the Probate Code is amended
8 to read:

9 2622. The ward or conservatee, the spouse *of the ward*
10 or *the spouse or domestic partner of the conservatee*, any
11 relative or friend of the ward or conservatee, or any
12 creditor or other interested person may file written
13 objections to the account of the guardian or conservator,
14 stating the items of the account to which objection is
15 made and the basis for the objection.

16 SEC. 28. Section 2651 of the Probate Code is amended
17 to read:

18 2651. The ward or conservatee, the spouse *of the ward*
19 or *the spouse or domestic partner of the conservatee*, any
20 relative or friend of the ward or conservatee, or any
21 interested person may apply by petition to the court to
22 have the guardian or conservator removed. The petition
23 shall state facts showing cause for removal.

24 SEC. 29. Section 2653 of the Probate Code is amended
25 to read:

26 2653. (a) The guardian or conservator, the ward or
27 conservatee, the spouse *of the ward* or *the spouse or*
28 *domestic partner of the conservatee*, any relative or
29 friend of the ward or conservatee, and any interested
30 person, may appear at the hearing and support or oppose
31 the petition.

32 (b) If the court determines that cause for removal of
33 the guardian or conservator exists, the court may remove
34 the guardian or conservator, revoke the letters of
35 guardianship or conservatorship, and enter judgment
36 accordingly and, in the case of a guardianship or
37 conservatorship of the estate, order the guardian or
38 conservator to file an account and to surrender the estate
39 to the person legally entitled thereto. If the guardian or

1 conservator fails to file the account as ordered, the court
2 may compel the account pursuant to Section 2629.

3 SEC. 30. Section 2681 of the Probate Code is amended
4 to read:

5 2681. A petition for appointment of a successor
6 conservator may be filed by any of the following:

7 (a) The conservatee.

8 (b) The spouse *or domestic partner* of the
9 conservatee.

10 (c) A relative of the conservatee.

11 (d) Any interested state or local entity or agency of
12 this state or any interested public officer or employee of
13 this state or of a local public entity of this state.

14 (e) Any other interested person or friend of the
15 conservatee.

16 SEC. 31. Section 2682 of the Probate Code is amended
17 to read:

18 2682. (a) The petition shall request that a successor
19 conservator be appointed for the person or estate, or
20 both, and shall specify the name and address of the
21 proposed successor conservator and the name and
22 address of the conservatee.

23 (b) The petition shall set forth, so far as they are known
24 to the petitioner, the names and addresses of the spouse
25 *or domestic partner* and of the relatives of the
26 conservatee within the second degree.

27 (c) If the petition is filed by one other than the
28 conservatee, the petition shall state whether or not the
29 petitioner is a creditor or debtor of the conservatee.

30 (d) If the conservatee is a patient in or on leave of
31 absence from a state institution under the jurisdiction of
32 the State Department of Mental Health or the State
33 Department of Developmental Services and that fact is
34 known to the petitioner, the petition shall state that fact
35 and name the institution.

36 (e) The petition shall state, so far as is known to the
37 petitioner, whether or not the conservatee is receiving or
38 is entitled to receive benefits from the Veterans
39 Administration and the estimated amount of the monthly



1 benefit payable by the Veterans Administration for the
2 conservatee.

3 (f) The petition shall state whether or not the
4 conservatee will be present at the hearing.

5 SEC. 32. Section 2687 of the Probate Code is amended
6 to read:

7 2687. The conservatee, the spouse, *the domestic*
8 *partner*, or any relative or friend of the conservatee, or
9 any other interested person may appear at the hearing to
10 support or oppose the petition.

11 SEC. 33. Section 2700 of the Probate Code is amended
12 to read:

13 2700. (a) At any time after the issuance of letters of
14 guardianship or conservatorship, the ward, if over 14
15 years of age or the conservatee, the spouse *of the ward* or
16 *the spouse or domestic partner of the conservatee*, any
17 relative or creditor of the ward or conservatee, or any
18 other interested person, in person or by attorney, may file
19 with the court clerk a written request for special notice.

