

SUMMARY OF OMNIBUS CONSERVATORSHIP AND GUARDIANSHIP REFORM ACT OF 2006

On September 27, 2006, the Governor signed into law the Omnibus Conservatorship and Guardianship Reform Act of 2006, a four-bill package that makes comprehensive reforms to California's probate system and improves court oversight of probate conservatorship cases. Following is a summary of some of the key provisions in each of the bills.

AB 1363 (Jones); Stats. 2006, ch. 493

This bill imposes a variety of new duties on the courts and the Judicial Council, as well as on public guardians. Except where expressly noted, these provisions take effect on January 1, 2007.

New Judicial Officer Duties

Among other things, the bill:

- Requires the court, on and after July 1, 2007, to review probate conservatorships six months after appointment of the conservator and annually thereafter. However, at the first-year review and every subsequent review conducted under this provision, the court may set the next review in two years if the court determines that the conservator is acting in the best interests of the conservatee. In these cases, the court shall require the investigator to conduct a specified investigation one year before the next review and file a status report in the conservatee's court file regarding whether the conservatorship is still warranted and whether the conservator is acting in the best interests of the conservatee. If the court investigator so determines, no further hearing or court action in response to the investigator's status report is required. (§ 11.5; * Prob. Code, § 1850(a).)

Note: Limited conservatorships for persons with developmental disabilities are exempt from the new review requirements. However, the court may order a review of these cases at any time. (§ 11.7; Prob. Code, § 1850.5.)

Lanterman-Petris-Short (LPS) Act (mental health) cases also are exempt from the new review requirements, including the new requirements regarding temporary conservatorships. (§ 15.5; Prob. Code, § 2250.2. § 17.5; Prob. Code, § 2250.8.) Under current law, however, the court must review LPS conservatorships annually. (Welf. & Inst. Code, § 5361.)

- Allows the court, on and after July 1, 2007, on the court's own motion or upon request by any interested person, to take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed

* Unless otherwise indicated, all section references are to the bill under discussion.

hearing, and ordering the conservator to present an accounting of the assets of the estate. (§ 11.5; Prob. Code, § 1850(b).)

New Court Investigator Duties

Imposes a variety of new duties on court investigators, effective July 1, 2007, including:

- Conducting new investigations of all temporary conservatorships. (§ 17; Prob. Code, § 2250.6.) The investigation must be undertaken before the hearing on the temporary conservatorship or within two court days after the hearing.
- Mailing a copy of the investigator's report to the court, which was prepared in connection with the initial petition to establish a general conservatorship, to the proposed conservatee, the proposed conservatee's spouse or registered domestic partner, and the proposed conservatee's relatives within the first degree (unless the court determines that the mailing will result in harm to the conservatee). (§ 8; Prob. Code, § 1826(l)(3), (4).)
- Conducting new, full investigations six months after the initial appointment of the conservator. (§ 11.5; Prob. Code, § 1850(a) (1).)
- Conducting new status investigations at specified one-year intervals. (§ 11.5; Prob. Code, § 1850(a) (2).)
- Requiring investigations to be conducted without prior notice to the conservator (except as ordered by the court for necessity or preventing harm to the conservatee). (§ 12.5; Prob. Code, § 1851(a).)
- Expanding the scope of investigations to focus on the conservatee's placement, quality of care, and finances. (§ 12.5; Prob. Code, § 1851(a).)
- Conducting interviews in connection with temporary and general conservatorships with the petitioner, the proposed conservator (if different from the petitioner), the proposed conservatee's spouse or registered domestic partner, relatives, neighbors, and, if known, close friends. (§ 8; Prob. Code, § 1826(a). § 12.5; Prob. Code, § 1851(a). § 17; Prob. Code, § 2250.6.)
- Authorizing the investigator, upon his or her request to the conservator, to inspect and copy all of the conservator's books and records, including receipts and any expenditures of the conservatorship. (§ 12.5; Prob. Code, § 1851(a).)
- Complying, effective January 1, 2008, with new qualifications and education standards established by the Judicial Council. (§ 3; Prob. Code, § 1456.)

New Court Accounting Requirements

Imposes various new conditions on accountings that must be submitted to the courts by

guardians and conservators, effective July 1, 2007, as follows:

- Requires accountings submitted by guardians and conservators to include additional specified supporting documentation. (§ 24; Prob. Code, § 2620(c).)
- Requires accountings submitted by guardians and conservators to be subject to random and full review and verification by the court. (§ 24; Prob. Code, § 2620(d).)
- Requires the guardian or conservator to make available for inspection and copying, to any person designated by the court to verify the accuracy of the accounting, upon reasonable notice, all books and records, including receipts for any expenditures, of the guardianship or conservatorship. (§ 24; Prob. Code, § 2620(e).)

