

Invitation to Comment

Title	Probate Conservatorships and Guardianships: Value of estate property for purposes of setting the amount of the surety bond for the cost of recovery on the bond (amend rule 7.207 of the California Rules of Court).
Summary	The proposed amendment of rule 7.207 would clarify that the value of estate property for purposes of setting the amount of the bond for the cost of recovery on the bond is the value of the property at the time of appointment of the conservator or guardian, whether or not there is an appraised value of the property when the amount of the recovery bond is set.
Source	Probate and Mental Health Advisory Committee Hon. Marjorie Laird Carter, Chair
Staff	Douglas C. Miller, Senior Attorney 415.865.7535, douglas.miller@jud.ca.gov

Discussion Legislation in 2006 amended Probate Code section 2320 to require an additional amount of surety bond to secure the cost of recovery on the bond. The new provision included a direction to the Judicial Council to adopt a rule of court to establish the amount of additional bond and implement the new requirement. Section 2320 was amended again in 2007 to clarify the operation of this provision.¹

In response to the statutory directive, the Judicial Council adopted rule 7.207 of the California Rules of Court, effective January 1, 2008. Rule 7.207(c)(1) (A) and (B) establishes the amount of the additional bond as including a sliding percentage of the “appraised value” of personal property of the estate and, in some circumstances, the net value of real property of the estate—the “appraised value” of this property less encumbrances.

¹ See Stats. 2006, ch. 453 (Assem. Bill. 363, part of the Omnibus Conservatorship and Guardianship Reform Act of 2006), § 19; and Stats. 2007, ch. 553 (Assem. Bill 1727), § 15. The 2006 legislation added paragraph (c)(4) to section 2320. The 2007 legislation amended that paragraph to expressly provide that attorneys’ fees and costs incurred in a successful surcharge action against a conservator or guardian are a surcharge against the fiduciary and, if unpaid, are to be recovered against the surety.

The Probate and Mental Health Advisory Committee proposes to amend rule 7.207(c)(1)(A) and (B) by deleting the word “appraised” from each subparagraph, leaving them to refer, respectively, to the value of the personal property, and the value of real property of the estate less encumbrances.

This change is proposed because in a new conservatorship or guardianship the amount of bond is set at the time of the fiduciary’s appointment, before the personal or real property has been appraised by the Probate Referee and before the Inventory and Appraisal has been filed.

This change would not affect the relevant valuation date of the estate’s personal and real property for purposes of setting the surety bond. That date is the date of the order appointing the conservator or guardian. See Probate Code sections 2610(a) and 2320(a) and (c)(1).

The text of amended rule 7.207 follows this Invitation to Comment.

Rule Proposal

Rule 7.207 of the California Rules of Court would be amended, effective January 1, 2010, to read:

1 **Rule 7.207. Bonds of conservators and guardians**

2
3 **(a) Bond for appointments after December 31, 2007**

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5 Except as otherwise provided by statute, every conservator or guardian of the
6 estate appointed after December 31, 2007, must furnish a bond that includes
7 an amount determined under (c) as a reasonable amount for the cost of
8 recovery to collect on the bond under Probate Code section 2320(c)(4).
9

10 **(b) Additional bond for appointments before January 1, 2008**

11
12 Except as otherwise provided by statute, every conservator or guardian of the
13 estate appointed before January 1, 2008, and the conservator's or guardian's
14 attorney, must after that date apply to increase the bond in the manner
15 described in rule 7.204 to include an additional amount determined under (c),
16 and must, no later than June 30, 2008, furnish the increased amount of bond
17 ordered by the court.
18

19 **(c) Amount of bond for the cost of recovery on the bond**

20
21 The reasonable amount of bond for the cost of recovery to collect on the
22 bond, including attorney's fees and costs, under Probate Code section
23 2320(c)(4) is:
24

25 (1) Ten percent (10%) of the value up to and including \$500,000 of the
26 following:

27
28 (A) The ~~appraised~~ value of personal property of the estate;

29
30 (B) The ~~appraised~~ value, less encumbrances, of real property of the
31 estate that the guardian or conservator has the independent power
32 to sell without approval or confirmation of the court under
33 Probate Code sections 2590 and 2591(d);

34
35 (C) The probable annual income from all assets of the estate; and

36
37 (D) The probable annual gross payments described in Probate Code
38 section 2320(c)(3); and

- 1 (2) Twelve percent (12%) of the value above \$500,000 up to and including
- 2 \$1,000,000 of the property, income, and payments described in (1); and
- 3
- 4 (3) Two percent (2%) of the value above \$1,000,000 of the property,
- 5 income, and payments described in (1).

Item SPR09-43 Response Form

Title: Probate Conservatorships and Guardianships: Value of estate property for purposes of setting the amount of the surety bond for the cost of recovery on the bond (amend Cal. Rules of Court, rule 7.207)

- 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: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009
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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.