

CALIFORNIA JUDGES BENCHGUIDES

Benchguide 301

CONSERVATORSHIP PROCEEDINGS

[REVISED 2016]



JUDICIAL COUNCIL
OF CALIFORNIA

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I. [§301.1] SCOPE OF BENCHGUIDE

This benchguide discusses proceedings in conservatorships after the initial appointment. It includes inventory, management of the estate and its assets, substituted judgment, accounts, compensation, termination of the conservatorship, and removal of the conservator. The appointment of conservators and the powers and authority issues that may arise when a conservator is appointed are discussed in California Judges Benchguide 300: *Conservatorship: Appointment and Powers of Conservator* (Cal CJER) (hereafter Benchguide 300).

II. PROCEDURAL CHECKLISTS

A. [§301.2] Inventory

(1) *Determine whether inventory and appraisal (GC-040) has been timely filed (90 days after appointment or further time for reasonable cause as allowed by court).* Prob C §2610(a); see §301.4.

- JUDICIAL TIP: Consider setting a hearing in 90 days to determine whether the inventory and appraisal was filed as ordered. This provides a method of tracking whether it was timely filed.

(2) *Determine whether copy of inventory and appraisal and a notice of how to file an objection (GC-042) have been mailed to the conservatee and his or her attorney of record.* Prob C §2610(a); see §301.4.

(3) *Determine whether assets have been appraised by the appropriate person, conservator, independent expert, or probate referee.* Prob C §§8900 et seq; Prob C §2610(c); see §301.4.

(4) *Determine whether any timely objections to the inventory and appraisal have been filed, whether the objections have been set for hearing at least 15 days after filing of the objection, and whether notice of hearing has been properly given.* Prob C §2614(a), (b); see §301.10.

(5) *At the hearing, determine the objections and fix the true value of any asset to which objection has been filed. Determine whether an additional appraisal is needed.* Prob C §2614(c); see §301.10.

(6) *If inventory has not been timely filed and request is made, order the conservator to file the inventory and appraisal within the time prescribed in the order or to show cause why the conservator should not be removed.* Prob C §2614.5(a); see §301.11.

(7) *If the inventory is not then filed, unless there is good cause shown, remove the conservator, revoke the letters of conservatorship, and enter judgment accordingly; order the conservator to file an account and to surrender the estate to the person legally entitled thereto.* Prob C §2614.5(b); see §301.11.

B. [§301.3] Account

(1) *Determine whether an accounting of assets has been timely filed (after 1 year and at least biennially thereafter).* Prob C §2620(a); see §301.113.

(2) *Determine whether proper notice of the hearing on the account has been given.* Prob C §2621; see §301.119.

(3) *Determine whether proper account and supporting documents have been filed.* Consider setting a status hearing for this purpose and requiring the attorney and conservator to attend. Prob C §2620(c); see §301.116.

(4) *Determine whether full or partial review will be done.* Prob C §2620(d); see §301.117.

(5) *Determine whether any objection to the account has been filed.* Prob C §2622; see §301.119.

(6) *If objections have been made, hold hearing on objections and determine their validity.* Prob C §11002; see §301.119.

(7) *Determine whether the reported expenses requested are proper and allowable.* Prob C §2623; see §301.120.

(8) *Review any transactions not previously authorized and determine whether they should be authorized and confirmed.* Prob C §2625; see §301.121.

(9) *Hold conservator liable for any violation of duties in connection with any sale, purchase, or other transaction.* Prob C §2625; see §301.121.

(10) *Enter order reflecting approval of account or liability of conservator.* See §301.25.

(11) *If account has not been timely filed, give written notice to the conservator and the attorney of record for the conservatorship, directing the conservator to file an accounting and to set the accounting for hearing before the court within 30 days of the date of the notice or, if the conservator is a public agency, within 45 days of the date of the notice.* If cause is shown, the court may grant an additional 30 days to file the accounting. Prob C §2620.2; see §301.118.

(12) *If account is not then timely filed, take further steps to hold conservator in contempt and obtain account.* Prob C §2620.2(b), (c); see §301.118.

III. APPLICABLE LAW

A. Inventory and Appraisal

1. [§301.4] Initial Inventory and Appraisal

The conservator must file the initial inventory and appraisal within 90 days after appointment with the clerk of the court. The court may extend the 90-day period for reasonable cause on ex parte petition of the conservator. In addition to filing the initial inventory and appraisal with the court, the conservator must mail a copy to the conservatee and to the attorneys of record for the conservatee. The conservator must also send a

notice of how to file an objection. And the conservator must send copies of the inventory and appraisal and notice to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee. Prob C §2610(a).

The conservator must take and subscribe to an oath that the inventory contains a true statement of all of the conservatee's estate of which the conservator has possession or knowledge. The oath must be endorsed on or annexed to the inventory. Prob C §2610(b).

The property described in the inventory must be appraised in the manner provided for the inventory and appraisal of estates of decedents. The conservator may appraise the assets that a personal representative could appraise under Prob C §8901. Prob C §2610(c); §301.7.

If a conservator of the person or estate, or both, is a professional fiduciary, as described in Prob C §2340, who is required to be licensed under Bus & P C §§6500 et seq, the conservator must file concurrently with the inventory and appraisal a proposed hourly fee schedule or another statement of proposed compensation from the conservatee's estate for services performed as a conservator. The filing of a proposed hourly fee schedule or another statement of the conservator's proposed compensation will not preclude a court from later reducing the conservator's or his or her attorney's fees or other compensation. Prob C §2614.7.

At any time on or after 1 year from the submission of an hourly fee schedule or another statement of proposed compensation, a conservator who is a professional fiduciary may submit a new proposed hourly fee schedule or another statement of proposed compensation from the conservatee's estate. The submittal of a new hourly fee schedule or another statement of the conservator's proposed compensation will not preclude a court from later reducing the conservator's hourly fees or other compensation, or his or her attorney's fees or other compensation. Prob C §2614.8.

During the conservatorship, if the conservatee is or has been a patient in a state hospital under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services, the conservator must mail a copy of the inventory and appraisal filed under Prob C §2610 to the director of the appropriate department at the director's office in Sacramento not later than 15 days after the inventory and appraisal is filed with the court. Compliance with this provision is not required if an unrevoked certificate described in Prob C §1461(c) is on file with the court with respect to the conservatee. Prob C §2611.

Judicial Council Forms GC-040, Inventory and Appraisal, and GC-041, Inventory and Appraisal Attachment, are the forms required for the

inventory and appraisal. Judicial Council Forms GC-042, Notice of Filing of Inventory and Appraisal and How to Object to the Inventory or the Appraised Value of Property, and GC-042(MA), Attachment to Notice of Filing of Inventory and Appraisal and How to Object to the Inventory or the Appraised Value of Property, may be used to provide notice of the appraisal and information as to how to file objections.

2. [§301.5] Notice to Court by Holder of Asset

When a conservator takes possession or control of any conservatee asset held by specified institutions, the institution must file Judicial Council Form GC-050, Notice of Taking Possession or Control of Asset of Minor or Conservatee, with the court having jurisdiction of the conservatorship. Prob C §2890(a). The institutions or persons subject to this requirement are an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment adviser, financial planner, financial adviser, or any other person who takes, holds, or controls an asset subject to a conservatorship that is not a “financial institution” as defined in Prob C §2892. Prob C §2890(c).

If a conservator opens or changes the name to an account or safe-deposit box in a financial institution, the financial institution must send Judicial Council Form GC-051, Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe Deposit Box, to the court identified in the letters of conservatorship. Prob C §2892(a). “Financial institution” means a bank, trust, savings and loan association, savings bank, industrial bank, or credit union. Prob C §2892(b).

3. [§301.6] Temporary Conservator

A temporary conservator must file an inventory and appraisal of the estate under Prob C §§2610 et seq. Prob C §2255(a). But a temporary conservator of the estate may inventory the estate in the final account, without the necessity for an appraisal of the estate, if the final account is filed within 90 days after the appointment of the temporary conservator. Prob C §2255(b).

4. [§301.7] Who Makes Appraisal

The conservator, probate referee, or independent expert may appraise property in the inventory in the manner provided for the inventory and appraisal of estates of decedents. Prob C §§2610(c), 8900.

The conservator appraises the following property, excluding items whose fair market value is, in the opinion of the conservator, an amount different from the face value of the property (Prob C §8901):

- Money and other cash items (check, draft, money order, or similar instrument issued on or before the date of the conservator's appointment that may be immediately converted to cash).
- Checks for wages earned before conservator's appointment and refund checks, including tax and utility refunds, and Medicare, medical insurance, and other healthcare reimbursements and payments.
- Accounts (as defined in Prob C §21) in financial institutions.
- Cash deposits and money market mutual funds, as defined in Prob C §9730(b), whether in a financial institution or otherwise, including a brokerage cash account. All other mutual funds, stocks, bonds, and other securities must be appraised under Prob C §§8902–8909, inclusive.
- Proceeds of life and accident insurance policies and retirement plans and annuities payable on death in lump-sum amounts. *Note:* As these items are more appropriately in a decedent estate, it seems unlikely they should be included in a conservatorship inventory, but perhaps they might come into possession in certain circumstances where the conservatee dies shortly after appointment of the conservator.

The conservator must deliver the inventory to the probate referee designated by the court, together with necessary supporting data, to enable the probate referee to make an appraisal of the property in the inventory to be appraised by the probate referee. Prob C §8902(a).

The probate referee appraises all property other than that appraised by the conservator. Prob C §8902(b).

A unique, artistic, unusual, or special item of tangible personal property that would otherwise be appraised by the probate referee may, at the election of the conservator, be appraised by an independent expert qualified to appraise the item. Prob C §8904(a). The conservator must make the election by a notation on the inventory delivered to the probate referee indicating the property to be appraised by an independent expert. Prob C §8904(b).

The probate referee may, within 5 days after delivery of the inventory, petition for a court determination whether the property to be appraised by an independent expert is a unique, artistic, unusual, or special item of tangible personal property. If the petition fails and the court determines that the petition was made without substantial justification, the court must award litigation expenses, including reasonable attorney's fees, against the probate referee. Prob C §8904(b).

A person who appraises property, whether a conservator, probate referee, or independent expert, must sign the appraisal as to property

appraised by that person, and must take and subscribe an oath that the person has truly, honestly, and impartially appraised the property to the best of the person's ability. Prob C §8905.

5. [§301.8] Waiver

The court may, for good cause, waive appraisal by a probate referee. Prob C §8903(a). The conservator may apply for a waiver up to the time the conservator delivers the inventory to the probate referee, if a probate referee has been designated. A copy of the proposed inventory and appraisal and a statement that sets forth the good cause that justifies the waiver must be attached to the petition. Prob C §8903(b).

The hearing on the waiver must be at least 15 days after the petition is filed. Notice of the hearing on the petition, together with a copy of the petition and a copy of the proposed inventory and appraisal, must be given to the conservator and all persons who requested special notice, each known heir, devisee, and the Attorney General if any portion of the estate is to escheat to the state, whose interest in the estate would be affected by the waiver, and the probate referee, if a probate referee has been designated. Prob C §8903(c). *Note:* this statute is a decedent estate statute and requires notice to those set forth above, but it is unclear that devisees or the Attorney General should receive notice in a conservatorship. Better notice would be to those identified in Prob C §1460(b), and then the probate referee, as is the case in §301.10.

A probate referee who has been given notice may oppose the waiver. If the opposition fails and the court determines the opposition was made without substantial justification, the court must award litigation expenses, including reasonable attorney's fees, against the probate referee. If the opposition succeeds, the court may designate a different probate referee to appraise property in the estate. Prob C §8903(d). If the petition is granted, the inventory and appraisal attached to the petition must be filed under Prob C §8800. Prob C §8903(e).

6. [§301.9] Subsequently Discovered Property

If any conservatee property is discovered that was not included in the inventory, or if any other property is received by the conservatee or by the conservator on the conservatee's behalf (other than by the actions of the conservator in the investment and management of the estate), the conservator must file a supplemental inventory and appraisal for that property, and the same appraisal process must be followed as in an initial inventory. The appraisal is made as of the date the property was discovered or received. Prob C §2613.

7. [§301.10] Objections and Hearing

The conservator or any creditor or other interested person may file written objections to any or all appraisals within 30 days after the inventory and appraisal is filed. The clerk must set a hearing on the objections at least 15 days after their filing. Prob C §2614(a).

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b), including the conservator, the conservatee, the conservatee's spouse or domestic partner, and all those who requested special notice of the matter. See Benchguide 300. If the appraisal was made by a probate referee, the person objecting must also mail notice of the hearing and a copy of the objection to the probate referee at least 15 days before the time set for the hearing. Prob C §2614(b).

The court must determine the objections and may fix the true value of any asset to which objection has been filed. To do so, the court may require at least one additional appraiser to make an independent appraisal or appraisals at the expense of the estate, or if the objecting party is not the conservator and the objection is rejected by the court, the court may assess the cost of any such additional appraisal or appraisals against the objecting party. Prob C §2614(c).

The burden of proof is on the person making the objection to establish that the inventory or appraisals are incorrect. *In re Conservatorship of Hume* (2006) 140 CA4th 1385, 1390–1391, 44 CR3d 906.

8. [§301.11] Failure To File Inventory

If the conservator fails to file an inventory and appraisal within the time allowed by law or by court order, on request of the conservatee, the conservatee's spouse or domestic partner, any relative or friend, or any interested person, the court must order the conservator to file the inventory and appraisal within the time prescribed in the order or to show cause why the conservator should not be removed. The person who requested the order must serve it on the conservator in the manner provided in CCP §415.10 or §415.30 or in a manner the court orders. Prob C §2614.5(a).

If the conservator fails to file the inventory and appraisal within the court-ordered time without good cause, the court, on its own motion or on petition, may remove the conservator, revoke the letters of conservatorship, and enter judgment accordingly, and order the conservator to file an account and to surrender the estate to the person legally entitled thereto. Prob C §2614.5(b). This procedure is optional and does not preclude the use of any other remedy or sanction when an inventory and appraisal is not timely filed. Prob C §2614.5(c).

If a conservator fails to file any inventory within the time prescribed by law or by court order, the conservator is liable for damages for any injury to the estate, or to any interested person, directly resulting from the failure to timely file the inventory. Damages awarded are a personal liability of the conservator and a liability on the bond, if any. Prob C §2615.

B. Management and Control of Estate

1. [§301.12] Conservator Is Fiduciary

The relationship of conservator and conservatee is a fiduciary relationship that is governed by the law of trusts, except as provided in conservatorship statutory provisions. Prob C §2101.

As a fiduciary, the conservator has the following duties:

- To administer the estate solely in the interest of the conservatee. Prob C §16002(a).
- Not to use or deal with estate property for the conservator's own profit or for any other purpose unconnected with the estate, nor to take part in any transaction in which the conservator has an interest adverse to the conservatee. Prob C §16004(a).
- To take reasonable steps under the circumstances to take and keep control of and to preserve the estate property. Prob C §16006.
- To make the estate property productive under the circumstances. Prob C §16007.
- To keep the estate property separate from other property not subject to the estate and to see that the estate property is designated as property of the estate. Prob C §16009.

2. [§301.13] Subject to Control of Court

A conservator is subject to the regulation and control of the court in the performance of the duties of the office. Prob C §2102.

3. [§301.14] Estate Transactions

Whenever the court authorizes or directs a transaction, the conservator must carry out the transaction in accordance with the terms of the order. Prob C §2111(b). "Transaction" means any of the following (Prob C §2111(a)):

- A conveyance or lease of real property of the conservatorship estate.
- The creation of a mortgage or deed of trust on real property of the conservatorship estate.

- A transfer of personal property of the conservatorship estate.
- The creation of a security interest or other lien in personal property of the conservatorship estate.

A conveyance, lease, or mortgage of, or deed of trust on, real property executed by a conservator must set forth that it is made by authority of the order authorizing or directing the transaction and must give the date of the order. A certified copy of the order must be recorded in the office of the county recorder in each county in which any portion of the real property is located. Prob C §2111(c).

A transaction carried out by a conservator in accordance with an order authorizing or directing the transaction has the same effect as if the conservatee had carried out the transaction while having legal capacity to do so. Prob C §2111(d).

4. [§301.15] Management of Community Property

The management provisions of Prob C §§2400 et seq (see §§301.47–301.55) apply to property owned by husband and wife or domestic partners as community property only to the extent authorized by Prob C §§3000 et seq. Prob C §2407. *Note:* Prob C §2407 only references husband and wife, but should also apply to domestic partners. See Fam C §297.5.

If one spouse or domestic partner (see Fam C §297.5)) has legal capacity and the other has a conservator of the estate (Prob C §3051(b)):

- The spouse or domestic partner who has legal capacity has the exclusive management and control of the community property including, subject to Prob C §3071, the exclusive power to dispose of the community property.
- The community property is not part of the conservatorship estate.

If both spouses or domestic partners have conservators of the estate, an undivided one-half interest in the community property is included in and, subject to Prob C §3071, managed, controlled, and disposed of as a part of the conservatorship estate of each spouse or domestic partner. Prob C §3051(d).

If one spouse or domestic partner has legal capacity and the other has a conservator, the spouse or domestic partner having legal capacity may consent, by a writing filed in the proceeding, that all or part of the community property be included in and, subject to Prob C §3071, be managed, controlled, and disposed of as a part of the conservatorship estate. Prob C §3051(c).

If both spouses or domestic partners have conservators, when authorized by court order in which any of the conservatorship proceedings

is pending, the conservators may agree in writing that all or specific parts of the community property must be included in the conservatorship estate of one or the other of the spouses or domestic partners and, subject to Prob C §3071, be managed, controlled, and disposed of as a part of the conservatorship estate of that spouse or domestic partner. Prob C §3051(e).

Subject to Prob C §3071, when community property is included in a conservatorship estate for the purpose of management, control, and disposition, the conservator has the same powers and duties with respect to such property as the conservator has with respect to other property of the conservatorship estate. Prob C §3056.

If authorization to enter into a community property transaction is needed, a proceeding under Prob C §§3100 et seq may be brought to obtain such authorization where one spouse or domestic partner lacks legal capacity for that transaction (whether or not that spouse or domestic partner has a conservator) and the other spouse or domestic partner either has legal capacity for the proposed transaction or has a conservator. Prob C §3101(a).

a. [§301.16] Court Orders for Inclusion

When community property is included or proposed to be included in the conservatorship estate of a spouse or domestic partner, the court in which the conservatorship proceeding is pending may do any of the following (Prob C §3054):

- Determine that the inclusion of some or all of the community property that is proposed to be included in the conservatorship estate would not be in the best interest of the spouses or domestic partners or their estates and order that such property not be included.
- Permit revocation of a written consent for inclusion of property in the conservatorship estate, with or without terms or conditions.
- Determine that the continued inclusion of some or all of the community property in the conservatorship estate is not in the best interest of the spouses or domestic partners or their estates and order that the inclusion of such property be terminated, with or without terms or conditions.
- Make other orders as appropriate for the orderly administration of the conservatorship estate or to protect the interests of the spouses or domestic partners.

The court may act on its own motion or on petition of a spouse or domestic partner having legal capacity or the conservator of either spouse

or domestic partner and on such notice to such persons as the court prescribes. Prob C §3054.

b. [§301.17] Termination of Consent

If consent is given that community property be included in the conservatorship estate of a spouse or domestic partner, the death of either spouse or domestic partner terminates the consent. Prob C §3055(a).

If a spouse or domestic partner consents that community property be included in the conservatorship estate of the other spouse or domestic partner (Prob C §3055(b)):

- The subsequent lack of legal capacity of the spouse or domestic partner giving the consent has no effect on the inclusion of the property in the conservatorship estate of the other spouse or domestic partner.
- The appointment of a conservator for the spouse or domestic partner giving the consent terminates the consent.

If a conservator is appointed for a spouse who has given consent to include community property in the conservatorship estate of the other spouse, the appointment terminates the consent. Prob C §3055(b)(2). But the two conservators may, when authorized by order of court, consent that the property continue to be included in the same conservatorship estate, or they may work out some other arrangement for administration of the property as part of a plan for administration of the community property of the two spouses. Cal L Rev Comm'n Comment to Prob C §3055 (1990).

c. [§301.18] Action To Enforce Spouse's Duty in Managing Property

If one spouse or domestic partner has a conservator and the other spouse or domestic partner is managing or controlling community property, the conservator has the duty to keep reasonably informed concerning the management and control, including the disposition, of the community property. Prob C §3057(b). If the conservator has knowledge or reason to believe that the conservatee's rights in the community property are being prejudiced, the conservator may bring an action on the conservatee's behalf to enforce the duty imposed by Fam C §§721 and 1100 with respect to the management and control of the community property and to obtain appropriate relief. Prob C §3057(b).

d. [§301.19] Determination of Character of Property

If one or both of the spouses or domestic partners has a conservator, the court in which any of the conservatorship proceedings is pending may

hear and determine whether property is community property or the separate property of either spouse or domestic partner, if the issue is raised. Prob C §3023(a).

