

Senate Bill No. 1116

CHAPTER 490

An act to amend Sections 2352, 2540, 2543, 2590, and 2591 of, and to add Sections 2352.5 and 2591.5 to, the Probate Code, relating to conservatorships.

[Approved by Governor September 27, 2006. Filed with Secretary of State September 27, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1116, Scott. Conservatorships.

(1) Existing law generally authorizes a guardian or conservator to fix the residence of a conservatee or ward within the state without permission of the court, by selecting the least restrictive appropriate setting, as specified, that is in the best interests of the conservatee. Existing law requires the guardian or conservator to promptly give notice of all changes in the residence of a conservatee or ward.

This bill would revise and recast this provision to permit a guardian or conservator to select the least restrictive appropriate residence of a conservatee or ward. The bill would require a presumption that the least restrictive appropriate residence for the conservatee is the personal residence of that conservatee, except if proven otherwise at a hearing by a preponderance of the evidence. The bill would require a conservator to evaluate the level of care and measures necessary to keep the conservatee in his or her personal residence or explain the limitations or restrictions regarding a return of the conservatee to his or her personal residence. The bill would exempt from these provisions conservatees with developmental disabilities for whom the Director of the Department of Developmental Disabilities or a regional center for the developmentally disabled acts as a conservator, as specified. The bill would require this determination to be made in writing under penalty of perjury. Because the bill would change the definition of the crime of perjury, the bill would impose a state-mandated local program. The bill would require the guardian or conservator to file notice of the change of address for a ward or conservatee in 30 days. The bill would permit the court to waive notice of the change of address in order to prevent harm to the conservatee or ward. The bill would require the Judicial Council to develop one or more forms consistent with this provision by January 1, 2008. If a ward or conservatee is being removed from his or her personal residence, the bill would require the guardian or conservator to give notice 15 days prior to removal, except in an emergency, as specified.

(2) Existing law provides that sales of real or personal property of the estate of a conservatee are subject to authorization, confirmation, or

direction of the court, except as otherwise provided and except for the sale of a conservatee's personal residence. In seeking authorization to sell a conservatee's present or former personal residence, the conservator is required to notify the court that the personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee, among other requirements.

This bill would revise the provisions for the proposed sale of the personal residence of a conservatee and require a conservator to publish and post a notice of sale, reappraisal for sale, minimum offer price, and other information related to the sale of the personal residence, as specified. The bill would delete restrictions regarding the sale of the personal residence of the conservatee related to contracts with and compensation of agents, brokers, and auctioneers, and restrictions regarding the sale of personal property.

(3) Under existing law, the court, in its discretion, may make an order granting a conservator one or more powers, as specified, for the advantage, benefit, and best interest of the estate of the conservatee. These powers include the sale of real property of the estate.

This bill would additionally require that the sale of the personal residence of a conservatee, including the terms of sale, price, and commissions to be paid from the estate, to be in the best interest of the conservatee, that the sale of that personal residence shall comply with requirements for appraisal and minimum offer price, and other conditions, as specified. The bill would prohibit a court from waiving specified requirements regarding appraisals.

(4) This bill would make related, nonsubstantive and clarifying changes.

(5) This bill would become operative only if SB 1550, SB 1716, and AB 1363 are enacted and become effective on or before January 1, 2007.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 2352 of the Probate Code is amended to read:

2352. (a) The guardian may establish the residence of the ward at any place within this state without the permission of the court. The guardian shall select the least restrictive appropriate residence that is available and necessary to meet the needs of the ward, and that is in the best interests of the ward.

(b) The conservator may establish the residence of the conservatee at any place within this state without the permission of the court. The conservator shall select the least restrictive appropriate residence, as

described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee.

(c) If permission of the court is first obtained, a guardian or conservator may establish the residence of a ward or conservatee at a place not within this state.

(d) An order under subdivision (c) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or a longer or shorter period specified in the order.

(e) (1) The guardian or conservator shall file a notice of change of residence with the court within 30 days of the date of the change. The conservator shall include in the notice of change of residence a declaration stating that the conservatee's change of residence is consistent with the standard described in subdivision (b). The Judicial Council shall, on or before January 1, 2008, develop one or more forms of notice and declaration to be used for this purpose.

(2) The guardian or conservator shall mail a copy of the notice to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section 1822 and shall file proof of service of the notice with the court. The court may, for good cause, waive the mailing requirement pursuant to this paragraph in order to prevent harm to the conservatee or ward.

(3) If the guardian or conservator proposes to remove the ward or conservatee from his or her personal residence, the guardian or conservator shall mail a notice of his or her intention to change the residence of the ward or conservatee to all persons entitled to notice under subdivision (b) of Section 1511 and subdivision (b) of Section 1822. In the absence of an emergency, that notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence. If the notice is served less than 15 days prior to the proposed removal of the ward or conservatee, the guardian or conservatee shall set forth the basis for the emergency in the notice. The guardian or conservator shall file proof of service of that notice with the court.

(f) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to establish his or her own residence.

SEC. 2. Section 2352.5 is added to the Probate Code, to read:

2352.5. (a) It shall be presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee. In any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of the evidence.

(b) Upon appointment, the conservator shall determine the appropriate level of care for the conservatee.

(1) That determination shall include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence.

(2) If the conservatee is living at a location other than his or her personal residence at the commencement of the proceeding, that determination shall either include a plan to return the conservatee to his or her personal residence or an explanation of the limitations or restrictions on a return of the conservatee to his or her personal residence in the foreseeable future.

(c) The determination made by the conservator pursuant to subdivision (b) shall be in writing, signed under penalty of perjury, and submitted to the court within 60 days of appointment as conservator.

(d) The conservator shall evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care.