20 (b) The request for special notice shall be so entitled
21 and shall set forth the name of the person and the address
22 to ~~which~~ *where* notices shall be sent.

23 (c) Special notice may be requested of any one or
24 more of the following matters:

25 (1) Petitions filed in the guardianship or
26 conservatorship proceeding.

27 (2) Inventories and appraisals of property in the
28 estate, including any supplemental inventories and
29 appraisals.

30 (3) Accounts of the guardian or conservator.

31 (4) Proceedings for the final termination of the
32 guardianship or conservatorship proceeding.

33 (d) Special notice may be requested of:

34 (1) Any one or more of the matters in subdivision (c)
35 by describing the matter or matters.

36 (2) All the matters in subdivision (c) by referring
37 generally to “the matters described in subdivision (c) of
38 Section 2700 of the Probate Code” or by using words of
39 similar meaning.

(e) A copy of the request shall be personally delivered or mailed to the guardian or conservator or to the attorney for the guardian or conservator. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received.

(f) When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service.

SEC. 34. Section 2803 of the Probate Code is amended to read:

2803. The petition shall set forth all of the following:

(a) The name and address of:

(1) The foreign guardian or conservator, who may but need not be the guardian or conservator appointed in this state.

(2) The ward or conservatee.

(3) The guardian or conservator, so far as is known to the petitioner.

(b) The names, ages, and addresses, so far as they are known to the petitioner, of the spouse *of the ward or the spouse or domestic partner of the conservatee* and of relatives of the ward or conservatee within the second degree.

(c) A brief description of the character, condition, value, and location of the personal property sought to be transferred.

(d) A statement whether the foreign guardian or conservator has agreed to accept the transfer of the property. If the foreign guardian or conservator has so agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(e) A statement of the manner in which and by whom the foreign guardian or conservator was appointed.

(f) A general statement of the qualifications of the foreign guardian or conservator.

(g) The amount of bond, if any, of the foreign guardian or conservator.

(h) A general statement of the nature and value of the property of the ward or conservatee already under the

1 management or control of the foreign guardian or
2 conservator.

3 (i) The name of the court having jurisdiction of such
4 foreign guardian or conservator or of the accounts of such
5 foreign guardian or conservator or, if none, the court in
6 which a proceeding may be had with respect to the
7 guardianship or conservatorship if the property is
8 transferred.

9 (j) Whether there is any pending civil action in this
10 state against the guardian or conservator, the ward or
11 conservatee, or the estate.

12 (k) A statement of the reasons for the transfer.

13 SEC. 35. Section 2805 of the Probate Code is amended
14 to read:

15 2805. Any of the following may appear and file
16 written objections to the petition:

17 (a) Any person required to be listed in the petition.

18 (b) Any creditor of the ward or conservatee or of the
19 estate.

20 (c) The spouse *of the ward or the spouse or domestic*
21 *partner of the conservatee*, or any relative or friend of the
22 ward or conservatee.

23 (d) Any other interested person.

24 SEC. 36. Section 6240 of the Probate Code is amended
25 to read:

26 6240. The following is the California statutory will
27 form:

28
29 QUESTIONS AND ANSWERS ABOUT THIS
30 CALIFORNIA STATUTORY WILL
31

32 The following information, in question and answer
33 form, is not a part of the California Statutory Will. It is
34 designed to help you understand about Wills and to
35 decide if this Will meets your needs. This Will is in a
36 simple form. The complete text of each paragraph of this
37 Will is printed at the end of the Will.

38
39 1. *What happens if I die without a Will?* If you die
40 without a Will, what you own (your “assets”) in your

1 name alone will be divided among your spouse, children,
2 or other relatives according to state law. The court will
3 appoint a relative to collect and distribute your assets. *A*
4 *domestic partner will not have a right to inherit your*
5 *property without a Will.*

6 2. *What can a Will do for me?* In a Will you may
7 designate who will receive your assets at your death. You
8 may designate someone (called an “executor”) to appear
9 before the court, collect your assets, pay your debts and
10 taxes, and distribute your assets as you specify. You may
11 nominate someone (called a “guardian”) to raise your
12 children who are under age 18. You may designate
13 someone (called a “custodian”) to manage assets for your
14 children until they reach any age between 18 and 25.