Any person having or claiming title to or an interest in the property, at or before the hearing on the issue, may object to the hearing if the court is not the proper court under any other provision of law for the trial of an action to determine the property issue. If the objection is established, the court must decline to hear and determine the issue. Prob C §3023(b).

If a civil action is pending with respect to the property issue and jurisdiction has been obtained in the court in which the civil action is pending, on the request of any party to the civil action, the court must abate the hearing until the conclusion of the civil action. Prob C §3023(c). But, the court need not abate the hearing if the court determines that the civil action was filed for the purpose of delay. Prob C §3023(d).

- **JUDICIAL TIP:** Even if no request is pending, consider setting an order to show cause why the probate action should not be abated on the court's own motion. If the civil action is within the same county, consider coordinating the cases as a possible case management tool.

5. [§301.20] Consent to Community Property Transactions

When a transaction for which the joinder or consent of both spouses or domestic partners is required by Fam C §1100 or §1102 or by any other statute, if one or both spouses or domestic partners lack legal capacity for the transaction, the requirement of joinder or consent is satisfied as follows (Prob C §3071):

- When one spouse or domestic partner has legal capacity for the transaction and the other spouse or domestic partner has a conservator, the requirement of joinder or consent is satisfied if both of the following are obtained:
 - The joinder or consent of the spouse or domestic partner who has legal capacity, and
 - The joinder or consent of the conservator of the other spouse or domestic partner given in compliance with Prob C §3072.
- When both spouses or domestic partners have conservators, the joinder or consent requirement is satisfied by the joinder or consent of each conservator given in compliance with Prob C §3072.
- In any case, the requirement of joinder or consent is satisfied if the transaction is authorized by a court order obtained in a proceeding under Prob C §§3100 et seq.

A conservator may join in or consent to a transaction under Prob C §3071 only after authorization by either of the following (Prob C §3072(a)):

- A court order obtained in the conservatorship proceeding on a petition filed under Prob C §§2403, 2540 et seq, or 2580 et seq.
- A court order made in a proceeding under Prob C §§3100 et seq.

A conservator may consent without court authorization to a sale, conveyance, or encumbrance of community personal property requiring consent under Fam C §1100(c) if the conservator could sell or transfer the property under Prob C §2545 without court authorization if the property were a part of the conservatorship estate. Prob C §3072(b).

The joinder or consent under Prob C §3071 of a spouse or domestic partner having legal capacity must be in a manner that complies with Fam C §1100 or §1102 or other statute that applies to the transaction. Prob C §3073(a).

The joinder or consent under Prob C §3071 of a conservator must be in the same manner as a spouse or domestic partner would join in or consent to the transaction under the statute that applies to the transaction except that the joinder or consent must be executed by the conservator and must refer to the court order, if one is required, authorizing the conservator to join in or consent to the transaction. Prob C §3073(b).

A transaction that affects real property, entered into by a person acting in good faith and for a valuable consideration, is not affected by the fact that one or both spouses or domestic partners have conservators unless a notice of the establishment of the conservatorship or conservatorships, as the case may be, has been recorded before the transaction in the county where the property is located. Prob C §3074.

6. Duty of Care and Diligence

a. [§301.21] Generally

The conservator of the estate (or limited conservator to the extent specifically and expressly provided in the appointing court's order) must use ordinary care and diligence in managing and controlling the estate. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate. Prob C §2401(a).

In determining what constitutes ordinary care and diligence, a professional conservator (such as a trust company or the trust department of a bank) will be held to a greater standard of care based on its presumed expertise than a lay conservator. Cal L Rev Comm'n Comment to Prob C §2401 (1990); see *Estate of Beach* (1975) 15 C3d 623, 635, 542 P2d 994, 125 CR 570 (executor).

The conservator must (Prob C §2401(b)):

- Exercise a power to the extent that ordinary care and diligence requires.
- Not exercise a power to the extent that ordinary care and diligence requires.

Probate Code §2401(b) makes clear that ordinary care and diligence may require that the conservator exercise a power. For example, the conservator may fail to exercise ordinary care and diligence under the circumstances of a particular estate if the conservator does not secure insurance to cover the risk of loss of property of the estate. Probate Code §2401(b) also makes clear that the extent to which a power should be exercised is limited to what is required by the exercise of ordinary care and diligence under all circumstances. Thus, for example, when purchasing insurance to cover the estate property, the conservator should not purchase an amount in excess of the amount that would be purchased using ordinary care and diligence in the management and control of the estate. Cal L Rev Comm'n Comment to Prob C §2401 (1990).

b. [§301.22] Standards of Conduct for Managing Estate

In the exercise of ordinary care and diligence in managing and controlling the estate, the conservator is directed to do the following (Cal Rules of Ct 7.1059(b)):

- (1) Provide competent management of the conservatee's property, with the care of a prudent person dealing with someone else's property;
- (2) Refrain from making unreasonably risky investments;
- (3) Refrain from making loans or gifts of estate property, except as authorized by the court after full disclosure;
- (4) Manage the estate for the benefit of the conservatee;
- (5) Closely guard against unnecessary or inappropriate disclosure of the conservatee's financial information, subject to the duty of full disclosure to the court and persons entitled under law to receive it;
- (6) Keep the money and property of the estate separate from the conservator's or any other person's money or property, except as may be permitted under statutes authorizing public guardians or public conservators and certain regulated private fiduciaries to maintain common trust funds or similar common investments;
- (7) Hold title reflecting the conservatorship in individual securities, mutual funds, securities broker accounts, and accounts with financial institutions;

(8) Keep accurate records of all transactions. Professional fiduciaries must maintain prudent accounting systems and procedures designed to protect against embezzlement and other cash-asset mismanagement;

(9) As soon as possible after appointment and qualification, locate and safeguard the conservatee's estate planning documents, including wills, living trusts, powers of attorney for health care and finances, life insurance policies, and pension records;

(10) As soon as possible after appointment and qualification, secure the real and personal property of the estate, insuring it at appropriate levels, and protecting it against damage, destruction, or loss;

(11) Make reasonable efforts to preserve property identified in the conservatee's estate planning documents;

(12) Communicate as necessary and appropriate with the conservator of the person of the conservatee, if any, and with the trustee of any trust of which the conservatee is a beneficiary;

(13) Pursue claims against others on behalf of the estate when it would be in the best interest of the conservatee or the estate to do so. Consider requesting prior court authority to pursue or compromise large or complex claims, particularly those that might require litigation and the assistance of counsel and those that might result in an award of attorney's fees for the other party against the estate if unsuccessful, and request such approval before entering into a contingent fee agreement with counsel;

(14) Defend against actions or claims against the estate when it would be in the best interest of the conservatee or the estate to do so. Consider requesting court approval or instructions concerning the defense or compromise of litigation against the estate;

(15) Collect all public and insurance benefits for which the conservatee is eligible;

(16) Evaluate the conservatee's ability to manage cash or other assets and take appropriate action, including obtaining prior court approval when necessary or appropriate, to enable the conservatee to do so to the level of his or her ability;

(17) When disposing of the conservatee's tangible personal property, inform the conservatee's family members in advance and give them an opportunity to acquire the property, with approval or confirmation of the court; and

(18) In deciding whether it is in the best interest of the conservatee to dispose of property of the estate, consider the following factors, among others, as appropriate in the circumstances:

- The likely benefit or improvement of the conservatee's life that disposing of the property would bring;
- The likelihood that the conservatee would need or benefit from the property in the future;
- Subject to the factors specified in Prob C §2113, the previously expressed or current desires of the conservatee concerning the property;
- The provisions of the conservatee's estate plan concerning the property;
- The tax consequences of the disposition transaction;
- The impact of the disposition transaction on the conservatee's entitlement to public benefits;
- The condition of the entire estate;
- Alternatives to disposition of the property;
- The likelihood that the property will deteriorate or be subject to waste if retained in the estate; and
- The benefit versus the cost or liability of maintaining the property in the estate.

7. [§301.23] Conservator's Conflicts of Interest

A conservator who is not a trust company, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except on authorization of the court. Before authorization from the court, the conservator must disclose to the court in writing his or her financial interest in the entity. Prob C §2401(c). For the purposes of this subdivision, "financial interest" means (Prob C §2401(c)):

- An ownership interest in a sole proprietorship, a partnership, or a closely held corporation; or
- An ownership interest of greater than 1 percent of the outstanding shares in a publicly held corporation; or
- Being an officer or a director of a corporation.

A conservator who is a trust company, in exercising its powers may not, except on authorization of the court, invest in securities of the trust company or an affiliate or subsidiary, or other securities from which the trust company or affiliate or subsidiary receives a financial benefit. It also may not invest in a mutual fund (other than a mutual fund authorized in Prob C §2574(a)(5), registered under the Investment Company Act of 1940 (15 USC §§80a-1 et seq)) to which the trust company or its affiliate provides services, including, but not limited to, services as an investment adviser, sponsor, distributor, custodian, agent, registrar, administrator,

servicer, or manager, and for which the trust company or its affiliate receives compensation. Prob C §2401(d). Before authorization from the court, the conservator must disclose to the court in writing the trust company's financial interest. Prob C §2401(d).

The conservator must avoid actual conflicts of interest and, consistent with his or her fiduciary duty to the conservatee, the appearance of conflicts of interest. California Rules of Ct 7.1059(a). The conservator must avoid any personal, business, or professional interest or relationship that is or reasonably could be perceived as being self-serving or adverse to the best interest of the conservatee. Cal Rules of Ct 7.1059(a). In particular:

- Except as appropriate for conservators who are not professional fiduciaries with full disclosure to the court, the conservator should not personally provide housing, medical, or legal services to the conservatee;
- The conservator must be independent from all service providers, except when (a) no other conservator or service providers are reasonably available, (b) the exception is in the best interest of the conservatee, (c) the circumstances are fully disclosed to the court, and (d) prior court approval has been obtained;
- The conservator must neither solicit nor accept incentives from service providers; and
- The conservator must not engage his or her family members to provide services to the conservatee for a profit or fee when other alternatives are reasonably available. When family members do provide such services, their relationship to the conservator must be fully disclosed to the court, the terms of engagement must be in the best interest of the conservatee compared to the terms available from independent service providers, the services must be competently performed, and the conservator must be able to exercise appropriate control and supervision.

A conservator's employees, including family members, are not service providers and are not providing services to the conservatee for a profit or fee within the meaning of this rule if their compensation is paid by the conservator and their services are either included in the conservator's petition for allowance of the conservator's compensation or are not paid from the conservatee's estate. Cal Rules of Ct 7.1059(a).

8. [§301.24] Court Official or Employee's Conflicts of Interest

Every court official or employee who has duties or responsibilities related to the appointment of a conservator, or the processing of any

document related to a conservator, and every person who is related by blood or marriage to a court official or employee who has these duties, is prohibited from purchasing, leasing, or renting any real or personal property from the estate of the conservatee whom the conservator represents. Prob C §2111.5(a). For purposes of this subdivision, a “person related by blood or marriage” means any of the following (Prob C §2111.5(a)):

- A person’s spouse or domestic partner.
- Relatives within the second degree of lineal or collateral consanguinity of a person or a person’s spouse.

These persons, however, may purchase real or personal property from the estate of the conservatee whom the conservator represents if the purchase is made under terms and conditions of a public sale of the property. Prob C §2111.5(b).

Any purchase, lease, or rental of property that violates this conflict of interest provision must be rescinded. And any losses incurred by the estate of the conservatee because the property was sold or leased at less than fair market value must be deemed as charges against the conservator under the provisions of Prob C §§2401.3 and 2401.5. Prob C §2111.5(c).

The court must assess a civil penalty equal to three times the charges against the conservator or other person in violation, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court must order the conservator or other person in violation to pay a fine of up to \$5,000 for each violation. The fines and penalties are in addition to any other rights and remedies provided by law. Prob C §2111.5(c).

9. [§301.25] Liability of Conservator

If the conservator breaches a fiduciary duty, the conservator is chargeable with any of the following that is appropriate under the circumstances (Prob C §2401.3(a)):

- Any loss or depreciation in value of the estate resulting from the breach of duty, with interest.
- Any profit made by the conservator through the breach of duty, with interest.
- Any profit that would have accrued to the estate if the loss of profit is the result of the breach of duty.

If the conservator is liable for interest under Prob C §2401.3, the conservator is liable for the greater of the following amounts (Prob C §2401.5(a)):

- The amount of interest that accrues at the legal rate on judgments.

- The amount of interest actually received.

If the conservator has acted reasonably and in good faith under the circumstances as known to the conservator, the court may excuse the conservator in whole or in part from liability if it would be equitable to do so. Prob C §§2401.3(b), 2401.5(b).

Any surcharge that a conservator incurs under Prob C §§2401.3 and 2401.5 may not be paid by or offset against future fees or wages to be provided by the estate to the conservator. Prob C §2401.6.

The statutory provisions for liability of a conservator for breach of a fiduciary duty do not prohibit any other remedy available against the conservator under the statutory or common law. Prob C §2401.7.

10. [§301.26] Additional Conditions for Care of Property

When a conservator is appointed, the court may, with the consent of the conservator, insert conditions into the order of appointment that are not otherwise obligatory and provide for the care and custody of the property of the conservatee. Any such conditions must be included in the letters. The performance of the conditions then becomes a part of the duties of the conservator, and the conservator and the sureties on the bond are responsible for the faithful performance of these conditions. Prob C §2402.

11. [§301.27] Confirmation

On petition of the conservator, the conservatee, a creditor, or other interested person, the court may authorize and instruct the conservator, or approve and confirm the acts of the conservator, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith. Prob C §2403(a). Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2403(b); see Benchguide 300, §300.23. This provision authorizes the court not only to instruct the conservator in advance but also to confirm actions already taken. Cal L Rev Comm'n Comment to Prob C §2403 (1990).

When a conservator petitions for the approval of a purchase, lease, or rental of real or personal property from the estate of a conservatee, the conservator must provide a statement disclosing the family or affiliate relationship between the conservator and the purchaser, lessee, or renter of the property, and the family or affiliate relationship between the conservator and any agent hired by the conservator. Prob C §2403(c)(1). "Family" means a person's spouse, domestic partner, or relatives within the second degree of lineal or collateral consanguinity of a person or a

person's spouse. "Affiliate" means an entity that is under the direct control, indirect control, or common control of the conservator. Prob C §2403(c)(2).

The purchase, lease, or rental of the property is rescinded if the disclosure requirement is violated. And any losses incurred by the estate of the conservatee because the property was sold, rented, or leased at less than fair market value are deemed as charges against the conservator under the provisions of Prob C §§2401.3 and 2401.5 (see §301.78). Prob C §2403(c)(3).

The court must assess a civil penalty equal to three times the charges against the conservator, or other person in violation, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court must order the conservator or other person in violation to pay a fine of up to \$5,000 for each violation. The fines and penalties provided are in addition to any other rights and remedies provided by law. Prob C §2403(c)(3).

- **JUDICIAL TIP:** A petition filed under Prob C §2403 may require a detailed review and analysis of relevant contracts and documents for complex transactions. Courts should insure prompt review of these petitions to determine whether a continuance is needed for review, and balance such need against time constraints pertaining to the requested transaction.

12. [§301.28] Court Order To Pay From Estate

If the conservator fails, neglects, or refuses to furnish comfortable and suitable support, maintenance, or education for the conservatee, or to pay a debt, expense, or charge lawfully due and payable by the conservatee or the estate, the court must, on petition or on its own motion, order the conservator to do so from the estate. Prob C §2404(a).

The petition may be filed by the conservatee or by the creditor or any other interested person. Prob C §2404(b). Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2404(b); see Benchguide 300, §300.23.

Property in a conservatorship estate is not subject to enforcement of a money judgment, but the judgment creditor may apply to the court in which the conservatorship proceeding is pending under Prob C §§1400 et seq. for an order requiring payment of the judgment. CCP §709.030; see *Neiman Marcus v Tait* (1995) 33 CA4th 271, 273–274, 39 CR2d 143 (creditor not entitled to funds held by sheriff under execution levy when conservatorship proceeding commenced because creditor did not file an application for payment with the probate court).

For a discussion of what debts the conservator must pay, see §301.56.

13. [§301.29] Resolution of Disputes

If there is a dispute relating to the estate between the conservator and a third person, the conservator (or limited conservator to the extent specifically and expressly provided in the appointing court's order) may do either of the following (Prob C §2405):

- Enter into an agreement in writing with the third person to refer the dispute to a temporary judge designated in the agreement. The agreement must be filed with the clerk, who must, with the approval of the court, enter an order referring the matter to the designated person. The temporary judge must proceed promptly to hear and determine the matter in controversy by summary procedure, without any pleadings, discovery, or jury trial. The decision of the temporary judge is subject to CCP §632 (requirements of statement of decision). Judgment must be entered on the decision and is as valid and effective as if rendered by a judge of the court in an action against the conservator or the third person commenced by ordinary process.
- Enter into an agreement in writing with the third person that a judge of the court, with the agreement and with the written consent of the judge, may hear and determine the dispute. Both the agreement and written consent must be filed with the clerk within the time for bringing an independent action on the matter in dispute, following the above procedure for a temporary judge.

Probate Code §2405 is designed to reduce the cost of administering estates and to ease the court's workload by encouraging settlement of disputes relating to the estate by summary proceedings rather than by litigation. Cal L Rev Comm'n Comment to Prob C §2405 (1990).

If there is a dispute relating to the estate between the conservator and a third person, the conservator may enter into an agreement in writing with the third person to submit the dispute to arbitration under CCP §§1280 et seq. The agreement is not effective unless it has first been approved by the court and a copy of the approved agreement to submit the matter to arbitration is filed with the court. Prob C §2406.

14. [§301.30] Subject to Independent Powers

Under Prob C §§2590 et seq, conservators are granted independent powers and may administer the estate under those provisions. Prob C §2408.

15. [§301.31] Durable Power of Attorney

A durable power of attorney may be effective during the incapacity of the grantor and will be effective despite the appointment of a conservator. Prob C §§4124–4125. The conservator of the estate, if appointed by a California court, may revoke or amend the durable power of attorney only if the court in which the conservatorship proceeding is pending has first made an order authorizing or requiring the conservator to modify or revoke the durable power of attorney and the modification or revocation is in accord with the order. Prob C §4206(b). The petition to revoke or amend is filed under the provisions of Prob C §§4540 et seq.

C. Transfer of Property

1. [§301.32] Petition To Transfer Property

A conservator or claimant may file a petition requesting that the court make an order to transfer property in the following cases (Prob C §850(a)):

- If the conservatee is bound by a contract in writing to convey real property or to transfer personal property, executed by the conservatee while competent or executed by the conservatee's predecessor in interest, and the contract is one that may be specifically enforced.
- If the conservator or conservatee is in possession of, or holds title to, real or personal property, and the property or some interest therein is claimed to belong to another.
- If the conservatee has a claim to real or personal property, title to or possession of which is held by another.

The petition must set forth facts on which the claim is based. Prob C §850(b).

2. [§301.33] Notice

At least 30 days before the day of the hearing, the petitioner must serve notice of the hearing and a copy of the petition in the manner provided in CCP §§413.10 et seq on all of the following persons where applicable (Prob C §851(a)):

- The conservator.
- Each person claiming an interest in, or having title to or possession of, the property.

Only a 15-day notice is required for notice to the conservatee, spouse or domestic partner of the conservatee, and any person who has requested

special notice under Prob C §2700. Prob C §851(b); see Prob C §1460(b); Benchguide 300, §300.23.

The court may not shorten the time for giving the notice of hearing. Prob C §851(c).

3. [§301.34] Response

An interested person may request time for filing a response to the petition for discovery proceedings, or for other hearing preparation, and the court must grant a continuance for a reasonable time. Prob C §852.

A person having or claiming title to or an interest in the property that is the subject of the petition may, at or before the hearing, object to the hearing of the petition if the petition is filed in a court that is not the proper court under any other provision of law for the trial of a civil action seeking the same relief and, if the objection is established, the court must not grant the petition. Prob C §853.

4. [§301.35] Abate When Pending Action

If a civil action is pending with respect to the subject matter of a petition and jurisdiction has been obtained in the court where the civil action is pending before the filing of the petition, on request of any party to the civil action, the court must abate the petition until the conclusion of the civil action. This provision does not apply if the court finds that the civil action was filed for the purpose of delay. Prob C §854.

5. [§301.36] May Include Claims That Could Be Raised in Civil Action

An action to transfer property may include claims, causes of action, or matters that are normally raised in a civil action to the extent that the matters are related factually to the subject matter of a petition filed under this part. Prob C §855.

6. [§301.37] Hearing

If there is a contested hearing, the rules of practice applicable to civil actions, including discovery proceedings, apply to, and constitute the rules of practice in the hearing. All issues of fact must be tried in conformity with the rules of practice in civil actions. Prob C §1000.