New Temporary Conservatorship Requirements

In addition to the new investigation requirements noted above, the bill also makes various other changes to the law governing temporary conservatorships, effective July 1, 2007, including clarifying:

- The circumstances under which a court may waive notice to the proposed conservatee regarding the hearing on the petition for the appointment of a temporary conservator. (§15; Prob. Code, § 2250.)
- The requirements for attendance of proposed temporary conservatees at hearings on petitions for the establishment of temporary conservatorships. (§ 16; Prob. Code, § 2250.4.)

New Judicial Council Duties

- *Qualification and Education Standards*—On or before January 1, 2008, the Judicial Council shall adopt a rule of court that specifies qualifications and education in conservatorships and guardianships that court-employed staff attorneys, examiners, investigators, and court-appointed counsel shall complete each year as well as the number of hours of education related to conservatorships or guardianships that a judge who is regularly assigned to probate matters shall complete upon assuming the probate assignment and for every three-year period thereafter. In formulating this rule, the Judicial Council must consult with interested parties, including the California Judges Association, the California Association of Superior Court Investigators, the California Public Defenders Association, the County Counsels' Association of California, the State Bar of California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers. (§ 3; Prob. Code, § 1456.)
- *Educational Self-Help Video*—The Judicial Council shall develop a short, user-friendly educational program to assist nonprofessional conservators and guardians who are not required to be licensed. The program, which must be provided free of

charge and is to be no more than three hours in duration, may be made available via video presentation or Internet access. (§ 4; Prob. Code, § 1457.)

- *Performance Standards*—On or before January 1, 2008, the Judicial Council shall report to the Legislature results of a study measuring effectiveness in conservatorship cases, with recommendations for statewide performance measures to be collected, best practices that serve to protect the rights of conservatees, and staffing needs to meet case processing measures. (§ 5; Prob. Code, § 1458.)
- *Form for Notice to Relatives*—On or before January 1, 2008, the Judicial Council shall develop a form for notice of hearings to the proposed conservatee’s spouse or registered domestic partner and relatives on petitions for appointment of conservators. (§ 7; Prob. Code, § 1822(f).)
- *Notice Concerning Rights of Conservatees*—On or before January 1, 2008, the Judicial Council shall develop a form for notice regarding the rights of conservatees, which will be attached to the order appointing the conservator and mailed to the conservatee and the conservatee’s relatives. (§ 10; Prob. Code, § 1830(c).)
- *Uniform Standards for Good-Cause Exceptions to Notice in Temporary Conservatorships and Guardianships*—On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good-cause exceptions to the five-day notice required for hearing petitions in temporary conservatorships and temporary guardianships, limiting those exceptions only to cases where waiver of the notice is essential to protect the proposed ward or conservatee, or the estate of the proposed ward or conservatee, from substantial harm. (§ 15; Prob. Code, § 2250(j).)
- *Uniform Standards of Conduct*—On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards of conduct for actions that conservators and guardians may take on behalf of conservatees and wards to ensure that their estates are maintained and conserved and to prevent loss or harm to conservatees and wards. This rule shall include, at a minimum, standards for determining the fees that may be charged to conservatees and wards and standards for asset management. In developing this rule, the Judicial Council shall consult with the California Judges Association; the California Association of Superior Court Investigators; the California Association of Public Administrators, Public Guardians, and Public Conservators; the State Bar of California; the National Guardianship Association; and the Association of Professional Geriatric Care Managers. (§ 22; Prob. Code, § 2410.)
- *Notice for Objections to Inventory and Appraisal*—By January 1, 2008, the Judicial Council shall develop a form notice to accompany the inventory and appraisal to be provided to the spouse or registered domestic partner and other

relatives of the conservatee or ward regarding how to file an objection. (§ 23; Prob. Code, § 2610(e).)

- *Accounting Forms*—By January 1, 2008, the Judicial Council shall develop a standard accounting form, a simplified accounting form, and rules for when the simplified accounting form may be used. In developing these forms and rules, the Judicial Council shall consult with the California Judges Association; the California Association of Superior Court Investigators; the California Association of Public Administrators, Public Guardians, and Public Conservators; the State Bar of California; and the California Society of Certified Public Accountants. (§ 24; Prob. Code, § 2620(a).)

