

Invitation to Comment

Title	Probate: Notices of Changes of Residence of Conservatees and Wards (adopt rules 7.1013 and 7.1063 of the California Rules of Court; revise form GC-080; and approve form GC-080(MA)).
Summary	Revised form GC-080 would provide both the newly-required advance notice of intent to change a conservatee's or ward's personal residence and the currently-required notice of a completed move by a conservatee or ward. Proposed rules 7.1013 and 7.1063 would clarify the statutory requirements for these notices. Proposed new form GC-080(MA) would provide a means to show proof of service of these notices on more persons than can be listed in the proof of mailing on the second page of the notice.
Source	Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair
Staff	Douglas C. Miller, Attorney Committee Counsel Office of the General Counsel, Administrative Office of the Courts (415) 865-7535 douglas.miller@jud.ca.gov
Discussion	The Omnibus Conservatorship and Guardianship Reform Act of 2006 ¹ substantially rewrote existing law concerning notice of changes of a conservatee's or ward's residence within California. Before the changes made by the Omnibus Act, Probate Code section 2352(c) merely required conservators or guardians to mail notices to the court of all changes in the conservatee's or ward's residence within the state. No time period within which to mail this notice was specified, no one other than the court was required to be notified about these changes, and no notice to the court in advance of the move was required. A Judicial Council form, <i>Change of Residence Notice</i> (form GC-080), was adopted in 2000 to provide the notice to the court required by section 2352(c).

¹ Stats 2006, chapters 490–493 (respectively, SB 1116, SB 1550, SB 1716, and AB 1363), referred to collectively as the Omnibus Act. Section 2352 was amended by section 1 of chapter 490 (SB 1116).

The Omnibus Act amended section 2352 to require two notices, the first to certain persons before a proposed move, and the second to the court and the same persons within 30 days of completion of a move. The Probate and Mental Health Advisory Committee proposes a revision of form GC-080 to provide both notices required by the Act and proof of their mailing.

A new section 2352(e) contains the notice provisions added or modified by the Omnibus Act, including the post-move notice provision formerly contained in section 2352(c). Section 2352(e) provides in full as follows:

- “(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).² 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

² Section 2352(b), as amended by the Omnibus Act, requires the conservator to select “[t]he 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.”

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.”

Revised form GC-080

Section 2352(e)(3) requires a conservator or guardian to mail a notice of intent to change the conservatee’s or ward’s personal residence to the persons entitled to notice of the hearing on a petition for appointment of a guardian under Probate Code section 1511(b) or the persons entitled to notice of the hearing on a petition for appointment of a conservator under Probate Code section 1822(b).³ This notice must be mailed at least 15 days before the move, in the absence of an emergency. If there is an emergency requiring a shorter period of notice, the notice must include a statement of the basis for the emergency. Proof of the notice must be filed with the court.

Items 1 and 2 on page 1 of revised form GC-080 contains the notice described in section 2352(e)(3).

Amended section 2352(e)(1) requires the conservator or guardian to file a notice of change of residence with the court within 30 days of the date of the change. The notice must also be served on the persons identified in the above footnote and a proof of service must be filed with the court.

³ For guardianships, the persons entitled to notice under section 1511(b) are the ward if twelve years of age or older, the ward’s parents, any person having legal custody of the ward or a serving guardian of the estate, and any person nominated by the ward’s parents as guardian. For conservatorships, the persons entitled to notice under section 1822(b) are the conservatee’s spouse or domestic partner and the conservatee’s second-degree relatives (grandparents, parents, siblings, children, and grandchildren). If none of these relatives are known, certain relatives of the conservatee’s spouse or domestic partner and parents identified in section 1821(b)(1)–(4) become entitled to notice under section 1822(b).

Items 3 and 4 on page 1 of revised form GC-080 contain the notice described in section 2352(e)(1). Item 4 is the declaration required by that section. It states the standard described in section 2352(b) for a change in the conservatee's residence.