15 3. *Does a Will avoid probate?* No. With or without a
16 Will, assets in your name alone usually go through the
17 court probate process. The court’s first job is to determine
18 if your Will is valid.

19 4. *What is community property?* Can I give away my
20 share in my Will? If you are married and you or your
21 spouse earned money during your marriage from work
22 and wages, that money (and the assets bought with it) is
23 community property. Your Will can only give away your
24 one-half of community property. Your Will cannot give
25 away your spouse’s one-half of community property.

26 5. *Does my Will give away all of my assets?* Do all
27 assets go through probate? No. Money in a joint tenancy
28 bank account automatically—~~belong~~ *belongs* to the other
29 named owner without probate. If your spouse, *domestic*
30 *partner*, or child is on the deed to your house as a joint
31 tenant, the house automatically passes to him or her. Life
32 insurance and retirement plan benefits may pass directly
33 to the named beneficiary. A Will does not necessarily
34 control how these types of “nonprobate” assets pass at
35 your death.

36 6. *Are there different kinds of Wills?* Yes. There are
37 handwritten Wills, typewritten Wills, attorney-prepared
38 Wills, and statutory Wills. All are valid if done precisely
39 as the law requires. You should see a lawyer if you do not



1 want to use this statutory Will or if you do not understand
2 this form.

3 7. *Who may use this Will?* This Will is based on
4 California law. It is designed only for California residents.
5 You may use this form if you are single, married, *a*
6 *member of a domestic partnership*, or divorced. You must
7 be age 18 or older and ~~or~~ of sound mind.

8 8. *Are there any reasons why I should NOT use this*
9 *statutory Will?* Yes. This is a simple Will. It is not designed
10 to reduce death taxes or other taxes. Talk to a lawyer to
11 do tax planning, especially if (i) your assets will be worth
12 more than \$600,000 at your death, (ii) you own ~~business~~
13 ~~related~~ *business-related* assets, (iii) you want to create a
14 trust fund for your children's education or other
15 purposes, (iv) you own assets in some other state, (v) you
16 want to disinherit your spouse or descendants, or (vi) you
17 have valuable interests in pension or ~~profit-sharing~~
18 *profit-sharing* plans. You should talk to a lawyer who
19 knows about estate planning if this Will does not meet
20 your needs. This Will treats most adopted children like
21 natural children. You should talk to a lawyer if you have
22 stepchildren or foster children whom you have not
23 adopted.

24 9. *May I add or cross out any words on this Will?* No.
25 If you do, the Will may be invalid or the court may ignore
26 the crossed out or added words. You may only fill in the
27 blanks. You may amend this Will by a separate document
28 (called a codicil). Talk to a lawyer if you want to do
29 something with your assets which is not allowed in this
30 form.

31 10. *May I change my Will?* Yes. A Will is not effective
32 until you die. You may make and sign a new Will. You may
33 change your Will at any time, but only by an amendment
34 (called a codicil). You can give away or sell your assets
35 before your death. Your Will only acts on what you own
36 at death.

37 11. *Where should I keep my Will?* After you and the
38 witnesses sign the Will, keep your Will in your safe deposit
39 box or other safe place. You should tell trusted family
40 members where your Will is kept.

1 12. *When should I change my Will?* You should make
2 and sign a new Will if you marry or divorce after you sign
3 this Will. Divorce or annulment automatically cancels all
4 property stated to pass to a former husband or wife under
5 this Will, and revokes the designation of a former spouse
6 as executor, custodian, or guardian. You should sign a new
7 Will when you have more children, or if your spouse,
8 *domestic partner*, or a child dies. You may want to change
9 your Will if there is a large change in the value of your
10 assets. *You may also want to change your Will if you enter*
11 *a domestic partnership or your domestic partnership has*
12 *been terminated after you sign this Will.*

13 13. *What can I do if I do not understand something in*
14 *this Will?* If there is anything in this Will you do not
15 understand, ask a lawyer to explain it to you.