New Public Guardian Duties

Among other things, the bill, effective January 1, 2007:

- Requires the public guardian to apply for appointment as guardian or conservator if there is an imminent threat to the person's health or safety or the person's estate. (§ 32; Prob. Code, § 2920(a) (1).)
- Allows the public guardian to apply for appointment in all other cases. (§ 32; Prob. Code, § 2920(a) (2).)
- Requires the public guardian to apply for appointment if the court so orders (as provided under current law), subject to the following new conditions:
 - The court must determine that there is no one else who is qualified and willing to act and that the appointment of the public guardian to serve as guardian or conservator appears to be in the best interests of the person.
 - However, if, before the petition for appointment is filed, the court determines that there is someone else who is qualified and willing to act as guardian or conservator, the court shall relieve the public guardian of the duty under the order.(§ 32; Prob. Code, § 2920(b).)
- Requires the public guardian to begin investigations within two business days of receiving a referral for guardianship or conservatorship. (§ 32; Prob. Code, § 2920(c).)
- Requires the public guardian, by January 1, 2008, to meet continuing education requirements established by the California Association of Public Administrators, Public Guardians, and Public Conservators. (§ 33; Prob. Code, § 2923.)

SB 1116 (Scott); Stats. 2006, ch. 490

This bill seeks to improve court oversight over proposed moves of conservatees and the sale of their personal residences. Among other things, the bill, effective January 1, 2007:

- Requires a guardian or conservator to select the residence of the ward or conservatee that is the least restrictive appropriate residence that is available and necessary to meet the needs of the ward or conservatee and that is in the best interests of the ward or conservatee (consistent with current law). (§ 1; Prob. Code, § 2352(a), (b).)
- Requires a guardian or conservator to file a notice of change of residence with the court, within 30 days of the date of the change, and to include in the notice a declaration that the change of residence is consistent with the above least restrictive–best interest standard. Requires the Judicial Council to develop, by January 1, 2008, one or more forms to implement this provision. (§ 1; Prob. Code, § 2352(e) (1).)
- Requires a guardian or conservator to mail a copy of the above notice to specified persons and to file a proof of service of the notice with the court. The court may, for good cause, waive this mailing requirement in order to prevent harm to the conservatee or ward. (§ 1; Prob. Code, § 2352(e) (2).)
- Provides that if a guardian or conservator proposes to remove the ward or conservatee from his or her personal residence:
 - The guardian or conservator must mail to specified persons a notice of his or her intention to change the residence.
 - In the absence of an emergency, the notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence.
 - If the notice is served less than 15 days before the proposed removal of the ward or conservatee, the guardian or conservator shall set forth the emergency basis for the removal.
 - The guardian or conservator shall file proof of service of the above notice with the court. (§ 1; Prob. Code, § 2352(e) (3).)
- Establishes a presumption that the personal residence of the conservatee at the time of commencement of the conservatorship proceeding is the least restrictive appropriate residence for the conservatee. Provides that in any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of evidence. (§ 2; Prob. Code, § 2352.5(a).)

- Requires a conservator, upon appointment, to determine the appropriate level of care for the conservatee, as follows:
 - The determination must include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence. (§ 2; Prob. Code, § 2352.5(b) (1).)
 - If the conservatee is living at a location other than his or her personal residence at the time of commencement of the proceeding, the determination must include either a plan to return the conservatee to his or her personal residence or an explanation of the limitations or restrictions on a return of the conservatee to his or her personal residence in the foreseeable future. (§ 2; Prob. Code, § 2352.5(b) (2).)
- Requires the conservator to make the above determination in writing, signed under penalty of perjury and submitted to the court within 60 days of appointment as conservator. (§ 2; Prob. Code, § 2352.5(c).)
- Requires the conservator to evaluate the conservatee’s placement and level of care if there is a material change in circumstances affecting the conservatee’s needs for placement and care. (§ 2; Prob. Code, § 2352.5(d).)

Note: Conservatees for whom the director of the Department of Developmental Services or a regional center for the developmentally disabled acts as the conservator and who receive services from a regional center are exempt from the above presumption and evaluation provisions. (§ 2; Prob. Code, § 2352.5(e).)