7. [§301.38] Order

If the court is satisfied that a conveyance, transfer, or other order should be made, the court must make an order authorizing and directing the conservator, or the person having title to or possession of the property,

to execute a conveyance or transfer to the person entitled thereto, or granting other appropriate relief. Prob C §856.

The court may not grant a petition if the court determines that the matter should be determined by a civil action. Prob C §856.5.

The order is prima facie evidence of the correctness of the proceedings and of the authority of the conservator or other person to make the conveyance or transfer. Prob C §857(a).

After entry of an order that the conservator or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order. Prob C §857(b).

Any conveyance, lease, or mortgage of, or deed of trust on, real property executed by the conservator must state that it is made by authority of the order authorizing or directing the transaction and must give the date of the order. A certified copy of the order must be recorded in the office of the county recorder in each county in which any portion of the real property is located. Prob C §2111(c).

8. [§301.39] Death of Conservatee

If a conservatee dies during the pendency of the proceeding brought by the conservator on behalf of the conservatee, the personal representative of the conservatee's estate or other successor in interest may proceed with the matter, and the existing proceeding must not be dismissed on account of the death of the conservatee. Prob C §858.

9. [§301.40] Bad Faith Damages

If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property belonging to a conservatee, the person is liable for twice the value of the property recovered by the action. Prob C §859.

- **JUDICIAL TIP:** Some judges interpret Prob C §859 to mean the person is liable for only twice the property's value, while others think the liability is the property's value plus two times the value of the property, for a total of three times the property's value.

In addition, the person may, in the court's discretion, be liable for reasonable attorney's fees and costs. These remedies are in addition to any other remedies available in law to a conservator. Prob C §859. See *Estate of Young* (2008) 160 CA4th 62, 92, 72 CR3d 520 (“[D]ouble damages are punitive in nature, or a ‘species’ of punitive damages”).

A bankruptcy court has held that the bad faith damages provision is applicable to a taking of property before the conservator was appointed. *In re Pereira and Melo Dairy* (Bankr ED Cal 2005) 325 BR 1.

D. Transfer of Property Out of State

1. [§301.41] Petition To Transfer Property

The court in which a conservatorship of the estate is pending may order the transfer of some or all of the personal property of the estate to a foreign conservator in another jurisdiction outside California where the conservatee resides at the time the petition for the order authorizing the transfer is filed. Prob C §2801. “Foreign conservator” means a conservator, committee, or comparable fiduciary in another jurisdiction. Prob C §2800.

A petition for an order authorizing a transfer may be filed by any of the following (Prob C §2802):

- The conservator of the estate.
- The conservatee.
- A foreign conservator.

The petition must set forth all of the following (Prob C §2803):

- The name and address of:
 - The foreign conservator, who may but need not be the conservator appointed in this state.
 - The conservatee.
 - The conservator, so far as is known to the petitioner.
- The names, ages, and addresses, so far as they are known to the petitioner, of the conservatee’s spouse or domestic partner and the conservatee’s relatives within the second degree.
- A brief description of the character, condition, value, and location of the personal property sought to be transferred.
- A statement whether the foreign conservator has agreed to accept the transfer of the property. If the foreign conservator has so agreed, the acceptance must be attached as an exhibit to the petition or otherwise filed with the court.
- A statement of the manner in which and by whom the foreign conservator was appointed.
- A general statement of the qualifications of the foreign conservator.
- The amount of bond, if any, of the foreign conservator.

- A general statement of the nature and value of the conservatee's property already under the management or control of the foreign conservator.
- The name of the court having jurisdiction of the foreign conservator or of the accounts of the foreign conservator or, if none, the court in which a proceeding may be had with respect to the conservatorship if the property is transferred.
- Whether there is any pending civil action in this state against the conservator, conservatee, or estate.
- A statement of the reasons for the transfer.

At least 30 days before the hearing, the petitioner must mail a notice of the time and place of the hearing and a copy of the petition to each person required to be listed in the petition at the address stated in the petition. Prob C §2804.

2. [§301.42] Hearing

Any of the following may appear and file written objections to the petition (Prob C §2805):

- Any person required to be listed in the petition.
- Any creditor of the conservatee or of the estate.
- The conservatee's spouse or domestic partner or any relative or friend of the conservatee.
- Any other interested person.

The court may grant the petition and order the conservator to transfer some or all of the personal property of the estate to the foreign conservator if the court determines all of the following (Prob C §2806):

- The transfer will promote the best interests of the conservatee and the estate.
- The substantial rights of creditors or claimants in California will not be materially impaired by the transfer.
- The foreign conservator is qualified, willing, and able to administer the property to be transferred.

The court may direct the manner of transfer and impose such terms and conditions as may be just for any transfers it orders. Prob C §2807.

If the court's order provides for the transfer of all of the property of the estate to the foreign conservator, the court, on settlement of the final account, must order the conservatorship of the estate terminated on the filing with the clerk of the court of a receipt for the property executed by the foreign conservator. Prob C §2808(a).

Unless notice is waived, a copy of the final account of the conservator and of the petition for discharge, together with a notice of the hearing thereon, must be mailed at least 30 days before the date of the hearing to all persons required to be listed in the petition for transfer, including the foreign conservator. Prob C §2808(b).

E. Support of Conservatee

1. [§301.43] Application of Income

The conservator must apply the income from the estate, so far as necessary, to the comfortable and suitable support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee, taking into account the value of the estate and the condition of life of the persons required to be furnished such support, maintenance, or education. This includes care, treatment, and support of a conservatee who is a patient in a state hospital under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services. Prob C §2420(a).

Note: Salary or other earnings by a conservatee are not income from the estate and the conservator is not accountable for those salaries or earnings unless otherwise ordered by the court. Prob C §2601(a).

If the income from the estate is insufficient to care for the conservatee as described in Prob C §2420(a), the conservator may sell or give a security interest in or other lien on any personal property of the estate, or sell or mortgage or give a deed of trust on any real property of the estate. Prob C §2420(b).

When the amount paid by the conservator for the support, maintenance, and education of the conservatee, and those legally entitled to support, satisfies the requirements of Prob C §2420(a), and the payments are supported by proper vouchers or other proof satisfactory to the court, the conservator is allowed credit for such payments when the accounts of the conservator are settled. Prob C §2420(c).

Although this provision does not require the conservator to obtain court authorization before making the authorized payments, it also does not eliminate the need to obtain any court authorization otherwise required for a particular transaction. Prob C §2420(d). The conservator may seek court authorization or instructions or approval and confirmation under Prob C §2403. Prob C §2420(e); see [§301.58](#).

2. [§301.44] Allowance

On petition of the conservator or the conservatee, the court may authorize the conservator to pay to the conservatee a reasonable allowance out of the estate for the conservatee's personal use. The allowance must be

in such amount as the court may determine to be in the conservatee's best interests. Prob C §2421(a). Fifteen days' notice of the hearing must be given to the conservator, conservatee, conservatee's spouse or domestic partner, and any person who requested special notice. Prob C §2421(b); see Prob C §1460(b); Benchguide 300, §300.23.

The conservator is not required to account for this allowance other than to establish that it has been paid to the conservatee. The allowance is subject to the conservatee's sole control. Prob C §2421(c).

3. [§301.45] Support Despite Third Party Duty

On petition of the conservator, the conservatee, or any other interested person, the court may for good cause order the conservatee to be wholly or partially supported, maintained, or educated out of the estate even if a third party is legally obligated to provide the support, maintenance, or education. The order may be made for a limited period of time. If it is not so limited, the order continues in effect until modified or revoked. Prob C §2422(a). Fifteen days' notice of the hearing must be given to the conservator, conservatee, and, if any, the conservatee's spouse or domestic partner, and any person who requested special notice. Prob C §2422(b); see Prob C §1460(b); Benchguide 300, §300.23.

4. [§301.46] Use of Surplus Income

On petition of the conservator, the conservatee, the conservatee's spouse or domestic partner, or a relative within the second degree of the conservatee, the court may authorize or direct the conservator to pay and distribute surplus income of the estate or any part of the surplus income to the conservatee's spouse or domestic partner and to relatives within the second degree of the conservatee whom the conservatee would, in the judgment of the court, have aided but for the existence of the conservatorship. Surplus income is income that is not used for the support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee. The court, in ordering payments, may impose conditions if the court determines that the conservatee would have imposed the conditions if the conservatee had the capacity to act. Prob C §2423(a).

The granting of the order and the amounts and proportions of the payments are discretionary with the court, but the court must consider all of the following (Prob C §2423(b)):

- 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.

- The circumstances and condition of life to which the conservatee and the spouse or domestic partner and relatives have been accustomed.
- The amount that the conservatee would in the judgment of the court have allowed the spouse or domestic partner and relatives but for the existence of the conservatorship.

Fifteen days' notice of the hearing must be given to the conservator and conservatee, and, if any, the conservatee's spouse or domestic partner, and any person who requested special notice. Prob C §2423(c); see Prob C §1460(b); Benchguide 300, §300.23.

5. Requiring Spouse to Support From Community Property

a. [§301.47] Petition for Support

If one spouse or domestic partner has a conservator and the other spouse or domestic partner manages or controls community property, the conservator or conservatee, a relative or friend of the conservatee, or any interested person may file a petition in the court in which the conservatorship proceeding is pending for an order requiring the conservatee's spouse or domestic partner to apply the income or principal, or both, of the community property to the conservatee's support and maintenance as ordered by the court. Prob C §3080.

Fifteen days' notice of the hearing must be given to the conservator and conservatee, and, if any, the conservatee's spouse or domestic partner, and any person who requested special notice. Prob C §3081(a); see Prob C §1460(b); Benchguide 300, §300.23. If the spouse or domestic partner who has the management or control of community property is not the conservator, the petitioner must also serve notice of the hearing and a copy of the petition on that spouse in accordance with CCP §§410.10 et seq. Prob C §3081(b).

On the filing of a petition, the court may cite the spouse or domestic partner who has the management or control of community property to appear before the court, and the court and the petitioner may examine the spouse or domestic partner under oath concerning the community property and other matters relevant to the petition. If the person so cited refuses to appear and submit to an examination, the court may proceed against the person as provided in Prob C §§8870 et seq. On such examination, the court may make an order requiring the person cited to disclose his or her knowledge of the community property and other matters relevant to the petition. If the person does not comply with the order, the court may proceed against the person as provided in Prob C §§8870 et seq. Prob C §3082.

When a petition is filed, the spouse or domestic partner having the management or control of community property must serve and file a current Income and Expense Declaration, Judicial Council Form FL-150, and a current Property Declaration, Judicial Council Form FL-160. Prob C §3084.

b. [§301.48] Order for Support Pending Determination

The court may, after notice and hearing, order the spouse or domestic partner who has the management or control of community property to pay from the community property an amount that the court determines is necessary for the support and maintenance of the conservatee's spouse or domestic partner pending the determination of the petition. Such an order does not prejudice the rights of the spouses, domestic partners, or other interested parties with respect to any subsequent order that may be made. Any order may be modified or revoked at any time except as to any amount that may have accrued before the date of filing of the petition to modify or revoke the order. Prob C §3083.

c. [§301.49] Ex Parte Restraining Orders

During the pendency of the proceeding, the court, on the application of the petitioner, may issue ex parte orders (Prob C §3085):

- Restraining the spouse or domestic partner that has the management or control of community property from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life.
- Requiring the spouse or domestic partner that has the management or control of the community property to notify the petitioner of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.

d. [§301.50] Hearing and Order

Any person interested in the proceeding may request time to file a response to the petition, to conduct discovery or prepare for the hearing, and the court must grant a continuance for a reasonable time. Prob C §3086.

The court may hear and determine whether property is community property or the separate property of either spouse or domestic partner if that issue is raised in the proceeding. Prob C §3087. Probate Code §3087 does not contain an express provision that requires the court to abate a proceeding when another action is pending. But the general rules of civil

procedure apply with respect to abatement when another action is pending to these proceedings. See Prob C §1000. Cal L Rev Comm'n Comment to Prob C §3087 (1990).

The court may order the spouse or domestic partner who has the management or control of community property to apply the income or principal, or both, of the community property to the conservatee's support and maintenance, including care, treatment, and support of a conservatee who is a patient in a state hospital under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services, as ordered by the court. Prob C §3088(a).

In determining the amount ordered for support and maintenance, the court must consider the following circumstances of the spouses or domestic partners (Prob C §3088(b)):

- The earning capacity and needs of each spouse or domestic partner.
- The obligations and assets, including the separate property, of each spouse or domestic partner.
- The duration of the marriage.
- The age and health of the spouses or domestic partners.
- The standard of living of the spouses or domestic partners.
- Any other relevant factors that it considers just and equitable.

At the request of any interested person, the court must make appropriate findings with respect to the circumstances. Prob C §3088(c).

The court may order the spouse or domestic partner who has the management or control of community property to make a specified monthly or other periodic payment to the conservator of the person of the conservatee or to any other person designated in the order. The court may order the spouse or domestic partner required to make the periodic payments to give reasonable security for those payments. Prob C §3088(d).

e. [§301.51] Earnings Assignment

The court may order the spouse or domestic partner required to make the periodic payments to assign, to the person designated in the order to receive the payments, that portion of the earnings of the spouse or domestic partner due or to be due in the future that will be sufficient to pay the amount ordered by the court for the conservatee's support and maintenance. The order operates as an assignment and is binding on any existing or future employer on whom a copy of the order is served. The order must be in the form of an earnings assignment order for support (Judicial Council Form FL-435). The employer may deduct \$1.50 for each

payment made under the order. Any such assignment made under court order must have priority against any execution or other assignment unless otherwise ordered by the court or unless the other assignment is made under Fam C §§5200 et seq. No employer may use any assignment authorized by this subdivision as grounds for the dismissal of that employee. Prob C §3088(e)(1). “Employer” includes the United States government and any public entity as defined in Govt C §811.2. This provision applies to the money and benefits described in CCP §§704.110 and 704.113 to the extent that those moneys and benefits are subject to a wage assignment for support under CCP §§703.010 et seq. Prob C §3088(e)(2).

f. [§301.52] Modification

The court retains jurisdiction to modify or to vacate an order if justice requires, except as to any amount that may have accrued before the date of the filing of the petition to modify or revoke the order. At the request of any interested person, the order of modification or revocation must include findings of fact and may be made retroactive to the date of the filing of the petition to revoke or modify, or to any subsequent date. At least 15 days before the hearing on the petition to modify or vacate the order, the petitioner must mail a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to the spouse or domestic partner who has the management or control of the community property. Fifteen days’ notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §3088(f); see Benchguide 300, §300.23.

In a proceeding for dissolution of the marriage or for legal separation, the court has jurisdiction to modify or vacate an order made hereunder to the same extent as it may modify or vacate an order made in the proceeding for dissolution of the marriage or for legal separation. Prob C §3088(g).

g. [§301.53] Division of Property

If the spouse or domestic partner who has the management or control of the community property refuses to comply with any order made to provide support or with an order made in a separate action to provide support for the conservatee spouse or domestic partner, on request of the petitioner or other interested person, the court may divide the community property and the quasi-community property of the spouses or domestic partners, as it exists at the time of division, equally in the same manner as when a marriage is dissolved. If the property is so divided, the property awarded to each spouse or domestic partner is the separate property of that spouse or domestic partner, and the court must order that the property awarded to the conservatee spouse or domestic partner be transferred or

paid over to the conservator of the estate of that spouse or domestic partner to be included in the conservatorship estate and be managed, controlled, and disposed of as a part of the conservatorship estate. The fact that property has been divided has no effect on the nature of property thereafter acquired by the spouses or domestic partners, and the determination whether the thereafter-acquired property is community or separate property must be made without regard to the fact that property has been divided. Prob C §3089.

The authority to divide property is useful, for example, where property awarded to the conservatee spouse or domestic partner is sufficient to provide for support and maintenance of that spouse or domestic partner. Division in such a case will avoid the need for further proceedings to enforce the support obligation from community property. Division of community property does not, however, necessarily eliminate the support obligation of the competent spouse or domestic partner. If community property is acquired by the competent spouse or domestic partner after division of the property, that community property may be ordered applied to support the conservatee under this article or by other procedures. However, a separate action is necessary to obtain future support from separate property of the competent spouse or domestic partner. Cal L Rev Comm'n Comment to Prob C §3089 (1990). *Note:* the Comment does not reference domestic partners but Fam C §297.5 gives domestic partners the same rights and responsibilities as spouses.

h. [§301.54] Enforcement

Any court order may be enforced by execution, the appointment of a receiver, contempt, or by other order or orders as the court in its discretion may deem necessary. Prob C §3090.

i. [§301.55] Other Actions

Nothing in these support provisions affect or limit the right of the conservator or any interested person to institute an action against any person to enforce the duty otherwise imposed by law to support the spouse or domestic partner having a conservator. These provisions are permissive and in addition to any other procedure otherwise available to enforce the obligation of support. Prob C §3092.

F. Payment of Claims

1. [§301.56] Payment of Debts

The conservator must pay the following debts and expenses from any principal and income of the estate (Prob C §2430(a)):

- The debts incurred by the conservatee before creation of the conservatorship, giving priority to the wage claims to the extent required by Prob C §2431 (see §301.57).
- The debts incurred by the conservatee during the conservatorship to provide the necessities of life to the conservatee, and to the spouse and conservatee’s minor children, to the extent the debt is reasonable. This also includes the debts reasonably incurred by the conservatee during the conservatorship to provide the basic living expenses to the domestic partner of the conservatee. The conservator may deduct the amount of any payments for these debts from any allowance otherwise payable to the conservatee.
- Any other debt incurred by the conservatee during the conservatorship if the debt satisfies the requirements of any order authorizing the payments made under Prob C §§1870 et seq. These payments are not required to be made to the extent the payments would impair the ability to provide the necessities of life to the conservatee and the spouse and minor children of the conservatee and to provide the basic living expenses of the domestic partner of the conservatee. Prob C §2430(b). *Note:* This section appears to give fewer rights to domestic partners (basic living expenses) than to spouses (necessaries of life), which violates Fam C §297.5. As such, domestic partners should be given the same consideration as spouses.
- 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 (Prob C §2430(a)(4)):
 - The conservator of the person or estate or both.
 - An attorney for the conservator of the person or estate or both.
 - An attorney for the conservatee.
 - An attorney for the estate.
 - The public guardian for the costs and fees under Prob C §2902.

Probate Code §2430(a)(1), providing that a conservator must pay any debts incurred by the conservatee before creation of the conservatorship, is not subject to an exception for payments which will impair the ability to continue to provide the conservatee with the necessities of life. *Conservatorship of Parker* (2014) 228 CA4th 803, 810, 175 CR3d 700 (confirming there is no longer a necessities of life exception for punitive damages award based on conservatee’s tortuous acts before conservatorship).

The conservator may petition the court under Prob C §2403 for instructions when there is doubt whether a debt should be paid. Prob C §2430(c); see §301.77.

2. [§301.57] Payment of Wage Claims

The conservator must promptly pay wage claims for work done or services rendered for the conservatee within 30 days before the date the petition for appointment of the conservator was filed. The payments made may not exceed \$900 to each claimant. If there is insufficient money to pay all the claims up to \$900, the money available must be distributed among such claimants in proportion to the amount of their respective claims. Prob C §2431(b).

After the 30-day payments have been made, the conservator must pay wage claims for work done or services rendered for the conservatee within 90 days before the date the petition for appointment of the conservator was filed, not including the 30-day payees. The payments may not exceed \$1,100 to each claimant. If there is insufficient money to pay all the claims up to \$1,100, the money available must be distributed among such claimants in proportion to the amounts of their respective claims. Prob C §2431(c).

The conservator may require sworn claims to be presented. If there is reasonable cause to believe that the claim is not valid, the conservator may refuse to pay the claim in whole or in part but must pay any part that is not disputed without prejudice to the claimant's rights as to the balance of the claim. The conservator must withhold sufficient money to cover the disputed portion until the claimant has had a reasonable opportunity to establish the validity of the claim by bringing an action, either in the claimant's own name or through an assignee, against the conservator. Prob C §2431(d).

If the conservator neglects or refuses to pay all or any portion of a claim that is not in dispute, the court must order the conservator to do so on the informal application of any wage claimant or the assignee or legal representative of such claimant. Prob C §2431(e).

The conservator may petition the court under Prob C §2403 for instructions when there is doubt whether a wage claim should be paid. Prob C §2431(a).

G. General Estate Management Powers

1. [§301.58] Court Authorization Not Required

Unless there is a statutory provision providing a proceeding to obtain court authorization or requiring court authorization, the estate management powers and duties may be exercised or performed by the

conservator without court authorization, instruction, approval, or confirmation. Prob C §2450(a). This does not preclude the conservator from seeking court authorization, instructions, approval, or confirmation under Prob C §2403. Prob C §2450(a). If the conservator is doubtful as to the proper action to take, the conservator may wish to obtain authorization under Prob C §2403 before acting or failing to act rather than risk that the court will find on settlement of the accounts that the conservator failed to use ordinary care and diligence in managing the estate. Cal L Rev Comm'n Comment to Prob C §2450 (1990).