16 14. *What is an executor?* An “executor” is the person
17 you name to collect your assets, pay your debts and taxes,
18 and distribute your assets as the court directs. It may be
19 a person or it may *be* a qualified bank or trust company.

20 15. *Should I require a bond?* You may require that an
21 executor post a “bond.” A bond is a form of insurance to
22 replace assets that may be mismanaged or stolen by the
23 executor. The cost of the bond is paid from the estate’s
24 assets.

25 16. *What is a guardian?* Do I need to designate one? If
26 you have children under age 18, you should designate a
27 guardian of their “persons” to raise them.

28 17. *What is a custodian?* Do I need to designate one?
29 A “custodian” is a person you may designate to manage
30 assets for someone (including a child) who is between
31 ages 18 and 25 and who receives assets under your Will.
32 The custodian manages the assets and pays as much as the
33 custodian determines is proper for health, support,
34 maintenance, and education. The custodian delivers
35 what is left to the person when the person reaches the age
36 you choose (between 18 and 25). No bond is required of
37 a custodian.

38 18. *Should I ask people if they are willing to serve*
39 *before I designate them as executor, guardian, or*
40 *custodian?* Probably yes. Some people and banks and



1 trust companies may not consent to serve or may not be
2 qualified to act.

3 19. *What happens if I make a gift in this Will to*
4 *someone and they die before I do?* A person must survive
5 you by 120 hours to take a gift under this Will. If they do
6 not, then the gift fails and goes with the rest of your assets.
7 If the person who does not survive you is a relative of you
8 or your spouse, then certain assets may go to the relative's
9 descendants.

10 20. *What is a trust?* There are many kinds of trusts,
11 including trusts created by Wills (called "testamentary
12 trusts") and trusts created during your lifetime (called
13 "revocable living trusts"). Both kinds of trusts are
14 long-term arrangements where a manager (called a
15 "trustee") invests and manages assets for someone
16 (called a "beneficiary") on the terms you specify. Trusts
17 are too complicated to be used in this statutory Will. You
18 should see a lawyer if you want to create a trust.

19 21. *What is a domestic partner?* You have a domestic
20 partner if you have met certain legal requirements and
21 filed a form entitled "Declaration of Domestic
22 Partnership" with the Secretary of State. If you have not
23 filed a Declaration of Domestic Partnership with the
24 Secretary of State, you do not meet the required
25 definition and should not use the section of the statutory
26 Will form that refers to domestic partners. If you are
27 unsure if you have a domestic partner or if your domestic
28 partnership meets the required definition, please contact
29 the Secretary of State's office.

30

31

INSTRUCTIONS

32

33 1. *READ THE WILL.* Read the whole Will first. If you
34 do not understand something, ask a lawyer to explain it
35 to you.

36 2. *FILL IN THE BLANKS.* Fill in the blanks. Follow the
37 instructions in the form carefully. Do not add any words
38 to the Will (except for filling in blanks) or cross out any
39 words.



1 3. *DATE AND SIGN THE WILL AND HAVE TWO*
2 *WITNESSES SIGN IT.* Date and sign the Will and have
3 two witnesses sign it. You and the witnesses should read
4 and follow the Notice to Witnesses found at the end of this
5 Will.



NOTE TO PRINTING OFFICE: INSERT
CAMERA-READY COPY HERE

for California Statutory Will

as printed on pages 17 to 22 of Ch. 1055, Stats. 1991.



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1 SEC. 37. Notwithstanding Section 17610 of the
2 Government Code, if the Commission on State Mandates
3 determines that this act contains costs mandated by the
4 state, reimbursement to local agencies and school
5 districts for those costs shall be made pursuant to Part 7
6 (commencing with Section 17500) of Division 4 of Title
7 2 of the Government Code. If the statewide cost of the
8 claim for reimbursement does not exceed one million
9 dollars (\$1,000,000), reimbursement shall be made from
10 the State Mandates Claims Fund. Notwithstanding
11 Section 17580 of the Government Code, unless otherwise
12 specified in this act, the provisions of this act shall become
13 operative on the same date that the act takes effect
14 pursuant to the California Constitution.