- Requires the conservator, when seeking authorization to sell the conservatee’s present or former personal residence, to inform the court why other alternatives, including but not limited to in-home care services, are not available. (§ 3; Prob. Code, § 2540(b).)
- Provides that if the last appraisal of the conservatee’s personal residence was conducted more than six months prior to the confirmation hearing, a new appraisal shall be required prior to the confirmation hearing unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the confirmation hearing. (§ 4; Prob. Code, § 2543(c).)
- Requires a conservator seeking an order under Probate Code section 2590 (independent exercise of powers) authorizing a sale of the conservatee’s personal residence to:
 - Demonstrate to the court that the terms of sale, including the price for which the property is to be sold and the commissions to be paid from the

estate, are in all respects in the best interests of the conservatee. (§ 7; Prob. Code, § 2591.5(a).)

- Comply with the provisions of Probate Code section 10309 concerning appraisal or new appraisal of the property for sale, as well as the minimum offer price. Provides that, notwithstanding section 10309, if the last appraisal of the conservatee’s personal residence was conducted more than six months before the proposed sale of the property, a new appraisal shall be required before the sale of the property unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year before the proposed sale of the property. For purposes of this provision, the date of sale is the date of the contract for sale of the property. (§ 7; Prob. Code, § 2591.5(b).)
- Within 15 days of the close of escrow, serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment of a conservator and all persons who have filed and served a request for special notice, and file a copy of the final escrow statement along with a proof of service on the court. (§ 7; Prob. Code, § 2591.5(c).)
- Allows the court, for good cause, to waive any of the above requirements in Probate Code section 2591.5 *except* the requirements regarding appraisal times in subdivision (b). (§ 7; Prob. Code, § 2591.5(d).)

SB 1550 (Figueroa); Stats. 2006, ch. 491

This bill creates the Professional Fiduciaries Act, which, effective July 1, 2008, requires licensure of private professional conservators, guardians, and other fiduciaries. Among other things, the bill:

- Establishes a licensing and disciplinary scheme for “professional fiduciaries” and defines the term as a person who acts as a conservator or guardian for two or more persons, at the same time, who are not related to the professional fiduciary or to each other by blood, adoption, marriage, or registered domestic partnership. “Professional fiduciary” also means a person who acts as a trustee or an agent under a durable power of attorney for health care or for finances for more than three people or three families, or a combination of people and families that total more than three, at the same time, who are not related to the professional fiduciary. (§ 3; Bus. & Prof. Code, § 6501(f).)
- Exempts from licensure any regional center for persons with developmental disabilities; brokers or securities dealers, including money market managers and those registered with the Federal Securities and Exchange Commission who by law act as “trustees” on behalf of their clients; enrolled agents acting within their scope of practice; financial institutions; public conservators, public guardians, and

- other state agencies; licensed attorneys; and certified public accountants. (§ 3; Bus. & Prof. Code, § 6501(f) (1)–(5).)
- Establishes the Professional Fiduciaries Bureau (bureau), located in the Department of Consumer Affairs, and requires the bureau chief appointed by the Governor to be confirmed by the Senate. (§ 3; Bus. & Prof. Code, § 6510.)
 - Establishes a Professional Fiduciaries Advisory Committee (advisory committee) within the bureau. The advisory committee shall have a public-member majority, and its members shall be appointed by the Governor, Speaker of the Assembly, and Senate Rules Committee. The advisory committee must meet at least once a quarter, and its meetings must be public. (§ 3; Bus. & Prof. Code, § 6511.)
 - Allows the bureau to adopt regulations pursuant to the Administrative Procedures Act, as specified, and requires the bureau, by regulation, to adopt a Professional Fiduciaries Code of Ethics, which shall comply with all statutory requirements as well as requirements developed by the Judicial Council and the courts. (§ 3; Bus. & Prof. Code, §§ 6517, 6520.)
 - Prohibits, on and after July 1, 2008, a person from holding himself or herself out to the public as a professional fiduciary unless he or she is licensed as a professional fiduciary under this act.
 - Prohibits, on and after July 1, 2008, a court from appointing a person to carry out the duties of a professional fiduciary unless he or she is licensed as a professional fiduciary under this act. (§ 3; Bus. & Prof. Code, § 6530. § 4; Prob. Code, § 60.1. § 5; Prob. Code, § 2340.)
 - Sets forth qualifications for licensure, including submitting to a criminal background check, passing a licensing examination administered by the bureau, having specified experience, and completing prelicensing education (and continuing education for license renewals), as specified. (§ 3; Bus. & Prof. Code, §§ 6533–6533.5, 6538–6539.)
 - Requires the bureau to deny a license to persons who meet any of specified criteria related to fraud or deceit, regardless of whether the applicant meets all of the other requirements for licensing. (§ 3; Bus. & Prof. Code, § 6536.)
 - Requires a licensee to keep and maintain records and file with the bureau annual statements containing specified information, and requires the bureau to make public specific information on each fiduciary. (§ 3; Bus. & Prof. Code, §§ 6560–6562, 6580(c).)
 - Authorizes the bureau to institute disciplinary proceedings and impose sanctions on licensees who violate a statute, regulation, or the Professional Fiduciaries Code of Ethics, or for other specified causes. Sanctions include administrative citations

and fines and license suspension, probation, or revocation. In addition, allows the bureau to refer licensees to the Attorney General or local district attorney for criminal prosecution. (§ 3; Bus. & Prof. Code, §§ 6580–6584.)