The name of form GC-080 would be changed from *Change of Residence Notice* to *Notice of Proposed Change of Personal Residence or Completed Change of Residence of Conservatee or Ward* to reflect the new intended dual use of the form.

The form must be served twice if the conservatee's or ward's personal residence is changed. Both original forms with completed proofs of service must be filed with the court. The first notice filed would show item 1 and possibly item 2 checked and completed. The second notice filed would show item 3 and, if a conservatorship, item 4 checked and completed. Only the second (post-move) notice must state the address of the new residence.

Because amended section 2352(e) provides that the conservator or guardian is to "mail" the notices, the proof of mailing on page 2 of the form is designed for the conservator or guardian, or his or her attorney or an employee of the attorney, to sign. This is consistent with the normal practice in probate matters where the fiduciary is represented by counsel, but would permit an unrepresented guardian or conservator to complete the mailing and fill out and sign the proof of mailing.

Rules 7.1013 and 7.1063

These proposed rules governing, respectively, guardianships and conservatorships are proposed to clarify amended section 2352 and to prescribe the use of revised form GC-080. Rules 7.1013(b) and 7.1063(b) would define a ward's or conservatee's personal residence for purposes of the notice required under section 2352(e)(3) (the pre-move notice). Rule 7.1013(b) would define a ward's personal residence as his or her residence at the time the first petition for appointment of a guardian was filed in the case. The definition of a conservatee's personal residence is more complex. Rule 7.1063(b) would define the term as the conservatee's non-institutional residence when the first petition for appointment of a conservator was filed in the case. If the conservatee was living in an institutional residential setting when the petition was filed, his or her personal residence would be defined as his or her residence prior to moving to the institutional setting if that residence is an asset of the conservatorship estate or a

trust of which the conservatee is a settlor and beneficiary. A change of personal residence in that situation would be a move from the institutional setting to any residence other than the prior residence.

The terms “residence of the ward” and “residence of the conservatee” for purposes of the notice required under section 2352(e)(1) (the post-move notice) would be defined in rules 7.1013(d) and 7.1063(d) as the ward’s or conservatee’s residence at any time after appointment of a guardian or conservator.

This interpretation of amended section 2352(e) is supported by the statute’s use of the term “personal residence” when describing the pre-move notice required under section 2352(e)(3), but merely the word “residence” when describing the post-move notice required under section 2352(e)(1). The special requirements of the pre-move notice seem clearly to have been intended for possible moves from the residence of the ward or conservatee at the beginning of the guardianship or conservatorship, and to give the conservatee and other interested persons an opportunity to object to the move before it takes place. This interpretation is also consistent with the term “personal residence” as used in new section 2352.5(a), which establishes a presumption that the “personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee.” A guardianship or conservatorship proceeding is commenced when the first petition for appointment of a guardian or conservator is filed.

The post-move notice appears to be a continuation of the previously-required notice to the court, with the addition of notice to interested persons so they will continue to know where the ward or conservatee is living.

Rule 7.1013(a) and (c) would require mailing of the pre-and post-move notices to a ward’s attorney of record, in addition to the persons mentioned in Probate Code section 1511(b). Although a notice mailed to a ward over the age of 12 under the latter section and sections 2352(e)(1) and (3) must also be mailed to the ward’s attorney of record,⁴ the advisory committee concluded that express provisions of

⁴ See Probate Code section 1214.

the rule requiring mailing of the notices to the ward's attorney in every case would be appropriate to ensure that a ward's attorney receives the notices even though his or her client is under the age of 12 and thus not entitled to receive copies of the notices under section 1511(b).

Rule 7.1063(a) and (c) would also require mailing of the pre- and post-move notices to the conservatee and the conservatee's attorney of record, in addition to the persons listed in Probate Code section 1822(b). The conservatee is not listed in that section, which identifies the persons who must be served by mail with notice of the hearing on a petition for appointment of a conservator, because the conservatee must be personally served with notice of that hearing in the form of a citation under section 1823.