The conservator may do any of the following (Prob C §2451.5):

- Contract for the conservatorship, perform outstanding contracts, and, thereby, bind the estate.
- Purchase tangible personal property.
- Subject to Prob C §§2640 et seq, employ an attorney to advise and represent the conservator in all matters, including the conservatorship proceeding and all other actions or proceedings.
- Employ and pay the expense of accountants, investment advisers, agents, depositories, and employees.
- Operate for a period of 45 days after the issuance of the letters of conservatorship, at the risk of the estate, a business, farm, or enterprise constituting an asset of the estate.

On petition of the conservatee, a creditor, or any other interested person, or on the court's own motion, the court may limit the authority of the conservator as to a particular power or duty or as to particular powers or duties. Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2450(b); see Benchguide 300, §300.23.

2. [§301.59] Elder Abuse Action

If the conservatee has been subject to abuse, either physical or financial, the conservator may bring an action under the Elder Abuse and Dependent Adult Civil Protection Act. Welf & I C §§15600 et seq. The action may be brought in the probate court or the civil court (Welf & I C §15657.3(a), (b)), and pain and suffering, punitive damages, and attorney's fees may be recovered. Welf & I C §15657.

Actions for elder abuse are further discussed in Benchguide 300, §300.100

3. [§301.60] Conservatee's Wages or Salary

Unless otherwise ordered by the court, if the conservatee is employed at any time during the continuance of the conservatorship (Prob C §2601(a)):

- The wages or salaries for such employment are not a part of the estate, and the conservator is not accountable for such wages or salaries.
- The wages or salaries for such employment must be paid to the conservatee and are subject to his or her control to the same extent as if the conservatorship did not exist.

Any court order with respect to a conservatee's wages is binding on the employer only after notice of the order has been received by the employer. Prob C §2601(b).

4. [§301.61] Collection of Debts

The conservator may collect debts and benefits due to the conservatee and the estate. Prob C §2451. This duty ordinarily will require that the conservator take appropriate action to collect a debt or benefit. But if the potential recovery is less than the cost of taking action that might result in recovery of a debt, Prob C §2451 does not require the conservator to act. If there is a question about the propriety of initiating a lawsuit to collect the debt, the conservator should obtain instructions from the court under Prob C §2403 before commencing the action. Cal L Rev Comm'n Comment to Prob C §2451 (1990).

5. [§301.62] Checks

The conservator may endorse and cash or deposit any checks, warrants, or drafts payable to the conservatee that are property of the estate. Prob C §2452(a). If it appears likely that the estate will satisfy the conditions of Prob C §2628 (qualify for waiver of accounting as a small estate; see §301.123), the court may order that the conservator be the designated payee for public assistance payments received under Welf & Inst C §§11000 et seq, 16000 et seq. Prob C §2452(b).

6. [§301.63] Deposit of Money

The conservator may deposit money belonging to the estate in an insured account in a financial institution in California. Unless otherwise provided by court order, the conservator may withdraw money deposited without a court order. Prob C §2453.

If a trust company is a conservator and, in the exercise of reasonable judgment, deposits money of the estate in an account in any department of the corporation or association of which it is a part, it is chargeable with interest thereon at the rate of interest prevailing among banks of the locality on such deposits. Prob C §2453.5(a). Cash that is reasonably necessary to the orderly administration of the estate, however, may be deposited in a checking account that does not bear interest in a department

of the corporation or association of which the trust company is a party. Prob C §2453.5(b).

- **JUDICIAL TIP:** Financial institution accounts must be titled in the name of the conservatorship estate, and not the names of the conservator or conservatee. Funds greater than the amount of the Federal Deposit Insurance Corporation (FDIC) insurance limit should not be deposited or kept in any single institution.

7. [§301.64] Deposit of Personal Property

The conservator may deposit personal property of the estate with a trust company for safekeeping. Unless otherwise provided by court order, the personal property may be withdrawn without a court order. Prob C §2454.

A trust company serving as conservator may deposit securities that are all or part of the estate in a securities depository. Prob C §2455(a). Similarly, a trust company that has received securities may deposit the securities in a securities depository. Prob C §2455(b); see Prob C §§2328, 2454. The securities depository may hold deposited securities in the manner authorized by Fin C §775. Prob C §2455(c). *Note:* Fin C §775 was repealed in 2008. Prob C §2455 has not been updated to remove or change this reference.

8. [§301.65] Deposit Withdrawal Only on Court Authorization

On application of the conservator, the court may, with or without notice, order that money or other personal property be deposited in an insured account with a financial institution or trust company, and be subject to withdrawal only on authorization of the court. Prob C §2456(a). Judicial Council forms may identify this account as a blocked account. See, *e.g.*, Judicial Council Form GC-340, Order Appointing Probate Conservator, and GC-065, Order Confirming Sale of Real Property. The conservator must deliver a copy of the court order to the financial institution or trust company at the time the deposit is made. Prob C §2456(b). Unless it has actual notice of the order, no financial institution or trust company accepting such a deposit is on notice of the existence of an order that the money or other property is subject to withdrawal only on authorization of the court. Prob C §2456(c).

Such a deposit may allow the conservator's bond to be reduced. See Benchguide 300, §300.50.

9. [§301.66] Maintenance of Dwelling

The conservator may maintain in good condition and repair the home or other dwelling of either or both of the following (Prob C §2457):

- The conservatee.
- The persons legally entitled to such maintenance and repair from the conservatee.

The power to add improvements is not included under this provision. If there is doubt as to whether the particular project is permitted, the conservator should seek court authorization under Prob C §2403. Cal L Rev Comm'n Comment to Prob C §2457 (1990).

10. [§301.67] Exercise Rights of Shareholder

With respect to a share of stock of a domestic or foreign corporation held in the estate, a membership in a nonprofit corporation held in the estate, or other property held in the estate, a conservator may do any one or more of the following (Prob C §2458):

- Vote in person, and give proxies to exercise, any voting rights with respect to the share, membership, or other property.
- Waive notice of a meeting or give consent to the holding of a meeting
- Authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

11. [§301.68] Insurance and Retirement Plans

The conservator may obtain, continue, renew, modify, terminate, or otherwise deal in any of the following for the purpose of providing protection to the conservatee or a person legally entitled to support from the conservatee (Prob C §2459(a)):

- Medical, hospital, and other health care policies, plans, or benefits.
- Disability policies, plans, or benefits.

The conservator may continue in effect any of the following in which the conservatee, or a person legally entitled to support, maintenance, or education from the conservatee, has or will have an interest (Prob C §2459(b)):

- Life insurance policies, plans, or benefits.
- Annuity policies, plans, or benefits.
- Mutual funds and other dividend reinvestment plans.
- Retirement, profit-sharing, and employee welfare plans or benefits.

The right to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights, or to take similar actions under

any of the policies, plans, or benefits described above may be exercised by the conservator only after authorization or direction by court order, except for mutual funds held without a designation of beneficiary. See Prob C §2544.5; §301.99. To obtain such an order, the conservator or other interested person must petition under Prob C §§2580 et seq, for substituted judgment (see §301.99). Prob C §2459(c).

The conservator may be surcharged for failure to renew a conservatee's life insurance policy with a third party as a beneficiary, even though the estate of the conservatee was not affected by the failure. *Conservatorship of Coffey* (1986) 186 CA3d 1431, 1440, 231 CR 421.

Unless the court otherwise orders, the conservator, without authorization of the court, may borrow on the loan value of an insurance policy to pay the current premiums to keep the policy in force if the conservatee followed that practice before the conservatorship was established. Prob C §2459(d).

Nothing in Prob C §2459 limits the power of the conservator to make investments as otherwise authorized to manage the estate. Prob C §2459(f).

The conservator may insure (Prob C §2460):

- Property of the estate against loss or damage.
- The conservatee, the conservator, and all or any part of the estate against liability to third persons.

12. [§301.69] Tax Returns

The conservator may prepare, execute, and file tax returns for the conservatee and for the estate and may exercise options and elections and claim exemptions for the conservatee and for the estate under the applicable tax laws. Prob C §2461(a). The conservator may pay, contest, and compromise taxes, penalties, and assessments on the property of the estate and income and other taxes payable or claimed to be payable by the conservatee or the estate. Court approval is not required in these cases even if the \$25,000 limit normally requiring court approval is exceeded. Prob C §2461(b). See Prob C §2502.

13. [§301.70] Maintenance and Defense of Actions

Unless another person is appointed for that purpose, the conservator may (Prob C §2462):

- Commence and maintain actions and proceedings for the benefit of the conservatee or the estate.
- Defend actions and proceedings against the conservatee, the conservator, or the estate.

- File a petition commencing a bankruptcy action on behalf of the conservatee.

14. [§301.71] Disposal of Property

The conservator may dispose of or abandon valueless property. Prob C §2465.

15. [§301.72] Advance of Conservator's Funds

The conservator may advance the conservator's own funds for the benefit of the conservatee or the estate and may reimburse the advance out of the income and principal of the estate that is first available. With court authorization or approval, interest on the amount advanced may be allowed at the legal rate payable on judgments. Prob C §2466.

16. [§301.73] Duty After Death of Conservatee

The conservator continues to have the duty of custody and conservation of the estate after the death of the conservatee pending the delivery thereof to the personal representative of the conservatee's estate or other disposition according to law. Prob C §2467(a). The conservator has such powers as are granted to a conservator by statute as are necessary for the performance of this duty. Prob C §2467(b). The conservator must notify specified parties of the conservatee's death (see §301.135).

17. [§301.74] Practice Administrator for Disabled Attorney

The conservator of the estate of a disabled attorney who was engaged in the practice of law at the time of his or her disability, or other person interested in the estate, may bring a petition seeking the appointment of an active member of the State Bar of California to take control of the files and assets of the practice of the disabled member. Prob C §2468(a). The person appointed to take control of the practice of the disabled member must be referred to as the "practice administrator," and the conservatee must be referred to as the "disabled member." Prob C §2468(j).

The petition may be filed and heard on such notice that the court determines is in the best interests of the persons interested in the estate of the disabled member. If the petition alleges that the immediate appointment of a practice administrator is required to safeguard the interests of the estate, the court may dispense with notice, provided that the conservator is the petitioner or has joined in the petition or has otherwise waived notice of hearing on the petition. Prob C §2468(b).

The petition must indicate the powers sought for the practice administrator from the list of powers set forth in Bus & P C §6185. These

powers must be specifically listed in the order that appoints the practice administrator. Prob C §2468(c).

The petition must allege the value of the assets that are to come under the control of the practice administrator, including but not limited by the amount of funds in all accounts used by the disabled member. The court must require the filing of a surety bond in the amount of the value of the personal property to be filed with the court by the practice administrator. No action may be taken by the practice administrator unless a bond has been duly filed with the court. Prob C §2468(d). The practice administrator must not be the attorney representing the conservator. Prob C §2468(e).

The court must appoint the attorney nominated by the disabled member in a writing, including but not limited to the disabled member's will, unless the court concludes that the appointment of the nominated person would be contrary to the best interests of the estate or would create a conflict of interest with any of the clients of the disabled member. Prob C §2468(f).

The practice administrator may be compensated for reasonable and necessary services, but only on order of the court making the appointment. The law practice must be the source of the compensation for the practice administrator unless the assets are insufficient, in which case, the compensation of the practice administrator must be charged against the assets of the estate as a cost of administration. The practice administrator is also entitled to reimbursement of costs. Prob C §2468(g).

On conclusion of the services of the practice administrator, the practice administrator must render an accounting to, and petition for its approval by, the superior court making the appointment. On settlement of the accounting, the practice administrator must be discharged and the surety on his or her bond exonerated. Prob C §2468(h).

If the court appointing the practice administrator determines on petition that the disabled attorney has recovered the capacity to resume his or her law practice, the appointment of a practice administrator must be terminated immediately, and the disabled attorney must be restored to his or her practice. Prob C §2468(i).

H. Settling Claims

1. [§301.75] Authority To Settle Claims Without Court Approval

If it is to the advantage of the estate and when court approval is not required, the conservator may do any of the following without court authorization, instruction, approval, or confirmation (Prob C §2500(a)):

- Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the conservatee, the conservator, or the estate, including the giving of a covenant not to sue.
- Extend, renew, or in any manner modify the terms of an obligation owing to or running in favor of the conservatee or the estate.

This authority does not preclude the conservator from seeking court authorization, instructions, approval, or confirmation under Prob C §2403. Prob C §2500(b).

On petition of the conservatee, a creditor, or any interested person, or on the court's own motion, the court may limit the above authority of the conservator. Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2500(c); see Benchguide 300, §300.23.

2. [§301.76] When Court Approval Required

Court approval is required for a compromise, settlement, extension, renewal, or modification that affects any of the following (Prob C §2501(a)):

- Title to real property.
- An interest in real property or lien or encumbrance on real property.
- An option to purchase real property or an interest in real property.

Court approval is required for a compromise or settlement of a matter when the transaction requires the transfer or encumbrance of property of the estate, or the creation of an unsecured liability of the estate, or both, in an amount or value in excess of \$25,000. Prob C §2502.

Court approval is also required for any of the following (Prob C §2503):

- A compromise or settlement of a claim by the conservatee against the conservator or against the attorney for the conservator, whether or not the claim arises out of the administration of the estate.
- An extension, renewal, or modification of the terms of a debt or similar obligation of the conservator, or of the attorney for the conservator, owing to or running in favor of the conservatee or the estate.

Court approval is required for the compromise or settlement of any of the following (Prob C §2504):

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

(including, but not limited to, the spouse, domestic partner, parent, or adult child of the conservatee.)

- A claim of the conservatee for wrongful death.
- A claim of the conservatee for physical or nonphysical harm to the person.

3. [§301.77] Obtaining Court Approval

If the claim or matter is the subject of a pending action or proceeding in a California court, court approval must be obtained from the court in which the action or proceeding is pending. Prob C §2505(a).

But if the claim or matter is not the subject of a pending action or proceeding, the court approval must be obtained from one of the following (Prob C §2505(b)):

- The court in which the conservatorship proceeding is pending.
- The superior court of the county where the conservatee or conservator resides at the time the petition for approval is filed.
- The superior court of any county where a suit on the claim or matter properly could be brought.

If the claim or matter is the subject of a pending action or proceeding that is not brought in a California court, court approval must be obtained from either of the following (Prob C §2505(c)):

- The court in which the action or proceeding is pending.
- The court in which the conservatorship proceeding is pending.

Probate Code §§2505(a), (b), and (c) do not apply to a conservatorship that is registered in California pursuant to Prob C §§2011 et seq (registration and recognition of conservatorship orders from other states). Prob C §2505(d)(1). When a conservatorship is registered in California pursuant to Prob C §§2011 et seq, the court approval required must be obtained in accordance with Prob C §2016. Prob C §2505(d)(2). However, when a conservatorship is registered in California pursuant to Prob C §§2011 et seq, and the claim or matter in question is the subject of a pending action or proceeding that is not brought in a California court, the required court approval required may be obtained from the court in which the action or proceeding is pending. Prob C §2505(d)(3).

If approval of the court in which the conservatorship proceeding is pending is required, the conservator must file a petition with the court showing the advantage of the compromise, settlement, extension, renewal, or modification to the conservatee and the estate. Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2506; see Benchguide 300, §300.23.

If another statute requires, provides a procedure for, or dispenses with court approval of a compromise, settlement, extension, renewal, or modification, the provisions of that statute govern any case to which that statute applies. Prob C §2507(a). And if another statute provides that a compromise or settlement of an administrative proceeding is not valid unless approved in such proceeding, the approval is governed by that statute, and approval in the conservatorship proceeding is not required. Prob C §2507(b).

I. Selling Property

1. [§301.78] Sales Subject to Authorization

Sales of real or personal property of the estate are subject to authorization, confirmation, or direction of the court. Prob C §2540(a). Special rules apply to the sale of a conservatee's personal residence (see §301.82).

When a conservator petitions for the approval of a purchase, lease, or rental of real or personal property from the estate of a conservatee, the conservator must disclose any family or affiliate relationship between the conservator and the purchaser, lessee, or renter of the property, and any family or affiliate relationship between the conservator and any agent hired by the conservator. Prob C §2403(c)(1). "Family" means a person's spouse, domestic partner, or relatives within the second degree of lineal or collateral consanguinity of a person or a person's spouse. "Affiliate" means an entity that is under the direct control, indirect control, or common control of the conservator. Prob C §2403(c)(2).

Violation of the disclosure requirement results in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the estate of the conservatee because the property was sold or leased at less than fair market value are deemed as charges against the conservator under the provisions of Prob C §§2401.3 and 2401.5 (see §301.25). The court must assess a civil penalty equal to three times the charges against the conservator or other person in violation, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court must order the conservator or other person in violation to pay a fine of up to \$5,000 for each violation. The fines and penalties are in addition to any other rights and remedies provided by law. Prob C §2403(c)(3).

2. [§301.79] When and What To Sell

The conservator may sell real or personal property of the estate in any of the following cases (Prob C §2541):

- If the income of the estate is insufficient for the comfortable and suitable support, maintenance, and education of the conservatee (including care, treatment, and support of the conservatee if a patient in a state hospital under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services) or of those legally entitled to support, maintenance, or education from the conservatee.
- If the sale is necessary to pay the debts referred to in Prob C §§2430, 2431; see §§301.56–301.57.
- If the sale is for the advantage, benefit, and best interest of (1) the conservatee, (2) the estate, or (3) the conservatee and those legally entitled to support, maintenance, or education from the conservatee.

If estate property is required or permitted to be sold, the conservator may (Prob C §2543(a)):

- Use discretion as to which property to sell first.
- Sell the entire interest of the estate in the property or any lesser interest therein.
- Sell the property either at public auction or private sale.

There is no statutory priority between personal and real property in selling property, whatever the reason that causes the property to be sold. Cal L Rev Comm'n Comment to Prob C §2543 (1990).

3. [§301.80] Terms of Sale

All sales must be for cash or for part cash and part deferred payments. The terms of sale are subject to court approval except as otherwise provided in Prob C §§2544 and 2545. Prob C §2542(a).

If the real property is sold for part deferred payments, the conservator must take the note of the purchaser for the unpaid portion of the purchase money, with a mortgage or deed of trust on the property to secure payment of the note. The mortgage or deed of trust must be subject only to encumbrances existing at the date of sale and such other encumbrances as the court may approve. Prob C §2542(b).

If the real or personal property of the estate that was sold for part deferred payments consists of an undivided interest, a joint tenancy interest, or any other interest less than the entire ownership, and the owner or owners of the remaining interests in the property join in the sale, the note and deed of trust or mortgage may be made to the conservatee and the other owner or owners. Prob C §2542(c).

- ➡ **JUDICIAL TIP:** Exercise caution in approving a sale on deferred payments. Consider the conservatee's need for the funds and the

consequences of missed payments. Consequences if payments are not made include the time costs of litigation to enforce the sale's terms, or the costs of and delays caused by foreclosing and possibly reselling the property.

4. [§301.81] Procedures for Sale

All proceedings concerning sales by conservators, publishing and posting notice of sale, reappraisal for sale, minimum offer price for the property, reselling the property, report of sale and petition for confirmation of sale, and notice and hearing of that petition, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, must conform, as nearly as possible, to the provisions of this code concerning sales by a personal representative. See Prob C §§10300 et seq, 10350 et seq, 10360 et seq, and 10380 et seq. The provisions concerning sales by a personal representative in the Independent Administration of Estates Act (Prob C §§10400 et seq) do not apply. Prob C §2543(b).

The clerk of the court must cause notice to be posted only in the following cases (Prob C §2543(d)):

- If posting of notice of hearing is required on a petition for the confirmation of a sale of real or personal property of the estate.
- If posting of notice of a sale governed by Prob C §10250 (sales of personal property) is required or authorized.
- If posting of notice is ordered by the court.

The required forms for obtaining approval of sales of real property are Judicial Council Forms GC-060, Report of Sale and Petition for Order Confirming Sale of Real Property, and GC-065, Order Confirming Sale of Real Property.

- **JUDICIAL TIP:** Despite the limitations on when notice is required by Prob C §2545(b)–(c), Cal Rules of Ct 7.1059(b)(17) states that the conservator must, when disposing of the conservatee's tangible personal property, inform the conservatee's family members in advance and give them an opportunity to acquire the property, with approval or confirmation of the court.