- Sunsets the Statewide Registry of Private Conservators and Guardians and the local court registry for professional fiduciaries, effective July 1, 2008. (§ 6; Prob. Code, § 2345. § 7; Prob. Code, § 2856.)
- Contains a sunset date of July 1, 2011, for the act, unless otherwise extended. Provides that if the bureau and chief sunset, the functions, duties, and responsibilities shall be transferred to the advisory committee, and the committee shall be established as a board within the Department of Consumer Affairs. (§ 3; Bus. & Prof. Code, § 6510(c). [See Governor’s signing message below.]

Governor’s Signing Message

I am signing Senate Bill 1550 because I believe that it is important to protect California’s vulnerable population from the financial abuse of unscrupulous professional fiduciaries that seek to do intentional harm.

However, clean-up legislation will be necessary in the next legislative session because of the way the author structured the bill. This bill establishes an unnecessary and complicated mechanism of transferring the responsibilities and jurisdiction of the newly created Professional Fiduciaries Bureau (Bureau) to a newly created Professional Fiduciaries Advisory Committee, which would then be established as a board within the Department of Consumer Affairs, after July 1, 2011. The creation of this arrangement is not justified and will leave consumers and the general public more confused by this regulatory scheme. Moreover, there is no rational, analytical justification to assume that in five years the Bureau would even need to be reconstituted as a full board. I would rather have a future Legislature evaluate that need at the time of the sunset review, instead of establishing the presumption now.

Therefore, my Administration will work with the Legislature to eventually clean up this bill so that the public can have faith that its State government is open, transparent, and easy to understand while protecting the interests of all Californians, especially its most vulnerable citizens.

Sincerely,
Arnold Schwarzenegger

SB 1716 (Bowen); Stats. 2006, ch. 492

Among other things, this bill establishes new procedures governing ex parte communications in probate cases, as follows:

- Provides, commencing January 1, 2008, that, in the absence of a stipulation to the contrary between parties who have filed pleadings in a proceeding under the Probate Code, there shall be no ex parte communications between any party, or attorney for the party, and the court concerning a subject raised in those pleadings, except as permitted or required by law. (§ 2; Prob. Code, § 1051(a),

(d). § 5; Welf. & Inst. Code, § 5372(a), (c).)

- Notwithstanding the above, permits the court, on and after January 1, 2008, to refer a matter to the court investigator or take other appropriate action in response to an ex parte communication regarding (1) a fiduciary (conservator, guardian, trustee, personal representative, attorney-in-fact, custodian under the California Uniform Transfer to Minors Act, or other legal representative) as to the fiduciary's performance of his or her duties and responsibilities, or (2) a person who is the subject of a conservatorship or guardianship proceeding.
- Specifies that any such action taken by the court shall be consistent with due process and requirements prescribed by existing law.
- Requires the court to disclose the ex parte communication to all parties and counsel. However, the court may, for good cause, dispense with the disclosure if necessary to protect the ward or conservatee from harm. (§ 2; Prob. Code, § 1051(b), (d). § 5, Welf. & Inst. Code, § 5372(a), (c).)
- Requires the Judicial Council, by January 1, 2008, to adopt a rule of court implementing the above provisions. (§ 2; Prob. Code, § 1051(c). § 5, Welf. & Inst. Code, § 5372(b).)

Note: The provisions in this bill that would have allowed the court to order a review of the conservatorship at any time (Prob. Code, § 1850) and required the court investigator's evaluation to include an examination of the conservatee's placement, quality of care, and finances (Prob. Code, § 1851) did not become operative as they were also contained in AB 1363, which was chaptered after this bill. (See §§ 5.5 and 5.7.) The versions of these two provisions in AB 1363 were enacted and become operative on July 1, 2007.

For further information or if you have any questions, please contact Daniel A. Pone, Senior Attorney, Administrative Office of the Courts, Office of Governmental Affairs, (916) 323-3121, daniel.pone@jud.ca.gov.