The advisory committee believes that omission of the conservatee as a person entitled to receive both notices required under section 2352(e) was inadvertent. On the other hand, service of the post-move notice on a ward of any age or the conservatee under section 2352(e)(1) seems unnecessary because the move will have already been completed when the notice is served.

Comments are requested concerning the mailing provisions of the proposed rules.

Form GC-080(MA)

This proposed new optional form is an attachment to revised form GC-080 to show the names and addresses of persons served with the notice who could not be listed on the proof of service on page 2 of that form.

The text of rules 7.1013 and 7.1063 and forms GC-080 and GC-080(MA) are attached beginning at page 7.

Attachments

Rule Proposal

Rules 7.1013 and 7.1063 of the California Rules of Court would be adopted, effective January 1, 2008, to read:

1 **Rule 7.1013. Change of ward's residence**

2
3 **(a) Advance notice of change of personal residence required**

4
5 Unless an emergency requires a shorter period of notice, the guardian of the
6 person must mail notice of an intended change of the ward's personal
7 residence at least 15 days before the date of the proposed change. The notice
8 must be mailed to the attorney of record for the ward and the persons entitled
9 to notice of the hearing on the petition for appointment of a guardian under
10 Probate Code section 1511(b). The guardian must file proof of mailing with
11 the court.

12
13 **(b) Personal residence of the ward**

14
15 The "ward's personal residence" under (a) is the ward's residence when the
16 first petition for appointment of a guardian was filed in the case.

17
18 **(c) Notice of a change of residence required**

19
20 The guardian of the person of a minor must file a notice of a change of the
21 ward's residence with the court within 30 days of the date of the change.
22 Unless waived by the court for good cause, the guardian must also mail a
23 copy of the notice to the attorney of record for the ward and the persons
24 entitled to notice of the hearing on a petition for appointment of a guardian
25 under Probate Code section 1511(b).

26
27 **(d) Residence of the ward**

28
29 The "ward's residence" under (c) is the ward's residence at any time after
30 appointment of a guardian.

31
32 **(e) Use of Judicial Council form GC-080**

33
34 *Notice of Proposed Change of Personal Residence or Completed Change of*
35 *Residence of Conservatee or Ward* (form GC-080) must be used for the
36 notices required under this rule and Probate Code section 2352(e). The
37 guardian, the guardian's attorney, or an employee of the attorney may
38 complete the mailing and sign the Proof of Mailing on page 2 of the form.

1 **Rule 7.1063. Change of conservatee’s residence**

2
3 **(a) Advance notice of change of personal residence required**

4
5 Unless an emergency requires a shorter period of notice, the conservator of
6 the person must mail notice of an intended change of the conservatee’s
7 personal residence at least 15 days before the date of the proposed change.
8 The notice must be mailed to the conservatee, the attorney of record for the
9 conservatee, and the persons entitled to notice of the hearing on the petition
10 for appointment of a conservator under Probate Code section 1511(b). The
11 conservator must file proof of mailing with the court.

12
13 **(b) Personal residence of the conservatee**

14
15 (1) The “conservatee’s personal residence” under (a) is the conservatee’s
16 non-institutional residence when the first petition for appointment of a
17 conservator was filed in the case.

18
19 (2) If the conservatee was living in an institutional residential setting when
20 the first petition for appointment of a conservator was filed in the case,
21 the “conservatee’s personal residence” under (a) is his or her residence
22 before moving to the institutional residential setting if the prior
23 residence is an asset of the conservatorship estate or a trust of which the
24 conservatee is a settlor and a beneficiary. A change of the conservatee’s
25 personal residence under (a) for a conservatee with a prior residence
26 under this paragraph is removal from the institutional residential setting
27 to any residence other than the prior residence.

28
29 **(c) Notice of a change of residence required**

30
31 The conservator of the person must file a notice of a change of the
32 conservatee’s residence with the court within 30 days of the date of the
33 change. Unless waived by the court for good cause, the conservator must
34 mail a copy of the notice to the conservatee, the conservatee’s attorney of
35 record, and the persons entitled to notice of the hearing on a petition for
36 appointment of a conservator under Probate Code section 1822(b).