5. [§301.82] Sale of Residence

Unless the conservator has been granted independent powers, he or she must seek court authorization before selling the conservatee's present or former personal residence. Prob C §2540(b); see Prob C §§2590 et seq. The conservator must notify the court that the conservator has discussed

the proposed sale with the conservatee and whether the conservatee supports or is opposed to the proposed sale. The conservator must also describe the circumstances that necessitate the proposed sale, including whether the conservatee has the ability to live in the personal residence and why other alternatives, including, but not limited to, in-home care services, are not available. The court, in its discretion, may require the court investigator to discuss the proposed sale with the conservatee. Prob C §2540(b).

If the last appraisal of the conservatee's personal residence was conducted more than 6 months before the confirmation hearing, a new appraisal is required before the confirmation hearing, unless the court finds that it is in the conservatee's best interests to rely on an appraisal of the personal residence that was conducted not more than 1 year before the confirmation hearing. Prob C §2543(c).

- **JUDICIAL TIP:** The best practice is to have the court investigator discuss the sale of a personal residence with the conservatee and inform the court of the conservatee's wishes before approving the sale. Some courts also appoint an attorney or guardian ad litem to report to the court on the conservatee's behalf and comment on the proposed sale's terms.

6. [§301.83] Sale of Securities Without Authorization

Except as specifically limited by court order, subject to Prob C §2541, the conservator may sell securities without authorization, confirmation, or direction of the court if any of the following conditions is satisfied (Prob C §2544(a)):

- The securities are to be sold on an established stock or bond exchange.
- The securities to be sold are securities designated as a national market system security on an interdealer quotation system or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer.
- The securities are to be directly redeemed by the issuer thereof.

Probate Code §2543, regarding procedures for sale, does not apply to such sales. Prob C §2544(b).

Except as specifically limited by the court, subject to Prob C §2541, the conservator may sell mutual funds held without designation of a beneficiary without authorization, confirmation, or direction of the court. Probate Code §2543, regarding procedures for sale, does not apply to such sales. Prob C §2544.5.

If court authorization is required for other sales of securities, permission may be obtained ex parte using required Judicial Council Form GC-070, Ex Parte Petition for Authority to Sell Securities and Order.

7. [§301.84] Sale of Tangible Personal Property Without Authorization

Subject to the following limitations, and Prob C §2541, the conservator may sell or exchange tangible personal property of the estate without authorization, confirmation, or direction of the court. Prob C §2545(a). The aggregate of the sales or exchanges made during any calendar year, however, may not exceed \$5,000. Prob C §2545(b). This provision applies whether or not the property is perishable or is property that may be disposed of without court order in a probate estate. Cal L Rev Comm'n Comment to Prob C §2545 (1990).

A sale or exchange of personal effects or of furniture or furnishings used for personal, family, or household purposes may be made only if the conservatee either (1) consents to the sale or exchange, or (2) the conservatee does not have legal capacity to give such consent. Prob C §2545(c)(2).

The conservator's failure to observe the above limitations does not invalidate the title of, or impose any liability on, a third person who acts in good faith and without actual notice of the conservator's lack of authority. Prob C §2545(d).

Probate Code §2543(b) regarding procedures for sale does not apply to such sales of personal property. Prob C §2545(e).

If court authorization is required for other sales of personal property, permission may be obtained ex parte using required Judicial Council Form GC-075, Ex Parte Petition for Approval of Sale of Personal Property and Order.

8. [§301.85] Application of Proceeds

The conservator must apply the proceeds of the sale to the purposes for which it was made, as far as necessary, and the residue, if any, must be managed as the other property of the estate. Prob C §2547.

9. [§301.86] Limitations

No action for the recovery of any property sold by a conservator may be maintained by the conservatee or by any person claiming under the conservatee unless commenced within the later of the following times (Prob C §2548):

- Three years after the termination of the conservatorship.

- When a legal disability to sue exists by reason of minority or otherwise at the time the cause of action accrues, within 3 years after the removal thereof.

10. [§301.87] Carrying Out Transaction

Whenever the court authorizes or directs a transaction, the transaction must be carried out by the conservator of the estate in accordance with the terms of the order. Prob C §2111(b).

“Transaction” means any of the following (Prob C §2111(a)):

- A conveyance or lease of real property of the conservatorship estate.
- The creation of a mortgage or deed of trust on real property of the conservatorship estate.
- A transfer of personal property of the conservatorship estate.
- The creation of a security interest or other lien in personal property of the conservatorship estate.

A conveyance, lease, or mortgage of, or deed of trust on, real property executed by a conservator must set forth that it is made by authority of the order authorizing or directing the transaction and must give the date of the order. A certified copy of the order must be recorded in the office of the county recorder in each county in which any portion of the real property is located. Prob C §2111(c).

A transaction carried out by a conservator in accordance with an order authorizing or directing the transaction has the same effect as if the conservatee had carried out the transaction while having legal capacity to do so. Prob C §2111(d).

J. Borrow and Lend

1. [§301.88] Authority and Authorization

A conservator may borrow money; lend money; give security; lease, convey, or exchange property of the estate; or engage in any other transaction only after authorization by court order. Prob C §2550.

In any case described in Prob C §2541 (sale of real or personal property) or Prob C §2552 (security interest), the conservator, after authorization by court order, may borrow money on a note, either unsecured or to be secured by a security interest or other lien on the personal property of the estate or any part thereof or to be secured by a mortgage or deed of trust on the real property of the estate or any part thereof. The conservator must apply the money to the purpose specified in the order. Prob C §2551(a).

To obtain an authorization order, the conservator, the conservatee, or any other interested person may file a petition with the court. The petition must state the purpose for which the order is sought, the necessity for or advantage to accrue from the order, the amount of money proposed to be borrowed, the rate of interest to be paid, the length of time the note is to run, and a general description of the property proposed to be mortgaged or subjected to a deed of trust or other lien. Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2551(b); see Benchguide 300, §300.23.

The court may require such additional proof of the fairness and feasibility of the transaction as the court determines is necessary. If the required showing is made, the court may make an order authorizing the transaction. Prob C §2551(c).

The court in its order may do any one or more of the following (Prob C §2551(c)):

- Order that the amount specified in the petition, or a lesser amount, be borrowed.
- Prescribe the maximum rate of interest and the period of the loan.
- Require that the interest and the whole or any part of the principal be paid from time to time out of the estate or any part thereof.
- Require that the personal property used as security or any buildings on real property to be mortgaged or subjected to the deed of trust be insured for the further security of the lender and that the premiums be paid out of the estate.
- Specify the purpose for which the money to be borrowed is to be applied.
- Prescribe such other terms and conditions concerning the transaction as the court determines to be to the advantage of the estate.

The note and the mortgage or deed of trust, if any, must be signed by the conservator. Prob C §2551(d).

Having jurisdiction to administer the conservatee's estate vests the court with jurisdiction to make the order for the note and for the security interest, lien, mortgage, or deed of trust. This jurisdiction inures to the benefit of the owner of the security interest or lien, mortgagee named in the mortgage, or the trustee and beneficiary named in the deed of trust, and their heirs and assigns. No omission, error, or irregularity in the proceedings may impair or invalidate the proceedings or the note, security interest, lien, mortgage, or deed of trust given under an order under this provision. Prob C §2551(e).

On any foreclosure or sale under a security interest, lien, mortgage, or deed of trust given by a conservator, if the proceeds of the sale of the encumbered property are insufficient to pay the note, the security interest, lien, mortgage, or deed of trust, and the costs or expenses of sale, no judgment or claim for any deficiency may be had or allowed against the conservatee or the estate. Prob C §2551(f).

Unless otherwise provided in the instrument or by statute, a conservator is not personally liable on an instrument, including but not limited to a note, mortgage, deed of trust, or other contract, properly entered into in the conservator's fiduciary capacity in the course of the conservatorship unless the conservator fails to reveal the conservator's representative capacity or identify the conservatorship estate in the instrument. Prob C §2110.

2. [§301.89] Security Interest

The conservator may give a security interest or other lien on the personal property of the estate or any part thereof or a mortgage or deed of trust on the real property of the estate or any part thereof, after authorization by court order (see Prob C §2551), for any of the following purposes (Prob C §2552(a)):

- To pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on property of the estate.
- To improve, use, operate, or preserve the property proposed to be mortgaged or subjected to a deed of trust, or some part thereof.

If property of the estate consists of an undivided interest in real or personal property, or any other interest that is less than the entire ownership, on a showing that it would be to the advantage of the estate to borrow money to improve, use, operate, or preserve the property jointly with the owners of the other interests therein, or to pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on all of the property, the conservator, after authorization by court order (see Prob C §2551), may join with the owners of the other interests in the borrowing of money and the execution of a joint and several note and such security interest, lien, mortgage, or deed of trust that may be required to secure the payment of the note. The note may be for such sum as is required for the purpose. Prob C §2552(b).

No omission, error, or irregularity in the proceedings under this provision may impair or invalidate the proceedings or the note, security interest, lien, mortgage, or deed of trust given under an order made under this provision. Prob C §2552(c).

K. Other Transactions

1. [§301.90] Leases

Except in limited circumstances (see Prob C §2555), leases may be executed by the conservator with respect to the property of the estate only after authorization by court order. Prob C §2553(a).

To obtain an order, the conservator or any interested person may file a petition with the court. The petition must state (Prob C §2553(b)):

- A general description of the property proposed to be leased;
- The term, rental, and general conditions of the proposed lease; and
- The advantage to the estate to accrue from giving the lease.

If the lease is proposed to be for a term longer than 10 years, the petition must also state facts showing the need for the longer lease and its advantage to the estate. Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2553(b); see Benchguide 300, §300.23. If a lease gives the lessee the right to extend the term of the lease, the length of the term must be considered as though the right to extend had been exercised. Prob C §2552.5.

At the hearing, the court must entertain and consider any other offer made in good faith at the hearing to lease the same property on more favorable terms. If the court is satisfied that it will be to the advantage of the estate, the court must make an order authorizing the conservator to make the lease to the person and on the terms and conditions stated in the order. The court must not make an order authorizing the conservator to make the lease to any person other than the lessee named in the petition unless the offer made at the hearing is acceptable to the conservator. Prob C §2553(c). Thus, the conservator has the power to reject a proposed lease notwithstanding court approval.

Having jurisdiction to administer the conservatee's estate vests the court with jurisdiction to make the order for the lease. This jurisdiction inures to the benefit of the lessee and the lessee's heirs and assigns. No omission, error, or irregularity in the proceedings may impair or invalidate the proceedings or the lease made under an order made under this provision. Prob C §2553(d).

An order authorizing the execution of a lease must set forth the minimum rental or royalty or both and the period of the lease, which must be for such time as the court may authorize. Prob C §2554(a).

The order may authorize other terms and conditions, including, with respect to a lease for the purpose of exploration for or production or removal of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy, any one or more of the following (Prob C §2554(b)):

- A provision for the payment of rental and royalty to a depository.

- A provision for the appointment of a common agent to represent the interests of all the lessors.
- A provision for the payment of a compensatory royalty in lieu of rental and in lieu of drilling and producing operations on the land covered by the lease.
- A provision empowering the lessee to enter into any agreement authorized by Pub Res C §3301 with respect to the land covered by the lease.
- A provision for a community oil lease or pooling or unitization by the lessee.

If the lease covers additional property owned by other persons or an undivided or other interest of the conservatee less than the entire ownership in the property, the order may authorize the lease to provide for division of rental and royalty in the proportion that the land or interest of each owner bears to the total area of the land or total interests covered by such lease. Prob C §2554(c).

A court may authorize a lease for the purpose of exploration for or production or removal of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy, for a fixed period and any of the following (Prob C §2554(d)):

- So long thereafter as minerals, oil, gas, or other hydrocarbon substances or geothermal energy are produced in paying quantities from the property leased or mining or drilling operations are conducted thereon.
- If the lease provides for the payment of a compensatory royalty, so long as such compensatory royalty is paid.
- If the land covered by the lease is included in an agreement authorized by Pub Res C §3301, so long as oil, gas, or other hydrocarbon substances are produced in paying quantities from any of the lands included in any such agreement or drilling operations are conducted thereon.

If a lease gives the lessee the right to extend the term of the lease, the length of the term must be considered as though the right to extend had been exercised. Prob C §2552.5.

If it is to the advantage of the estate, the conservator may lease, as lessor, real property of the estate without authorization of the court in either of the following cases (Prob C §2555):

- When the rental does not exceed \$5,000 a month, and the term does not exceed 2 years.
- When the lease is from month to month, regardless of the amount of the rental.

2. [§301.91] Extension of Leases

If it is to the advantage of the estate, the conservator without prior court approval may extend, renew, or modify a lease of real property in either of the following cases (Prob C §2501(b)):

- When under the lease as extended, renewed, or modified the rental does not exceed \$5,000 a month and the term does not exceed 2 years.
- When the lease is from month to month, regardless of the amount of the rental.

If the lease as extended, renewed, or modified gives the lessee the right to extend the term of the lease, the length of the term must be considered as though the right to extend had been exercised. Prob C §2501(c).

3. [§301.92] Dedication or Conveyance

If it is for the advantage, benefit, and best interests of the estate and those interested therein, the conservator, after authorization by court order, may do any of the following either with or without consideration (Prob C §2556(a)):

- Dedicate or convey real property of the estate for any purpose to any of the following:
 - This state or any public entity in this state.
 - The United States or any agency or instrumentality of the United States.
- Dedicate or convey an easement over any real property of the estate to any person for any purpose.
- Convey, release, or relinquish to this state or any public entity in this state any access rights to any street, highway, or freeway from any real property of the estate.
- Consent as a lienholder to a dedication, conveyance, release, or relinquishment by the owner of property subject to the lien.

To obtain an order, the conservator or any other interested person must file a petition with the court. Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2556(b); Benchguide 300, §300.23.

4. [§301.93] Exchanges

A conservator, after authorization by court order, may exchange any property of the estate for other property on such terms and conditions as

may be prescribed by the court if it is for the advantage, benefit, and best interests of the conservatee and those legally entitled to support, maintenance, or education from the conservatee. The terms and conditions prescribed by the court may include the payment or receipt of part cash by the conservator. Prob C §2557(a).

To obtain an order, the conservator or any interested person must file a petition containing all of the following (Prob C §2557(b)):

- A description of the property.
- The terms and conditions of the proposed exchange.
- A showing that the proposed exchange is for the advantage, benefit, and best interests of the conservatee and those legally entitled to support, maintenance, or education from the conservatee.

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2557(c); Benchguide 300, §300.23.

If the petition is for authorization to exchange stocks, bonds, or other securities as defined in Prob C §10200 for different stocks, bonds, or other securities, the court, on a showing of good cause, may order that the notice be given for a shorter period or be dispensed with. Prob C §2557(d).

After authorization by court order, the conservator may execute the conveyance or transfer to the person with whom the exchange is made to effectuate the exchange. Prob C §2557(e).

No omission, error, or irregularity in the proceedings under this provision may impair or invalidate the proceedings or the exchange made under an order made under this provision. Prob C §2557(f).

5. [§301.94] Partition

The conservator may bring an action against the other cotenants for partition of any property in which the conservatee has an undivided interest if the court has first made an order authorizing the conservator to do so. The court may make such an order ex parte on a petition filed by the conservator. Prob C §2463(a). The conservator may consent and agree, without an action, to a partition of the property and to the part to be set off to the estate, and may execute deeds or conveyances to the owners of the remaining interests of the parts to which they may be respectively entitled, if the court has made an order under Prob C §§2500 et seq (see §301.76) authorizing the conservator to do so. Prob C §2463(b). If the conservatee, or the conservator as such, is made a defendant in a partition action, the conservator may defend the action without authorization of the court. Prob C §2463(c).

6. [§301.95] Deed in Lieu of Foreclosure

If it is to the advantage of the estate to accept a deed to property that is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust, the conservator may, after authorization by court order and on such terms and conditions as may be imposed by the court, accept a deed conveying the property to the conservatee. Prob C §2464(a). To obtain an order under this provision, the conservator must file a petition showing the advantage to the estate of accepting the deed. Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2464(b); Benchguide 300, §300.23. The court must make an order only if the advantage to the estate of accepting the deed is shown by clear and convincing evidence. Prob C §2464(c).

L. Investments

1. [§301.96] Court Order

The conservator, after authorization by court order, may invest the proceeds of sales and any other money of the estate as provided in the order. Prob C §2570(a).

To obtain a court order authorizing a transaction, the conservator, the conservatee, or any other interested person may file a petition with the court. Prob C §2570(b). Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2570(c); Benchguide 300, §300.23. The court may order that the notice be dispensed with. Prob C §2570(c).

The court may require such proof of the fairness and feasibility of the transaction as the court determines is necessary. Prob C §2570(d).

If the required showing is made, the court may make an order authorizing the transaction and may prescribe in the order the terms and conditions on which the transaction must be made. Prob C §2570(e).

2. [§301.97] Real Property

When authorized by court order under Prob C §2570, the conservator may purchase (Prob C §2571):

- Real property in this state as a home for the conservatee if such purchase is for the advantage, benefit, and best interest of the conservatee.
- Real property as a home for those legally entitled to support and maintenance from the conservatee if such purchase is for the advantage, benefit, and best interest of the conservatee and of those legally entitled to support and maintenance from the conservatee.

An order authorizing the conservator to purchase real property may authorize the conservator to join with the conservatee's spouse or domestic partner with any other person or persons in the purchase of the real property, or an interest, equity, or estate therein, in severalty, in common, in community, or in joint tenancy, for cash or on a credit or for part cash and part credit. When the court authorizes the purchase of real property, the court may order the conservator to execute all necessary instruments and commitments to complete the transaction. Prob C §2572.

3. [§301.98] Stocks and Bonds

An order authorizing investment in bonds issued by any state or of any city, county, city and county, political subdivision, public corporation, district, or special district of any state may authorize the conservator to select from among bonds issued by any such issuer, without specifying any particular issuer or issue of bonds, if the type of issuer is designated in general terms and the order specifies as to such bonds a minimum quality rating as shown in a recognized investment service, a minimum interest coupon rate, a minimum yield to maturity, and the date of maturity within a 5-year range. Prob C §2573.

The conservator, without authorization of the court, may invest funds of the estate in (Prob C §2574(a)):

- Direct obligations of the United States, or of the State of California, maturing not later than 5 years from the date of making the investment.
- United States Treasury bonds redeemable at par value on the death of the holder for payment of federal estate taxes, regardless of maturity date.
- Securities listed on an established stock or bond exchange in the United States that are purchased on such exchange.
- Eligible securities for the investment of surplus state moneys as provided for in Govt C §16430.
- An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 USC §§80a-1 et seq) or an investment vehicle authorized for the collective investment of trust funds under 12 CFR §9.18, the portfolios of which are limited to United States government obligations maturing not later than 5 years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.
- Units of a common trust fund described in Fin C §1585. The objective of a common trust fund must be to invest primarily in short-term fixed income obligations, and the fund must be

permitted to value investments at cost under regulations of the appropriate regulatory authority.

In making and retaining investments made, the conservator must take into consideration the circumstances of the estate, indicated cash needs, and, if reasonably ascertainable, the date of the prospective termination of the conservatorship. Prob C §2574(b).

Probate Code §2574 does not limit the conservator's authority to seek court authorization for any investment, or to make other investments with court authorization. Prob C §2574(c).

M. Substituted Judgment

1. [§301.99] Authorized Actions

The conservator or other interested person may file a petition for a court order authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes (Prob C §2580(a)):

- Benefiting the conservatee or the estate.
- Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate on the death of the conservatee.
- Providing gifts for any purposes, and to any charities, relatives (including the other spouse or domestic partner), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

In essence, the statute permits the court to substitute its judgment for that of a conservatee. The question in substituted-judgment proceedings is not what the conservatee would do but rather what a reasonably prudent person in the conservatee's position would do. *In re Conservatorship of McDowell* (2004) 125 CA4th 659, 665, 23 CR3d 10, disapproved on other grounds in 39 C4th 794, 816; *Conservatorship of Hart* (1991) 228 CA3d 1244, 1250, 279 CR 249. Thus, the court may establish a special needs trust for a developmentally disabled conservatee to allow an inheritance to be used for treatment without losing federal benefits. *In re Conservatorship of Estate of Kane* (2006) 137 CA4th 400, 406–408, 40 CR3d 378.

A beneficiary of a revocable trust established by the conservatee is an interested person who may petition to have the conservator take actions to preserve the conservatee's interests in the trust assets. *Johnson v Kotyck* (1999) 76 CA4th 83, 89, 90 CR2d 99.