(e) (1) This section shall not apply to a conservatee with developmental disabilities for whom the Director of the Department of Developmental Services or a regional center for the developmentally disabled, established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, acts as the conservator and who receives services from a regional center pursuant to the Lanterman Developmental Disabilities Act, Division 4.5 (commencing with Section 4500) of the Welfare and Institutions.

(2) Services, including residential placement, for a conservatee described in paragraph (1) who is a consumer, as defined in Section 4512 of the Welfare and Institutions Code, shall be identified, delivered, and evaluated consistent with the individual program plan process described in Article 2 (commencing with Section 4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code.

SEC. 3. Section 2540 of the Probate Code is amended to read:

2540. (a) Except as otherwise provided in Sections 2544 and 2545, and except for the sale of a conservatee's present or former personal residence as set forth in subdivision (b), sales of real or personal property of the estate under this article are subject to authorization, confirmation, or direction of the court, as provided in this article.

(b) In seeking authorization to sell a conservatee's present or former personal residence, the conservator shall notify the court that the present or former personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee. The conservator shall inform the court whether the conservatee supports or is opposed to the proposed sale and shall 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. This subdivision shall not apply when the conservator is granted the power to sell real property of the estate pursuant to Article 11 (commencing with Section 2590).

SEC. 4. Section 2543 of the Probate Code is amended to read:

2543. (a) If estate property is required or permitted to be sold, the guardian or conservator may:

(1) Use discretion as to which property to sell first.

(2) Sell the entire interest of the estate in the property or any lesser interest therein.

(3) Sell the property either at public auction or private sale.

(b) Subject to Section 1469, unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or 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, shall conform, as nearly as may be, to the provisions of this code concerning sales by a personal representative as described in Articles 6 (commencing with Section 10300), 7 (commencing with Section 10350), 8 (commencing with Section 10360), and 9 (commencing with Section 10380) of Chapter 18 of Part 5 of Division 7. The provisions concerning sales by a personal representative as described in the Independent Administration of Estates Act, Part 6 (commencing with Section 10400) of Division 7 shall not apply to this subdivision.

(c) Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the confirmation hearing, a new appraisal shall be required prior to the confirmation hearing, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the confirmation hearing.

(d) The clerk of the court shall cause notice to be posted pursuant to subdivision (b) only in the following cases:

(1) 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.

(2) If posting of notice of a sale governed by Section 10250 (sales of personal property) is required or authorized.

(3) If posting of notice is ordered by the court.

SEC. 5. Section 2590 of the Probate Code is amended to read:

2590. The court may, in its discretion, make an order granting the guardian or conservator any one or more or all of the powers specified in Section 2591 if the court determines that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. Subject only to the requirements, conditions, or limitations as are specifically and expressly

provided, either directly or by reference, in the order granting the power or powers, and if consistent with Section 2591, the guardian or conservator may exercise the granted power or powers without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as the ward or conservatee could do if possessed of legal capacity.

SEC. 6. Section 2591 of the Probate Code is amended to read:

2591. The powers referred to in Section 2590 are:

(a) The power to contract for the guardianship or conservatorship and to perform outstanding contracts and thereby bind the estate.

(b) The power to operate at the risk of the estate a business, farm, or enterprise constituting an asset of the estate.

(c) The power to grant and take options.

(d) (1) The power to sell at public or private sale real or personal property of the estate, other than the personal residence of a conservatee.

(2) The power to sell at public or private sale the personal residence of the conservatee as described in Section 2591.5. The power granted pursuant to this paragraph is subject to the requirements of Sections 2352.5 and 2541.

(e) The power to create by grant or otherwise easements and servitudes.

(f) The power to borrow money and give security for the repayment thereof.

(g) The power to purchase real or personal property.

(h) The power to alter, improve, and repair or raze, replace, and rebuild property of the estate.

(i) The power to let or lease property of the estate for any purpose (including exploration for and removal of gas, oil, and other minerals and natural resources) and for any period, including a term commencing at a future time.

(j) The power to lend money on adequate security.

(k) The power to exchange property of the estate.

(l) The power to sell property of the estate on credit if any unpaid portion of the selling price is adequately secured.

(m) The power to commence and maintain an action for partition.

(n) The power to exercise stock rights and stock options.

(o) The power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property.

(p) The power to pay, collect, compromise, arbitrate, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship.

(q) The power to employ attorneys, accountants, investment counsel, agents, depositaries, and employees and to pay the expense.

SEC. 7. Section 2591.5 is added to the Probate Code, to read:

2591.5. (a) Notwithstanding any other provisions of this article, a conservator seeking an order under Section 2590 authorizing a sale of the conservatee's personal residence shall demonstrate to the court that the terms of sale, including the price for which the property is to be sold and

the commissions to be paid from the estate, are in all respects in the best interests of the conservatee.

(b) A conservator authorized to sell the conservatee's personal residence pursuant to Section 2590 shall comply with the provisions of Section 10309 concerning appraisal or new appraisal of the property for sale and sale at a minimum offer price. Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the proposed sale of the property, a new appraisal shall be required prior to the sale of the property, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the proposed sale of the property. For purposes of this section, the date of sale is the date of the contract for sale of the property.

(c) Within 15 days of the close of escrow, the conservator shall serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment for a conservator and all persons who have filed and served a request for special notice and shall file a copy of the final escrow statement along with a proof of service with the court.

(d) The court may, for good cause, waive any of the requirements of this section, except the requirements regarding appraisal times in subdivision (b).

SEC. 8. This act shall become operative only if Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363 of the 2005–06 Regular Session are enacted and become effective on or before January 1, 2007.

SEC. 9. This act, together with Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363, shall be known and may be cited as the Omnibus Conservatorship and Guardianship Reform Act of 2006.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.