37
38 **(d) Residence of the conservatee**

39
40 The “conservatee’s residence” under (c) is the conservatee’s residence at any
41 time after appointment of a conservator.

1 **(e) Use of Judicial Council form GC-080**

2

3 *Notice of Proposed Change of Personal Residence or Completed Change of*
4 *Residence of Conservatee or Ward (form GC-080) must be used for the*
5 notices required under this rule and Probate Code section 2352(e). The
6 conservator, the conservator's attorney, or an employee of the attorney may
7 complete the mailing and sign the Proof of Mailing on page 2 of the form.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr/> TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY Draft 4, 05/11/07 Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF THE PERSON <input type="checkbox"/> AND ESTATE OF (<i>Name</i>): _____ <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR	
NOTICE OF <input type="checkbox"/> PROPOSED CHANGE OF PERSONAL RESIDENCE <input type="checkbox"/> COMPLETED CHANGE OF RESIDENCE OF <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> WARD	CASE NUMBER: _____

INFORMATION FOR CONSERVATORS AND GUARDIANS:

- (1) Unless there is an emergency requiring a shorter period of time, you must mail, at least 15 days **before** the date of the proposed move, a notice of your intention to change the conservatee's or ward's personal residence at the beginning of the conservatorship or guardianship to the conservatee, the conservatee's or ward's attorney of record, and the persons mentioned in Probate Code sections 1822(b) (conservatorship) or 1511(b) (guardianship). If an emergency requires a shorter period of time, your notice must include a statement of the basis for the emergency. You must file proof of the mailing of this notice with the court. Items 1 and 2 below apply to this notice. (See Cal. Rules of Court, rules 7.1013(a) and (b) and 7.1063(a) and (b).)
- (2) **Within 30 days of the date of the move**, you must give notice to the court and, unless for good cause the court excuses you, the persons named in (1), every time the conservatee or ward moves to a new residence in the State of California. Items 3 and 4 below apply to this notice, which may be given after the move. Item 4 applies to changes of residence in a conservatorship only. (See Cal. Rules of Court, rules 7.1013(c) and (d) and 7.1063(c) and (d).)
- (3) You must obtain court permission **BEFORE** the conservatee or ward can move to a new residence outside California.

NOTICE IS GIVEN as follows (*check all that apply*):

1. I intend to change the above-named conservatee's or ward's personal residence on (*date*):
2. I cannot give at least 15 days' notice of this intended change because of the emergency described below (*specify*):

3. On (*date*): _____ the conservatee or ward named above moved to the following residence:
 New address: _____

 Telephone number: _____ Other contact number: _____
4. The conservatee's new residence identified in 3 is the least restrictive appropriate residence that is available to meet his or her needs, and is in the conservatee's best interest.

Date: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



(TYPE OR PRINT NAME OF CONSERVATOR OR GUARDIAN)

(SIGNATURE OF CONSERVATOR OR GUARDIAN)

<input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF THE PERSON <input type="checkbox"/> AND ESTATE OF (Name): _____ <div style="text-align: center;"> <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR </div>	CASE NUMBER: _____
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**ATTACHMENT TO NOTICE OF PROPOSED CHANGE OF PERSONAL RESIDENCE
OR COMPLETED CHANGE OF RESIDENCE OF CONSERVATEE OR WARD**

(This Attachment is for use with Form GC-080.)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and relationship of addressee
to conservatee or ward

Address (number, street, city, state, and zip code)

_____ Relationship: _____	

Item SP07-13 Response Form

Title: Probate: Notices of Changes of Residence of Conservatees and Wards (adopt rules 7.1013 and 7.1063 of the California Rules of Court; revise form GC-080; and approve form GC-080(MA)).

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **[respond using the Internet](#)** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102

Fax: (415) 865-7664 **Attention:** Camilla Kieliger

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/commentform.htm>

DEADLINE FOR COMMENT: 5:00 p.m., Friday, July 13, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*