The action proposed in the petition may include, but is not limited to, the following (Prob C §2580(b)):

- Making gifts of principal or income, or both, of the estate, outright or in trust.
- Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.
- Exercising or releasing the conservatee's powers as donee of a power of appointment.
- Entering into contracts.
- Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life. But, a special needs trust for money paid under a compromise or judgment for a conservatee may be established only under Prob C §§3600 et seq and not under Prob C §2580.
- Transferring any property unintentionally omitted from the trust to a trust created by the conservator or conservatee.
- Exercising the conservatee's options to purchase or exchange securities or other property.
- Exercising the conservatee's rights to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:
 - Life insurance policies, plans, or benefits.
 - Annuity policies, plans, or benefits.
 - Mutual fund and other dividend investment plans.
 - Retirement, profit sharing, and employee welfare plans and benefits.
- Exercising the conservatee's right to elect to take under or against a will.
- Exercising the conservatee's right to disclaim any interest that may be disclaimed under Prob C §§260 et seq.
- Exercising the conservatee's right to revoke or modify a revocable trust, or to surrender the right to revoke or modify a revocable trust. But the court must not authorize or require the conservator to exercise the right to revoke or modify a revocable trust if the instrument governing the trust:
 - Evidences an intent to reserve the right of revocation or modification exclusively to the conservatee,

- Provides expressly that a conservator may not revoke or modify the trust, or
 - Otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke or modify the trust.
 - Making an election referred to in Prob C §13502 or an election and agreement referred to in Prob C §13503 (election or petition to have surviving spouse’s property administered under Probate Code).
 - Making a will.
 - Making or revoking a revocable transfer on death deed.
- ☛ JUDICIAL TIP: In any petition for substituted judgment, it is best to appoint counsel or a guardian ad litem for the conservatee.

2. [§301.100] Notice

Notice of the hearing of the petition must be given for the period and in the manner provided in Prob C §§1460 et seq to all of the following (Prob C §2581):

- The persons required to be given notice under Prob C §§1460 et seq. See Benchguide 300, §300.23.
- The persons required to be named in a petition for the appointment of a conservator.
- So far as is known to the petitioner, beneficiaries under any document executed by the conservatee that may have testamentary effect unless the court for good cause dispenses with such notice.
- So far as is known to the petitioner, the persons who, if the conservatee were to die immediately, would be the conservatee’s heirs under the laws of intestate succession unless the court for good cause dispenses with such notice.
- Such other persons as the court may order.

There is no exception for the age of the recipient, so notice must be sent to all regardless of age. See Prob C §2581.

3. [§301.101] Bases for Court Determination

The court may make an order authorizing or requiring the proposed action only if the court determines all of the following (Prob C §2582):

- The conservatee either (1) is not opposed to the proposed action or (2) if opposed to the proposed action, lacks legal capacity for the proposed action. This provision precludes a substituted judgment

order if the conservatee has legal capacity for the proposed action and is opposed to it. Cal L Rev Comm'n Comment to Prob C §2582 (1990).

- Either the proposed action will have no adverse effect on the estate, or the estate remaining after the proposed action is taken will be adequate to provide for the conservatee's needs and for the support of those legally entitled to support, maintenance, and education from the conservatee, taking into account the age, physical condition, standards of living, and all other relevant circumstances of the conservatee and those legally entitled to support, maintenance, and education from the conservatee.

In determining whether to authorize or require a proposed action, the court must take into consideration all the relevant circumstances, which may include, but are not limited to, the following (Prob C §2583):

- Whether the conservatee has legal capacity for the proposed transaction and, if not, the probability of the conservatee's recovery of legal capacity.
- The conservatee's past donative declarations, practices, and conduct.
- The conservatee's traits.
- The conservatee's relationship to and intimacy with the prospective donees, their standards of living, and the extent to which they would be natural objects of the conservatee's bounty by any objective test based on such relationship, intimacy, and standards of living.
- The conservatee's wishes.
- Any known estate plan of the conservatee (including, but not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others that the conservatee may have originated).
- The manner in which the estate would devolve on the conservatee's death, giving consideration to the conservatee's age and mental and physical condition, the conservatee's prospective devisees or heirs, and the prospective donees.
- The estate's value, liquidity, and productiveness.
- The minimization of current or prospective income, estate, inheritance, or other taxes or expenses of administration.

- Changes of tax laws and other laws that would likely have motivated the conservatee to alter the conservatee's estate plan.
- The likelihood from all the circumstances that the conservatee as a reasonably prudent person would take the proposed action if the conservatee had the capacity to do so.
- Whether any beneficiary is the conservatee's spouse or domestic partner.
- Whether a beneficiary has committed physical abuse, neglect, false imprisonment, or financial abuse against the conservatee after the conservatee was substantially unable to manage his or her financial resources, or resist fraud or undue influence, and the conservatee's disability persisted throughout the time of the hearing on the proposed substituted judgment.

This listing is not exclusive, and the weight to be given to any particular matter listed depends on the circumstances of the case. The likelihood that the conservatee would have taken the action, given that the conservatee was of sound mind, is a relevant consideration absent a showing of contrary intent. See *In re Guardianship of Christiansen* (1967) 248 CA2d 398, 414, 424, 56 CR 505 (court will not assume conservatee is abnormally selfish unless that trait is established). A matter not listed may be significant in a particular case. For example, the conservatee may have received property from a parent with the understanding that the conservatee would leave the property to the descendants of that parent. Such an understanding would be a circumstance that the court should consider with other relevant circumstances. Cal L Rev Comm'n Comment to Prob C §2583 (1990).

After hearing, the court, in its discretion, may approve, modify and approve, or disapprove the proposed action and may authorize or direct the conservator to transfer or dispose of assets or take other action as provided in the court's order. Prob C §2584. There is no requirement for an evidentiary hearing. The trial court must use its discretion in evaluating the information presented to it in order to decide if the information in the petition is sufficient, or if a full contested evidentiary hearing is required. *Conservatorship of McElroy* (2002) 104 CA4th 536, 554, 128 CR2d 485.

4. [§301.102] No Duty To Propose

There is no duty on the conservator to propose any action for substituted judgment, and the conservator is not liable for failure to propose any action for substituted judgment. Prob C §2585.

5. [§301.103] Court Examination of Estate Planning Document

Notwithstanding Evid C §§950 et seq (lawyer-client privilege), the court, in its discretion, may order that any person having possession of any document constituting all or part of the estate plan of the conservatee must deliver the document to the court for examination by the court, and, in the discretion of the court, by the attorneys for the persons who have appeared in the proceedings in connection with the petition for substituted judgment. Prob C §2586(b).

“Estate plan of the conservatee” includes, but is not limited to

- The conservatee’s will;
- Any trust of which the conservatee is the settlor or beneficiary;
- Any power of appointment created by or exercisable by the conservatee; and
- Any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee’s death to another or others that the conservatee may have originated. Prob C §2586(a).

Unless the court otherwise orders, no person who examines any document produced under an order may disclose the contents of the document to any other person. If that disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court. Prob C §2586(c).

For good cause, the court may order that a document constituting all or part of the estate plan of the conservatee, whether or not produced under an order, must be delivered for safekeeping to the custodian designated by the court. The court may impose those conditions it determines are appropriate for holding and safeguarding the document. The court may authorize the conservator to take any action a depositor may take under Prob C §§700 et seq (deposit of estate planning documents with attorney). Prob C §2586(d).

6. [§301.104] Trusts Funded by Court Order

When the court orders formation of a trust under the substituted judgment provisions, Cal Rules of Ct 7.903 requires certain provisions in the trust and order.

The order creating or approving the funding of a trust funded by court order must provide that the trust is subject to the continuing jurisdiction of the court and may provide that the trust is to be subject to court supervision under the Probate Code. Cal Rules of Ct 7.903(b). “Continuing jurisdiction of the court” means and refers to the court’s continuing subject matter jurisdiction over trust proceedings under Prob C

§§15000 et seq. Cal Rules of Ct 7.903(a)(2). “Court supervision under the Probate Code” means and refers to the court’s authority to require prior court approval or subsequent confirmation of the actions of the trustee as for the actions of a conservator of the estate under Prob C §§1400 et seq. Cal Rules of Ct 7.903(a)(3).

Unless the court otherwise orders for good cause shown, trust instruments for trusts funded by court order must (Cal Rules of Ct 7.903(c)):

- (1) Not contain “no-contest” provisions.
- (2) Prohibit modification or revocation without court approval.
- (3) Clearly identify the trustee and any other person with authority to direct the trustee to make disbursements.
- (4) Prohibit investments by the trustee other than those permitted under Prob C §2574.
- (5) Require the trustee or persons with authority to post bond in the amount required under Prob C §§2320 et seq.
- (6) Require the trustee to file accounts and reports for court approval in the manner and frequency required by Prob C §§1060 et seq and 2620 et seq.
- (7) Require court approval of changes in trustees and a court order appointing any successor trustee.
- (8) Require compensation of the trustee, the members of any advisory committee, or the attorney for the trustee, to be in just and reasonable amounts that must be fixed and allowed by the court. The instrument may provide for periodic payments of compensation on account, subject to the requirements of Prob C §2643 and Cal Rules of Ct 7.755.

The requirements of (5)–(8) above do not apply to trust instruments for trusts that will have total assets of \$20,000 or less after receipt of the property ordered by the court, unless the court otherwise orders for good cause. Cal Rules of Ct 7.903(d).

Cal Rules of Ct 7.903(a)(1) defines a “[t]rust funded by court order” as a trust that will receive funds under Prob C §§2580 et seq (substituted judgment); Prob C §§3100 et seq (proceedings for particular transactions involving disabled spouses or registered domestic partners); or Prob C §§3600 et seq (settlement of claims or actions or disposition of judgments involving persons with disabilities). Two of these proceedings—a petition for substituted judgment (Prob C §2580) and a proceeding for a particular transaction in the property of an impaired spouse or domestic partner without a conservator (Prob C §3100; Fam C §297.5)—are regularly heard in the probate department of the court. The third proceeding, a pending action involving a person with a disability or approving the disposition of the proceeds of a judgment in favor of a person with a disability (Prob C

§3600), may be heard in either a probate or a civil department. Advisory Committee Comment Cal Rules of Ct 7.903.

Prob C §2580(b)(5) provides that a special needs trust for money paid pursuant to a compromise or judgment for a conservatee may be established only under Prob C §§3600 et seq.

The Judicial Council has adopted Cal Rules of Ct, Standards of J Admin 7.10 to address proceedings under Prob C §3600 that involve court-funded trusts and are heard in civil departments. The standard makes two recommendations concerning the expertise of judicial officers who hear these proceedings on trust issues. The recommendations are to develop practices and procedures that (1) provide for determination of the trust issues in these matters by the probate department of the court or by a judicial officer who regularly hears probate proceedings, or (2) ensure that judicial officers who hear these matters have experience or receive training in substantive and technical issues involving trusts, including special needs trusts. Advisory Committee Comment to Cal Rules of Ct 7.903; Cal Rules of Ct, Standards of J Admin 7.10.

N. Periodic Review

1. [§301.105] Time for Review

Each conservatorship must be reviewed by the court as follows (Prob C §1850(a)):

- At the expiration of 6 months after the initial appointment of the conservator, the court investigator must visit the conservatee, conduct an investigation in accordance with the provisions of Prob C §1851(a), and report to the court regarding the appropriateness of the conservatorship and whether the conservator is acting in the conservatee's best interests regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances. The court may, in response to the investigator's report, take appropriate action including, but not limited to:
 - Ordering a review of the conservatorship.
 - Ordering the conservator to submit an accounting under Prob C §2620(a).
- One year after the conservator's appointment and annually thereafter.

However, at the review that occurs 1 year after the conservator's appointment, and at every subsequent review, the court may set the next review in 2 years if the court determines that the conservator is acting in the conservatee's best interest. In these cases, the court must require the investigator to conduct an investigation under Prob C §1851(a) 1 year before the next review and file a status report in the conservatee's court

file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the conservatee's best interests. If the investigator determines that the conservatorship still appears to be warranted and that the conservator is acting in the conservatee's best interests regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, no hearing or court action in response to the investigator's report is required. Prob C §1850(a)(2).

The court may, on its own motion or on request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate under Prob C §2620. Prob C §1850(b).

Notice of a hearing must be provided to all persons listed in Prob C §1822(b). Prob C §1850(c); Benchguide 300, §300.21.

The review requirement is not applicable to (Prob C §1850(d)):

- A conservatorship for an absentee as defined in Prob C §1403.
- A conservatorship of the estate for a nonresident if the conservatee is not present in California.

Notwithstanding Prob C §1850, each limited conservatorship for a developmentally disabled adult, as defined in Prob C §1801(d), must be reviewed by the court 1 year after the conservator's appointment and biennially thereafter. Prob C §1850.5(a).

The court may, on its own motion or upon request by any interested person, take appropriate action, including, but not limited to, ordering a review of the limited conservatorship, including at a noticed hearing, at any time. Prob C §1850.5(b).

Note: As with local rule requirements that a conservator of the person file a general plan (see Benchguide 300, §300.47) many courts' local rules require the conservator to file a status report, updating the court on the conservatee's personal and financial needs, as well as updating contact information. The conservator must follow these local rules for the report's format, timing, and service.

2. [§301.106] Investigator's Report

When court review is required under Prob C §1850, the court investigator must, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator must inform the conservatee personally that the conservatee is under a conservatorship and must give the conservator's name to the conservatee. The court investigator must determine all of the following (Prob C §1851(a)):

- If the conservatee wishes to petition the court for termination of the conservatorship,
- If the conservatee is still in need of the conservatorship,
- If the present conservator is acting in the conservatee's best interests, and
- If the conservatee is incapable of communicating, with or without accommodations, a desire to participate in the voting process and may be disqualified from voting pursuant to Elec C §§2208 or 2209. The conservatee must not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration:
 - Signs the affidavit of voter registration with a mark or a cross pursuant to Elec C §2150(b).
 - Signs the affidavit of voter registration by means of a signature stamp pursuant to Elec C §354.5.
 - Completes the affidavit of voter registration with the assistance of another person pursuant to Elec C §2150(d).
 - Completes the affidavit of voter registration with reasonable accommodations.

In determining whether the conservator is acting in the conservatee's best interests, the court investigator must examine the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. To the greatest extent possible, the court investigator must interview individuals set forth in Prob C §1826(a)(1) (spouse, domestic partner, relatives of first and second degree, and others), to determine if the conservator is acting in the conservatee's best interests. Prob C §1851(a)(1)(C). See Benchguide 300, §300.27. If the court has made an order under Prob C §§1870 et seq (capacity of conservatee), the court investigator must determine if the conservatee's present condition is such that the terms of the order should be modified or the order revoked. Prob C §1851(a)(2). On request of the court investigator, the conservator must make all books and records, including receipts and any expenditures, of the conservatorship available to the court investigator during the investigation for inspection and copying. Prob C §1851(a)(3).

The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the conservatee's best interests. Prob C §1851(d).

The findings of the court investigator, including the facts on which the findings are based, must be certified in writing to the court not less than 15 days before the date of review. A copy of the report must be mailed to the conservator and to the attorneys of record for the conservator

and conservatee at the same time it is certified to the court. A modified copy of the report must also be mailed to the conservatee's spouse or domestic partner, the conservatee's relatives in the first degree, and if there are no such relatives, to the next closest relative, unless the court determines that the mailing will harm the conservatee. Prob C §1851(b)(1). Confidential medical information and confidential information from the California Law Enforcement Telecommunications System must be in a separate attachment to the report and must not be provided in copies sent to the conservatee's spouse or domestic partner, the conservatee's relatives in the first degree, and if there are no such relatives, to the next closest relative. Prob C §1851(b)(2).

The report must be confidential and must be made available only to parties, the conservator, the conservatee, attorneys for the conservator and conservatee, persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court may exercise its discretion at any other time to release the report if it would serve the conservatee's interests. The clerk of the court must limit disclosure of the report exclusively to entitled persons. Prob C §1851(e).

Each court must assess each conservatee in the county for any investigation or review conducted by a court investigator with respect to that person. Subject to Govt C §68631 (waiver of court fees and costs), the court may order reimbursement to the court for the amount of the assessment, unless the court finds that all or any part of the assessment would impose a hardship on conservatee or the conservatee's estate. There is a rebuttable presumption that the assessment would impose a hardship if the conservatee is receiving Medi-Cal benefits. Prob C §1851.5.

3. [§301.107] Conservatee's Requested Petition

If the conservatee wishes to petition the court for:

- Terminating the conservatorship;
- Removing the existing conservator;
- Making, modifying, or revoking a court order under Prob C §§1870 et seq; or
- Restoring the right to register to vote;

the court must notify the attorney of record for the conservatee, if any, or must appoint the public defender or private counsel under Prob C §1471, to file the petition and represent the conservatee at the trial or hearing. If such appointment is made, counsel must be paid under the provisions of Prob C §1472. Prob C §1852; Benchguide 300, §300.48.

The attorney must also be notified or appointed if the court determines that a trial or hearing for termination of the conservatorship or removal of the existing conservator is in the conservatee's best interests, based on information contained in the court investigator's report or obtained from any other source. Prob C §1852.

4. [§301.108] Unable To Locate Conservatee

If the court investigator is unable to locate the conservatee, the court must order the court investigator to serve notice on the conservator of the person, or on the conservator of the estate if there is no conservator of the person, in the manner provided in CCP §415.10 or §415.30 or in such other manner as is ordered by the court, to make the conservatee available for the purposes of Prob C §1851 to the court investigator within 15 days of the receipt of such notice or to show cause why the conservatorship should not be terminated. Prob C §1853(a).

If the conservatee is not made available within the time prescribed, unless good cause is shown for not doing so, the court must make that finding and must enter judgment terminating the conservatorship and, in case of a conservatorship of the estate, must order the conservator to file an account and to surrender the estate to the person legally entitled thereto. At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated on the settlement and approval of the conservator's final account by the court. Prob C §1853(b).

What constitutes good cause depends on the circumstances. For example, good cause is shown (1) when it is established that the conservatee disappeared from his or her place of residence and a diligent search was made to find the conservatee or (2) when the conservatee is out of state to receive necessary medical treatment. Cal L Rev Comm'n Comment to Prob C §1853 (1990).

Termination of the conservatorship does not preclude institution of new proceedings for the appointment of a conservator. Nothing in Prob C §1853 limits the power of a court to appoint a temporary conservator under Prob C §§2250 et seq. Prob C §1853(c). See Benchguide 300, §§300.54–300.60.

O. Petition To Examine About Estate Assets

1. [§301.109] Petition To Examine

There is a procedure to examine persons who may have knowledge of estate assets. A petition to examine may be filed by any one or more of the following (Prob C §2616(a)):

- The conservator.

- The conservatee.
- A creditor or other interested person, including persons having only an expectancy or prospective interest in the estate.

A beneficiary of a trust that is being managed by the conservator is an interested person and may file a petition to examine the conservator. *Johnson v Kotyck* (1999) 76 CA4th 83, 90, 90 CR2d 99.

2. [§301.110] Citation and Examination

On the filing of a petition, the court may order that a citation be issued to a person to answer interrogatories, or to appear before the court and be examined under oath, or both, concerning any of the following allegations made in the petition (Prob C §2616(b)):

- The person has wrongfully taken, concealed, or disposed of the conservatee's property.
- The person has knowledge or possession of any of the following:
 - A deed, conveyance, bond, contract, or other writing that contains evidence of or tends to disclose the conservatee's right, title, interest, or claim to property.
 - An instrument in writing belonging to the conservatee.
- The person asserts a claim against the conservatee or the estate.
- The estate asserts a claim against the person.

If the citation requires the person to appear before the court, the court and the petitioner may examine the person under oath on the matters recited in the petition. The citation may include a requirement for this person to produce documents and other personal property specified in the citation. Prob C §2616(c).

Disobedience of a citation may be punished as a contempt of the court issuing the citation. Prob C §2616(d).

At an examination, witnesses may be produced and examined on either side. Prob C §2618(a).

On examination, if it appears that the allegations of the petition are true, the court may order the person to disclose the person's knowledge of the facts. Prob C §2618(b).

On examination, if it appears that the allegations of the petition are not true, the person's necessary expenses, including reasonable attorney's fees, must be charged against the petitioner or allowed out of the estate, in the discretion of the court. Prob C §2616(c).

3. [§301.111] Interrogatories

Interrogatories may be put to a person cited to answer interrogatories. The interrogatories and answers must be in writing. The answers must be signed under penalty of perjury by the person cited. The interrogatories and answers must be filed with the court. Prob C §2617.

4. [§301.112] Citation to Account

On petition of the conservator, the court may issue a citation to a person who has possession or control of property in the conservatee's estate to appear before the court and make an account under oath of the property and the person's actions with respect to the property. Prob C §2619(a).

Disobedience of a citation issued may be punished as a contempt of the court issuing the citation. Prob C §2619(b).

P. Accounts

1. [§301.113] Account Requirement

After 1 year expires from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court to be more frequent, the conservator must present the accounting of the assets of the conservatee's estate to the court for settlement and allowance in the manner provided in Prob C §§1060 et seq. Prob C §2620(a).

The account must include out-of-state property, including out-of-state real property. *In re Conservatorship of Estate of Hume* (2006) 139 CA4th 393, 398, 42 CR3d 796.

The final court accounting of the conservator following the conservatee's death must include a court accounting for the period that ended on the date of death and a separate accounting for the period subsequent to the date of death. Prob C §2620(b).

- **JUDICIAL TIP:** For professional or institutional conservators, or large estates, 1 year accountings are preferred as it is easier to evaluate and review the numerous transactions often involved in such estates. Two-year accountings are more appropriate for small estates with few liquid assets or few transactions as long as the conservator has not been deficient in past accountings.

2. [§301.114] Standard and Simplified Accountings

There are two types of accountings that are available to conservators. A standard accounting lists receipts and disbursements in subject-matter categories, with each receipt and disbursement category subtotaled. A simplified accounting lists receipts and disbursements chronologically, by

receipt or payment date, without subject-matter categories. Cal Rules of Ct 7.575(a).

Standard accounting. A conservator may file any accounting required or authorized by Prob C §2620 as a standard accounting under this rule and *must* file a standard accounting if (Cal Rules of Ct 7.575(b)):

- The estate contains income real property;
- The estate contains a whole or partial interest in a trade or business;
- The appraised value of the estate is \$500,000 or more, exclusive of the conservatee’s personal residence;
- Except as provided in Cal Rules of Ct 7.575(c) (see below), Schedule A (receipts) or Schedule C (disbursements) prepared in a simplified accounting format exceeds 5 pages in length; or
- The court directs that a standard accounting be filed.

Judicial Council Forms designated as GC-400 or as GC-400/GC-405 may be used by standard accounting filers. Cal Rules of Ct 7.575(d)–(e).

Simplified accounting. A conservator may file a simplified accounting in all cases not listed in Cal Rules of Ct 7.575(b). If required by this rule to file a standard accounting only because a receipts or disbursements schedule is longer than 5 pages under Cal Rules of Ct 7.575(b)(4), a conservator may file a simplified accounting, except for that schedule, which must be prepared in a standard accounting format. Cal Rules of Ct 7.575(c).

Judicial Council Forms designated as GC-405 may be used by simplified account filers. Forms designated as GC-400/GC-405 must be used by such filers. Cal Rules of Ct 7.575(d)–(e).

Summary of account. All standard and simplified accounting filers must provide all information in their accounting schedules or their Summary of Account that is required by Prob Code §§1060–1063 and must provide all information required by Prob Code §1064 in the petition for approval of their account or the report accompanying their account. Cal Rules of Ct 7.575(f).

Judicial Council Forms GC-400(SUM)/GC-405(SUM), Summary of Account, must be used by all filers.

3. [§301.115] Temporary Conservator’s Account

The temporary conservator of the estate must present his or her account to the court for settlement and allowance within 90 days after the appointment of a conservator of the estate or within such other time as the court may fix. Prob C §2256(a). However, if the temporary conservator of

the estate is appointed conservator of the estate, the conservator may account for the administration as temporary conservator in his or her first regular account. Prob C §2256(b).

Accounts are subject to Prob C §§2621–2626, 2630–2633, and 2640–2642. Prob C §2256(c).

4. [§301.116] Supporting Documents

The conservator must file the following supporting documents with each court accounting (Prob C §2620(c)(1)–(5)):

- All account statements showing the account balance as of the closing date of the accounting period of the court accounting. If the court accounting is the first court accounting of the conservatorship, the conservator must provide the court with all account statements, showing the account balance immediately preceding the date that the conservator was appointed and all account statements showing the account through the closing date of the first court accounting. The term “account statement” must include any original account statement from any institution, as defined in Prob C §2890, or any financial institution, as defined in Prob C §2892, in which money or other assets of the estate are held or deposited.
- If the conservator is a private professional or licensed conservator, all original account statements, as described above, showing the balance as of all periods covered by the accounting.
- The filing must include the original closing escrow statement received, showing the charges and credits for any sale of real property of the estate.
- If the conservatee is in a residential care facility or a long-term care facility, the filing must include the original bill statements for the facility.

This subdivision does not apply to the public guardian if the money belonging to the estate is pooled with money belonging to other estates pursuant to Prob C §§2940 and 7640 et seq. This section does not affect any other duty or responsibility of the public guardian with regard to managing money belonging to the estate or filing accountings with the court. Prob C §2620(c)(6).

If any document to be filed or lodged with the court contains the conservatee’s social security number or any other personal information regarding the conservatee that would not ordinarily be disclosed in a court accounting, an inventory and appraisal, or other nonconfidential pleadings filed in the action, the account statement or other document must be attached to a separate affidavit describing the character of the document,

captioned “CONFIDENTIAL FINANCIAL STATEMENT” in capital letters. Prob C §2620(c)(7). Except as otherwise ordered by the court, the clerk of the court must keep the document confidential except to the court and subject to disclosure only on a court order. The conservator may redact the conservatee’s social security number from any document lodged with the court. Prob C §2620(c)(7).

Courts may provide by local rule that the court must retain all documents lodged with it until the court’s determination of the conservator’s account has become final, at which time the documents must be returned to the depositing conservator or delivered to any successor appointed by the court. Prob C §2620(c)(8).

5. [§301.117] Review

Each accounting is subject to random or discretionary, full or partial, review by the court. The review may include consideration of any information necessary to determine the accuracy of the accounting. If the accounting has any material error, the court must make an express finding as to the severity of the error and what further action is appropriate in response to the error, if any. Among the actions available to the court is immediate suspension of the conservator without further notice or proceedings and appointment of a temporary conservator or removal of the conservator under Prob C §2650 and appointment of a temporary conservator. Prob C §2620(d).

On reasonable notice, the conservator must make all books and records, including receipts for any expenditures, of the conservatorship available for inspection and copying to any person designated by the court to verify the accuracy of the accounting. Prob C §2620(e).

6. [§301.118] Failure To File Account

Whenever the conservator has failed to file an accounting as required by Prob C §2620, the court must require that written notice be given to the conservator and the attorney of record for the conservatorship directing the conservator to file an accounting and to set the accounting for hearing before the court within 30 days of the date of the notice or, if the conservator is a public agency, within 45 days of the date of the notice. The court may grant an additional 30 days to file the accounting on a showing of cause. Prob C §2620.2(a).

Failure to file the accounting within the time specified or within 45 days of actual receipt of the notice, whichever is later, is a contempt of the authority of the court as described in CCP §1209. Prob C §2620.2(b).

If the conservator does not file an accounting with all appropriate supporting documentation and set the accounting for hearing as required by Prob C §2620, the court must do one or more of the following and must

report that action to the Professional Fiduciaries Bureau if the conservator is a licensed professional fiduciary (see Bus & P C §6510) (Prob C §2620.2(c)):

- Remove the conservator as provided under Prob C §§2650 et seq.
- Issue and serve a citation requiring a conservator who does not file a required accounting to appear and show cause why the conservator should not be punished for contempt. If the conservator purposely evades personal service of the citation, the conservator must be immediately removed from office.
- Suspend the powers of the conservator and appoint a temporary conservator, who must take possession of the assets of the conservatorship, investigate the actions of the conservator, and petition for surcharge if this is in the conservatee's best interests. Compensation for the temporary conservator and the temporary conservator's counsel must be treated as a surcharge against the conservator, and if unpaid must be considered a breach of condition of the bond.
- Appoint legal counsel to represent the conservatee if the court has not suspended the powers of the conservator, and appoint a temporary conservator. Compensation for the counsel appointed for the conservatee must be treated as a surcharge against the conservator, and if unpaid must be considered a breach of a condition on the bond, unless for good cause shown the court finds that counsel for the conservatee must be compensated according to Prob C §1470. The court must order the legal counsel to do one or more of the following:
 - Investigate the actions of the conservator, and petition for surcharge if this is in the conservatee's best interests.
 - Recommend to the court whether the conservator should be removed.
 - Recommend to the court whether money or other property in the estate should be deposited under Prob C §§2453, 2453.5, 2454, or 2455, to be subject to withdrawal only on authorization of the court.
- After resolution of the matters for which legal counsel was appointed, the court must terminate the appointment of legal counsel, unless the court determines that continued representation of the conservatee and the estate is necessary and reasonable.
- If the conservator is exempt from the licensure requirements of Bus & P C §§6500 et seq. (professional fiduciaries), on ex parte application or any notice as the court may require, the court may

extend the time to file the accounting, not to exceed an additional 30 days after the expiration of the deadline described above, if the court finds there is good cause and that the estate is adequately bonded. After expiration of any extensions, if the accounting has not been filed, the court must take action as described above.

The above procedure does not preclude the court from additionally taking any other appropriate action in response to a failure to file a proper accounting in a timely manner. Prob C §2620.2(d).

7. [§301.119] Hearing on Account

Fifteen days' notice of the hearing on the account of the conservator must be given to the persons listed in Prob C §1460(b); see Benchguide 300, §300.23. If notice is required to be given to the Director of State Hospitals or the Director of Developmental Services under Prob C §1461, the account must not be settled or allowed unless that notice has been given as provided in Prob C §1461. Prob C §2621.

The conservatee, the conservatee's spouse or domestic partner, any relative or friend of the conservatee, or any creditor or other interested person may file written objections to the account of the conservator, stating the items of the account to which objection is made and the basis for the objection. Prob C §2622.

Discovery is available under Prob C §1000, and a referee may be appointed to examine and report on the account, subject to confirmation by the court. Prob C §§1000, 11002(b).

If the court determines that the objections were without reasonable cause and in bad faith, the court may order the objector to pay the compensation and costs of the conservator and other expenses and costs of litigation, including attorney's fees, incurred to defend the account. The objector must be personally liable to the conservatorship estate for the amount ordered. Prob C §2622.5(a).

If the court determines that the opposition to the objections was without reasonable cause and in bad faith, the court may award the objector the costs of the objector and other expenses and costs of litigation, including attorney's fees, incurred to contest the account. The amount awarded is a charge against the compensation of the conservator, and the conservator is liable personally and on the bond, if any, for any amount that remains unsatisfied. Prob C §2622.5(b).

The conservator may be surcharged for any breach of fiduciary duty. Prob C §§2401.3, 2401.5; see §301.25.

8. [§301.120] Allowable Expenses

The conservator must be allowed all of the following (Prob C §2623(a)):

- Reasonable expenses incurred in the exercise of the powers and the performance of the duties of the conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the conservator of the person as the court determines is just and reasonable). These expenses include amounts paid for the conservatee's support, maintenance, or education and of persons legally entitled to support, maintenance, or education from the conservatee. Cal L Rev Comm'n Comment to Prob C §2623 (1990).
- Compensation for services rendered by the conservator as the court determines is just and reasonable.
- All reasonable disbursements made before appointment as conservator.
- In the case of termination other than by the conservatee's death, all reasonable disbursements made after the termination of the conservatorship but before the discharge of the conservator by the court.
- In the case of termination by the conservatee's death, all reasonable expenses incurred before the discharge of the conservator by the court for the custody and conservation of the estate and its delivery to the personal representative of the estate of the deceased conservatee or in making other disposition of the estate as provided for by law.

The conservator may not be compensated from the estate for any costs or fees that the conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the conservatee, unless the court determines that the opposition was made in good faith, based on the conservatee's best interests. Prob C §2623(b).

9. [§301.121] Review of Unauthorized Transaction

Any sale or purchase of property or other transaction not previously authorized, approved, or confirmed by the court is subject to review by the court on the next succeeding account of the conservator occurring after the transaction. On such account and review, the court may hold the conservator liable for any violation of duties in connection with the sale, purchase, or other transaction. This review must not be construed to affect the validity of any sale or purchase or other transaction. Prob C §2625.

The fact that a transaction required prior court authorization that was not obtained does not preclude the court from approving and confirming the transaction at the time of the accounting or on a petition for approval and confirmation under Prob C §2403. See *Place v Trent* (1972) 27 CA3d 526, 103 CR 841, disapproved on other grounds in 14 C3d 33, 39. However, if the transaction required court authorization that was not obtained, when it is reviewed under Prob C §2625, the conservator must justify the transaction in the same manner that would have been required had authorization been sought before the transaction was made. And the conservator runs a risk that the court will not approve and confirm the transaction at the time of the accounting.

A conservator may be surcharged for improper payments or other wrongful acts or omissions that cause pecuniary damage to the estate. Nevertheless, unless the court determines that the transaction was improper because the conservator failed to use ordinary care and diligence (Prob C §2401) or was improper for some other reason, the court should approve and confirm the transaction when it reviews the current account. But if the court determines that there was loss from failure to use ordinary care and diligence, the court may surcharge the conservator. See *Estate of Hilde* (1952) 112 CA2d 189, 246 P2d 79 (administrator surcharged when estate property sold below appraised value without required court authorization). Cal L Rev Comm'n Comment to Prob C §2625 (1990).

10. [§301.122] Estate Exhausted

If it appears on the settlement of any account that the estate has been entirely exhausted through expenditures or disbursements that are approved by the court, the court, on settlement of the account, must order the proceeding terminated and the conservator immediately discharged unless the court determines that there is reason to continue the proceeding. Prob C §2626.

11. [§301.123] Account Not Required

The court may make an order that the conservator need not present the accounts otherwise required so long as all of the following conditions are satisfied (Prob C §2628(a)):

- The estate at the beginning and end of the accounting period for which an account is otherwise required consisted of property, exclusive of the conservatee's residence, of a total net value of less than \$15,000 dollars.
- The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than \$2,000.

- All income of the estate during the accounting period, if not retained, was spent for the conservatee’s benefit.

“Public benefit payments” means payments received or to be received under either or both of the following (Cal L Rev Comm’n Comment to Prob C §2628 (1990)):

- Welf & I C §§11000–15754 (state aid and medical assistance), Welf & I C §§16100–16515 (services for the care of children), Welf & I C §§17000–17410 (county aid and relief to indigents).
- 42 USC §§401–431 (federal old age, survivors, and disability insurance benefits); 42 USC §§1381–1383c (federal supplemental security income for the aged, blind, and disabled).

Notwithstanding that the court has made such an order, the conservatee or any interested person may petition the court for an order requiring the conservator to present an account as otherwise required, or the court on its own motion may make that an order. The order may be made ex parte or on such notice of hearing as the court in its discretion requires. Prob C §2628(b).

For any accounting period during which all of the conditions stated above are not satisfied, the conservator must present the account as otherwise required. Prob C §2628(c).

Q. Compensation

1. [§301.124] Petition for Compensation by Conservator of Estate

At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following (Prob C §2640(a)):

- The conservator of the estate for services rendered to that time.
- The conservator of the person for services rendered to that time.
- The attorney for services rendered to that time by the attorney to the conservator of the person or estate or both.

A petition for allowance of compensation to a conservator or to the attorney for a conservator may include a request for compensation for services rendered before an order appointing a conservator. The petition must show facts demonstrating the necessity for preappointment services. Cal Rules of Ct 7.751(a).

The court may order the conservator to file an accounting before or at the time a petition for an allowance of compensation is filed or heard. Cal Rules of Ct 7.752.

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2640(b); see Benchguide 300, §300.23.

2. [§301.125] Statement of Facts on Which Compensation of Conservator Is Based

A petition for compensation to the conservator must include, or be accompanied by, a statement of the facts on which the petition is based. The statement of facts must (Cal Rules of Ct 7.702, 7.751(b)):

- Show the nature and difficulty of the tasks performed;
- Show the results achieved;
- Show the benefit of the services to the estate;
- Specify the amount requested for each category of service performed;
- State the hourly rate of each person who performed services and the hours spent by each of them; and
- Describe the services rendered in sufficient detail to demonstrate the productivity of the time spent.

3. [§301.126] Order for Compensation on Conservator of Estate's Petition

At the hearing, the court must make an order allowing (Prob C §2640(c)):

- Any compensation requested in the petition that the court determines is just and reasonable to the conservator of the estate for services rendered or to the conservator of the person for services rendered, or to both, and
- Any compensation requested in the petition that the court determines is reasonable to the attorney for services rendered to the conservator of the person or estate or both.

The compensation allowed to the conservator of the person, the conservator of the estate, and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the conservator. The compensation allowed must be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The

petition or application for compensation must set forth the hours spent and services performed by the paralegal. Prob C §2640(c).

The conservator may not be compensated from the estate for any costs or fees that the conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the conservatee, unless the court determines that the opposition was made in good faith, based on the conservatee's best interests. Prob C §2640(d).

4. [§301.127] Petition for Compensation by Petitioner Not Appointed

If a person has petitioned for the appointment of a particular conservator and another conservator was appointed while the petition was pending, but not before the expiration of 90 days from the issuance of letters, the person who petitioned for the appointment of a conservator but was not appointed and that person's attorney may petition the court for an order fixing and allowing compensation and reimbursement of costs, provided that the court determines that the petition was filed in the conservatee's best interests. Prob C §2640.1(a); see *In re Moore's Estate* (1968) 258 CA2d 458, 462, 65 CR 831.

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2640.1(b); Benchguide 300, §300.23.

At the hearing, the court must make an order to allow both of the following (Prob C §2640.1(c)):

- Any compensation or costs requested in the petition that the court determines is just and reasonable to the person who petitioned for the appointment of a conservator but was not appointed, for services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith.
- Any compensation or costs requested in the petition that the court determines is just and reasonable to the attorney for that person, for services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith.

Any compensation and costs allowed must be charged to the conservatee's estate. If a conservator of the estate is not appointed, but a conservator of the person is appointed, the compensation and costs allowed must be ordered by the court to be paid from property belonging to the conservatee, whether held outright, in trust, or otherwise. Prob C §2640.1(c).

5. [§301.128] Petition for Compensation by Conservator of Person

At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the conservator of the person may petition the court for an order fixing and allowing compensation for services rendered to that time. Prob C §§2640, 2641(a).

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §§2640(b), 2641(a); Benchguide 300, §300.23.

At the hearing, the court must make an order allowing any compensation that the court determines is just and reasonable to the conservator of the person for services rendered. The compensation allowed to the conservator of the person may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the conservator. The compensation allowed must be charged against the estate. Prob C §2641(b).

The conservator may not be compensated from the estate for any costs or fees that the conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the conservatee, unless the court determines that the opposition was made in good faith, based on the conservatee's best interests. Prob C §2641(c).

In addition, a temporary conservator is entitled to reimbursement of legal fees and other expenses properly incurred for the conservatee's benefit during the term of that temporary appointment regardless of whether a permanent conservator is ever appointed. The deciding factor in awarding reimbursement in a conservatorship proceeding is not whether a permanent conservatorship is established but whether expenses were incurred in good faith and in the best interests of the proposed conservatee. *Conservatorship of Cornelius* (2012) 200 CA4th 1198, 1205–1206, 132 CR3d 922.

6. [§301.129] Petition for Compensation by Attorney

At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, an attorney who has rendered legal services to the conservator of the person or estate or both, including services rendered under Prob C §2632 (deceased or incapacitated conservator), may petition the court for an order fixing and allowing compensation for such services rendered to that time. Legal services for which the attorney may petition the court for an order fixing and allowing compensation include those services rendered by any

paralegal performing the legal services under the direction and supervision of an attorney. The petition or application for compensation must set forth the hours spent and services performed by the paralegal. Prob C §§2640, 2642(a).

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §§2640(b), 2642(a); Benchguide 300, §300.23.

At the hearing, the court must make an order allowing such compensation as the court determines reasonable to the attorney for services rendered to the conservator. The compensation so allowed must be charged against the estate. Prob C §2642(b). The value of the estate is a factor that the court may consider in awarding attorney's fees. *Conservatorship of Levitt* (2001) 93 CA4th 544, 550, 113 CR2d 294.

The petition for compensation of the attorney must include, or be accompanied by, a statement of the facts on which the petition is based. The statement of facts must (Cal Rules of Ct 7.702, 7.751(b)):

- Show the nature and difficulty of the tasks performed;
- Show the results achieved;
- Show the benefit of the services to the estate;
- Specify the amount requested for each category of service performed;
- State the hourly rate of each person who performed services and the hours spent by each of them; and
- Describe the services rendered in sufficient detail to demonstrate the productivity of the time spent.

7. [§301.130] No Advance Payments

No attorney's fees may be paid from the conservatee's estate without prior court order. The conservatee's estate is not obligated to pay attorney's fees established by any engagement agreement or other contract until it has been approved by the court. This does not preclude an award of fees by the court even if the contractual obligations are unenforceable pursuant to this section. Prob C §2647. If an advance payment is made or received, the court may surcharge the conservator in the manner provided in Cal Rules of Ct 7.700(b), in addition to removing the conservator or imposing any other sanction authorized by law on the conservator or on the attorney. Cal Rules of Ct 7.755(a).

8. [§301.131] Periodic Payments

On petition by the conservator of the person or estate, or both, except as provided in Prob C §2643.1 (conservator is a professional fiduciary), the court may by order authorize periodic payments on account to any one

or more of the following persons for the services rendered by that person during the period covered by each payment (Prob C §2643(a)):

- The conservator of the person.
- The conservator of the estate.
- The attorney for the conservator of the person or estate, or both.

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2643(b); Benchguide 300, §300.23.

For periodic payments of attorney's fees on account of future services, there must be a showing of an ongoing need for legal services. Cal Rules of Ct 7.755(b). The petition must describe the services to be rendered on a periodic basis and the reason why authority to make periodic payments is requested. In fixing the amount of the periodic payment, the court must take into account the services to be rendered on a periodic basis and the reasonable value of such services. The conservator of the estate may make the periodic payments authorized by the order only if the services described in the petition are actually rendered. The payments made under the order are subject to review by the court on the next succeeding account of the conservator of the estate to determine that the services were actually rendered and that the amount paid on account was not unreasonable, and the court must make an appropriate order if the court determines that the amount paid on account was either excessive or inadequate in view of the services actually rendered. Prob C §2643(c).

Probate Code §2643 permits the court, for example, to authorize the conservator of the estate to make a payment each month on account to the attorney for services rendered during the immediately preceding month. Such an order may be useful for a large estate when there may be tax advantages from making periodic payments of compensation. When a conservator of the person is compensated and devotes substantial time to the conservatee's care, periodic payments may be needed. Periodic payments also avoid problems that may exist when payment is delayed. The payments provide funds on a current basis to cover out-of-pocket expenses, avoid the need to determine questions that turn on the value of loss of use of money caused by delay in payment, and protect against variations in the value of money that may be significant in an inflationary period. When services are rendered on a periodic basis, these payments avoid the need for frequent accountings or petitions for compensation. Cal L Rev Comm'n Comment to Prob C §2643 (1990).

The periodic payments are "on account." Actual compensation is determined when the court reviews the account of the conservator. At that time, payments are reviewed by the court in light of services actually rendered. If the total of periodic payments is too low to be just and reasonable compensation for the conservator or attorney, the court should

allow additional compensation for services actually rendered. If the amount paid is unreasonably high for services actually rendered, the court should make an appropriate order. Such an order might require the conservator to credit the excess paid against amounts to be paid for future services. Cal L Rev Comm'n Comment to Prob C §2643 (1990).

On petition by a conservator of the person or estate, or both, who is a professional fiduciary as described in Prob C §2340 and who is required to be licensed under Bus & P C §§6500 et seq, the court may by order authorize periodic payments on account to a person as described in Prob C §2643(a) (conservator of the person or estate, or both), for the services rendered by that person during the period covered by each payment only if that person has filed a proposed hourly fee schedule or another statement of his or her proposed compensation from the conservatee's estate for services performed as a conservator, as required by Prob C §2614.7, and only after the court has addressed any filed written objections. Prob C §2643.1(a) (See §301.4 regarding hourly fee schedule requirements).

The petition must describe the services to be rendered on a periodic basis, the reason why authority to make periodic payments is requested, and a good faith estimate of the fees to be charged by the professional fiduciary from the date the petition is filed up to, and including, the date of the next succeeding account required by Prob C §2620 or, if the next succeeding account required is due in less than 1 year, a good faith estimate of the fees to be charged by the professional fiduciary from the date the petition is filed through the next succeeding 12 months. Prob C §2643.1(b). Prior to ordering periodic payments or fixing the amount of the periodic payment, the court must determine whether making periodic payments is in the conservatee's best interest, taking into consideration the conservatee's needs and the need to preserve and protect the estate. If the court determines that making periodic payments is not in the conservatee's best interest, the court must deny the petition to authorize periodic payments. If the court determines that making periodic payments is in the conservatee's best interest, the court must fix the amount of the periodic payment. In fixing the amount of the periodic payment, the court must take into account the services to be rendered on a periodic basis and the reasonable value of those services. Prob C §2643.1(b).

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b) and to the court investigator. Prob C §2643.1(c); see Benchguide 300, §300.23.

Any person entitled to notice may file a written objection to the authorization of periodic payments on account with the court. The court clerk must set any objections for a hearing no fewer than 15 days after the date the objections are filed. Prob C §2643.1(d)(1).

If an objection is filed, the conservator has the burden of establishing the necessity for and amount, if any, of periodic payments. Prob C §2643.1(d)(2).

The conservator of the estate may make the periodic payments authorized by the order only if the services described in the petition are actually rendered. The payments made pursuant to the order must be reviewed by the court on the next succeeding account of the conservator of the estate to determine that the services were actually rendered and that the amount paid on account was reasonable and in the conservatee's best interest, taking into consideration the conservatee's needs and the need to preserve and protect the estate. The court must make an appropriate order reducing the conservator's compensation if the court determines that the amount paid on account was either unreasonable or not in the conservatee's best interest in view of the services actually rendered. Prob C §2643.1(e).

The authorization for periodic payments granted must terminate on a date determined by the court, but not later than the due date of the next succeeding account. Nothing precludes a conservator from filing a subsequent petition to receive periodic payments. Prob C §2643.1(f).

9. [§301.132] Contingent Fees

When it is to the advantage, benefit, and best interest of the conservatee or the estate, the conservator of the estate may contract with an attorney for a contingent fee for the attorney's services in representing the conservatee or the estate in connection with a matter that is of a type that is customarily the subject of a contingent fee contract, but such a contract is valid only if (1) the contract is made under a court order authorizing the conservator to execute the contract or (2) the contract is approved by court order. Prob C §2644(a); Cal Rules of Ct 7.753.

To obtain an order, the conservator must file a petition with the court showing the advantage, benefit, and best interest to the conservatee or the estate of the contingent fee contract. A copy of the contingent fee contract must be attached to the petition. Prob C §2644(b). "Court" includes either of the following (Prob C §2644(d)):

- The court in which the conservatorship proceeding is pending.
- When the contract is in connection with a matter in litigation, the court in which the litigation is pending.

An attorney may agree to perform services for a conservator on a contingent-fee basis if the agreement is in writing and complies with Bus & P C §6147. Cal Rules of Ct 7.703(d), 7.753.

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2644(c); Benchguide 300, §300.23.

10. [§301.133] Attorney's Fees to Specific Persons

No attorney who is a conservator may receive any compensation from the conservatorship estate for legal services performed for the conservator unless the court specifically approves the right to the compensation and finds that it is to the conservatee's advantage, benefit, and best interests. Prob C §2645(a).

No parent, child, sibling, or spouse of a person who is a conservator, and no law partnership or corporation whose partner, shareholder, or employee is serving as a conservator may receive any compensation for legal services performed for the conservator unless the court specifically approves the right to the compensation and finds that it is to the conservatee's advantage, benefit, and best interests. Prob C §2645(b). There are two requirements: benefit to the conservatee and specific court approval. *Conservatorship of Bryant* (1996) 45 CA4th 117, 121–122, 52 CR2d 755. This provision is not applicable if the conservator is related by blood or marriage to, or is a cohabitant with, the conservatee. Prob C §2645(c).

After full disclosure of the relationships of all persons to receive compensation for legal services, the court may, in its discretion and at any time, approve the right to that compensation, including any time during the pendency of any of the following orders (Prob C §2645(d)):

- An order appointing the conservator.
- An order approving the general plan under Prob C §1831. (*Note*: Prob C §1831 was repealed in 1993.)
- An order settling any account of the conservator.
- An order approving a separate petition, with notice given under Prob C §2581 (substituted judgment).

11. [§301.134] Fees Payable From Other Sources

In conservatorship proceedings, the court must only determine fees that are payable from the conservatee's estate and not limit fees payable from other sources. Prob C §2646.

R. Termination of Conservatorship

1. [§301.135] Duration of Conservatorship

A conservatorship continues until terminated by the conservatee's death or by court order. Prob C §1860(a); Cal Rules of Ct 7.1052(a). The court retains jurisdiction of the conservatorship proceeding after the conservatee's death (see §301.138). Prob C §2630; see *Conservatorship of O'Connor* (1996) 48 CA4th 1076, 1089, 56 CR2d 386 (the scope of the court's jurisdiction should be construed broadly to accomplish these

goals). Therefore, the probate court had the authority to set aside a deed executed by the conservator several months before the conservatee's death. *Conservatorship of Starr* (1989) 215 CA3d 1390, 1394–1395, 264 CR 80.

Unless the court orders otherwise, a conservator must give the parties listed in Prob C §1460 written notice of a conservatee's death and file a proof of service with the court. Prob C §2361.

Similarly, a conservator's death ends the relationship of conservator and conservatee, but does not terminate the conservatorship proceeding. The court retains jurisdiction of the conservatorship proceeding despite termination of the relationship of conservator and conservatee. Cal L Rev Comm'n Comment to Prob C §1860 (1990).

If a conservatorship is established for the person of a married minor, the conservatorship does not terminate if the marriage is dissolved or is adjudged a nullity. Prob C §1860(b).

This termination provision does not apply to limited conservatorships. Prob C §1860(c).

A limited conservatorship continues until the authority of the conservator is terminated by one of the following (Prob C §1860.5(a)):

- The death of the limited conservator.
- The death of the limited conservatee.
- By an order appointing a conservator of the former limited conservatee.
- By an order of the court stating that the limited conservatorship is no longer necessary for the limited conservatee and terminating the limited conservatorship.

2. [§301.136] Petition for Termination

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

- The conservator.
- The conservatee.
- The conservatee's spouse, or domestic partner, or any relative or friend or other interested person.

The petition must state facts showing that the conservatorship is no longer required. Prob C §1861(b).

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §1862; Benchguide 300, §300.23.

A conservatorship of the person terminates by operation of law when the conservatee dies, and the conservator of the person need not file a petition for its termination. Cal Rules of Ct 7.1052(b).

A petition for the termination of a limited conservatorship may be filed by any of the following (Prob C §1860.5(b)):

- The limited conservator.
- The limited conservatee.
- Any relative or friend of the limited conservatee.

The petition must state facts showing that the limited conservatorship is no longer required. Prob C §1860.5(c).

At least fifteen days' notice of the hearing must be given to the persons listed in Prob C §1822. Prob C §1860.5(d); see Benchguide 300, §300.21. If the limited conservator is not the petitioner or has not joined in the petition, he or she must be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least 5 days prior to the hearing. Such service must be made in the same manner provided for in CCP §§415.10 or 415.30 or in such other manner as may be authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with notice. Prob C §1860.5(d).

3. [§301.137] Hearing and Order

The court must hear and determine the matter of terminating the conservatorship according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the conservatee. The conservator, the conservatee, or the conservatee's spouse or domestic partner, or any relative or friend or other interested person may appear and support or oppose the petition to terminate. Prob C §1863(a).

If the court determines that the conservatorship is no longer required or that grounds for establishing a conservatorship of the person or estate, or both, no longer exist, the court must make this finding and must enter judgment terminating the conservatorship accordingly. Prob C §1863(b).

At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated on the settlement and approval of the conservator's final account by the court. Prob C §1863(c).

Termination of conservatorship does not preclude a new proceeding for appointment of a conservator on the same or other grounds. Prob C §1863(d).

If the conservatee has been disqualified from voting under Elec C §§2208 or 2209, when the conservatorship is terminated, the court must notify the county elections official of the county of residence of the former

conservatee that the former conservatee's right to register to vote is restored. Prob C §1865.

In a limited conservatorship, the limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court must hear and determine the matter according to the laws and procedures relating to the trial of civil actions, including trial by jury if demanded. If it is determined that the limited conservatorship is no longer required, the limited conservatorship must cease. If the petition alleges and if it is determined that the limited conservatee is able to properly care for himself or herself and for his or her property, the court must make such finding and enter judgment accordingly. The limited conservator may at the hearing, or thereafter on further notice and hearing, be discharged and his or her bond exonerated upon the settlement and approval of the final account by the court. Prob C §1860.5(e).

- **JUDICIAL TIP:** Many conservators will request that their bond be exonerated in their final account and include that provision in the order approving the final account. Do not exonerate the bond until the conservator has filed all receipts for distribution to a personal representative, trustee, successor conservator or the former conservatee, and completed Judicial Council Form DE295/GC395, Ex Parte Petition for Final Discharge and Order.

4. [§301.138] Continuing Jurisdiction

The termination of the relationship of conservator and conservatee by the death of either, by the determination of the court that the conservatorship is no longer necessary, by the removal or resignation of the conservator, or for any other reason, does not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the conservator or for any other purpose incident to the enforcement of the judgments and orders of the court on such accounts or on the termination of the relationship. Prob C §2630.

5. [§301.139] Final Account

A conservator of the estate whose administration is terminated by operation of law or by court order must file and obtain the court's approval of a final account of the administration. Cal Rules of Ct 7.1052(c). A conservator of the person need not file an account on the termination of the conservatorship by operation of law or when the conservatee dies. Cal Rules of Ct 7.1052(b).

After termination of the conservatorship, the conservator of the estate must serve copies of the conservator's final account and the petition for its settlement with the notices of hearing that must be served on the former

conservatee and on the spouse or domestic partner of the former conservatee under Prob C §1460(b)(2) and (3), unless the court dispenses with such service. Cal Rules of Ct 7.1054.

6. [§301.140] Payment of Expenses

On the conservatee's death, the conservator may contract for and pay a reasonable sum for the expenses of the last illness and the disposition of the remains of the deceased conservatee, and for unpaid court-approved attorney's fees, and may pay the unpaid expenses of the conservatorship accruing before or after the conservatee's death, in full or in part, to the extent reasonable, from any personal property of the deceased conservatee that is under the control of the conservator. Prob C §2631(a).

7. [§301.141] Liquidation of Estate

If after payment of expenses, the total market value of the remaining estate of the deceased conservatee does not exceed the amount determined under Prob C §13100 (\$150,000), the conservator may petition the court for an order permitting the conservator to liquidate the decedent's estate. The conservator may petition even though there is a will of the decedent in existence if the will does not appoint an executor or if the named executor refuses to act. No notice of the petition need be given. If the order is granted, the conservator may sell personal property of the decedent; withdraw money of the decedent in an account in a financial institution; and collect a debt, claim, or insurance proceeds owed to the decedent or the decedent's estate. A person having possession or control must pay or deliver the money or property to the conservator. Prob C §2631(b).

After payment of expenses, the conservator may transfer any remaining property as provided in Prob C §§13000 et seq. For this purpose, the value of the property of the deceased conservatee must be determined after the deduction of the expenses so paid. Prob C §2631(c).

8. [§301.142] Death or Incapacity of Conservator

If a conservator dies or becomes incapacitated and a legal representative is appointed for the deceased or incapacitated conservator, the legal representative must, not later than 60 days after appointment unless the court extends the time, file an account of the administration of the deceased or incapacitated conservator. Prob C §2632(b).

If a conservator dies or becomes incapacitated and no legal representative is appointed for the deceased or incapacitated conservator, or if the conservator absconds, the court may compel the attorney for the deceased, incapacitated, or absconding conservator or the attorney of record in the conservatorship proceeding to file an account of the

administration of the deceased, incapacitated, or absconding conservator. Prob C §2632(c).

“Incapacitated” means lack of capacity to serve as conservator. “Legal representative” means the personal representative of a deceased conservator or the conservator of the estate of an incapacitated conservator. Prob C §2632(a).

The legal representative or attorney must exercise reasonable diligence in preparing an account. Verification of the account may be made on information and belief. The court must settle the account as in other cases. The court must allow reasonable compensation to the legal representative or the attorney for preparing the account. The amount allowed must be a charge against the estate that was being administered by the deceased, incapacitated, or absconding conservator. Legal services for which compensation must be allowed to the attorney include those services rendered by any paralegal performing the services under the direction and supervision of an attorney. The petition or application for compensation must set forth the hours spent and services performed by the paralegal. Prob C §2632(d).

9. [§301.143] Termination Before Inventory

When the conservatorship terminates before the inventory of the estate has been filed, the court, in its discretion and on such notice as the court may require, may make an order that the conservator need not file the inventory and appraisal and that the conservator must file an account covering only those assets of the estate of which the conservator has possession or control. Prob C §2633.

This provision authorizes the court to dispense with the inventory and appraisal when the conservatee dies a few days after appointment of a conservator. This will permit the court, in its discretion, to waive the inventory and permit an accounting of assets actually marshaled, thereby avoiding (1) the need to inventory estate assets—such as stocks, oil rights, or real property—when the conservator has not yet taken possession or control of the assets and (2) the resulting additional fees for the conservator and needless delay in turning the estate over to the personal representative of the deceased conservatee. Cal L Rev Comm’n Comment to Prob C §2633 (1990).

S. Removal and Resignation of Conservator

1. [§301.144] Causes for Removal

A conservator may be removed for any of the following causes (Prob C §2650):

- Failure to use ordinary care and diligence in the management of the estate.
- Failure to file an inventory or an account within the time allowed by law or by court order.
- Continued failure to perform duties or incapacity to perform duties suitably.
- Conviction of a felony, whether before or after appointment as conservator.
- Gross immorality.
- Having such an interest adverse to the faithful performance of duties that there is an unreasonable risk that the conservator will fail faithfully to perform duties.
- In the case of a conservator of the person, acting in violation of any provision of Prob C §2356 (placement in a mental health treatment facility against the conservatee's will, prescription of an experimental drug for, or performance of convulsive therapy on the conservatee).
- In the case of a conservator of the estate, insolvency or bankruptcy of the conservator.
- In the case of a conservator appointed by a court in another jurisdiction, removal because that person would not have been appointed in California despite being eligible to serve under California law.
- In any other case in which the court in its discretion determines that removal is in the conservatee's best interests.

2. [§301.145] Termination of Marriage or Domestic Partnership

The spouse of a conservatee must disclose to the conservator, or if the spouse is the conservator, must disclose to the court, the filing of any action or proceeding against the conservatee for legal separation of the parties, dissolution of marriage, or adjudication of nullity of the marriage, within 10 days of the filing of the action or proceeding by filing a notice with the court. Prob C §1813(b).

Notice must be given to the persons listed in Prob C §1460(b). Prob C §1813(b); Benchguide 300, §300.23.

The domestic partner of a conservatee must disclose to the conservator, or if the domestic partner is the conservator, must notify the court, of the termination of a domestic partnership as provided in Fam C §299, within 10 days of its occurrence. Prob C §1813.1(b).

The court may, on receipt of the notice, set the matter for hearing on an order to show cause why the appointment of the spouse or domestic partner as conservator, if the spouse or domestic partner is the conservator, should not be terminated and a new conservator appointed by the court. Prob C §§1813(b), 1813.1(b).

3. [§301.146] Petition for Removal

The conservatee, the conservatee's spouse or domestic partner, any relative or friend, or any interested person may apply by petition to the court to have the conservator removed. The petition must state facts showing cause for removal. Prob C §2651. Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2652; Benchguide 300, §300.23.

The conservator, the conservatee, the conservatee's spouse or domestic partner, any relative or friend, and any interested person may appear at the hearing and support or oppose the petition. Prob C §2653(a).

There is no right to jury trial in removal proceedings. Cal L Rev Comm'n Comment to Prob C §2653 (1990); Prob C §1452.

If the court determines that cause for removal of the conservator exists, the court may remove the conservator, revoke the letters of conservatorship, and enter judgment accordingly and, in the case of a conservatorship of the estate, order the conservator to file an accounting and to surrender the estate to the person legally entitled thereto. If the conservator fails to file the accounting as ordered, the court may compel the accounting under Prob C §2620.2 (see §301.118). Prob C §2653(b).

4. [§301.147] Removal for Contempt

A conservator may be removed from office if the conservator is found in contempt for disobeying a court order. Prob C §2655(a). A conservator may be removed from office for contempt by a court order reciting the facts and without further showing or notice. Prob C §2655(b).

5. [§301.148] Costs and Attorney's Fees

If the court removes the conservator for cause, as described in Prob C §§2650(a)–(g) or 2655, both of the following apply (Prob C §2653(c)):

- The court must award the petitioner the costs of the petition and other expenses and costs of litigation, including attorney's fees, unless the court determines that the conservator has acted in good faith, based on the conservatee's best interests.
- The conservator may not deduct from, or charge to, the estate his or her costs of litigation, and is personally liable for those costs and expenses.

6. [§301.149] Suspension of Powers

Whenever it appears that the conservatee or the estate may suffer loss or injury during the time required for notice and hearing for removal, the court, on its own motion or on petition, may do either or both of the following (Prob C §2654):

- Suspend the powers of the conservator pending notice and hearing to such extent as the court deems necessary.
- Compel the conservator to surrender the estate to a custodian designated by the court.

7. [§301.150] Resignation

A conservator may at any time file with the court a petition tendering the resignation of the conservator. Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §2660; Benchguide 300, §300.23. The court must allow such resignation when it appears proper, to take effect at such time as the court must fix, and may make any order as may be necessary to deal with the conservatorship during the period before the appointment of a new conservator and the settlement of the accounts of the resigning conservator. Prob C §2660.

8. [§301.151] Service of Final Account

A resigned or removed conservator of the estate must serve a copy of the conservator's final account and the petition for its settlement with the notice of hearing that must be served on the successor conservator of the estate under Prob C §1460(b)(1), unless the court dispenses with such service. Cal Rules of Ct 7.1053.

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