

## RESOLUTION 08-04-2017

### DIGEST

#### Conservatorships: Increase Value of Small Estates

Amends Probate Code section 2628 to increase the value of a small estate subject to a waiver of accounting in conservatorship and guardianship proceedings.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Probate Code section 2628 to increase the value of a small estate subject to a waiver of accounting in conservatorship and guardianship proceedings. This resolution should be approved in principle because it is a common-sense increase of the minimum amount an estate can contain to obtain a waiver of accounting.

As the resolution notes, the legislature has authorized increases in the past with the most recent increase in 2007 to \$15,000. This resolution would provide an increase to allow conservatorship or guardianship estates with a value of \$30,000 or less to obtain a waiver so that the preparation of an accounting is not required. However, the statute still allows the court, the conservatee or ward, or any interested person to request a full accounting.

Generally, estates that fall under this statute consist only of public benefits paid to the conservatee. Since the purpose of the statute is to reduce the expense of administration of small estates, the proposed increase in this resolution both recognizes inflation since 2007, and provides relief to conservators and courts regarding the preparation and review of accountings.

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 2628 to read as follows:

- 1 § 2628  
2 (a) The court may make an order that the guardian or conservator need not present the  
3 accounts otherwise required by this chapter so long as all of the following conditions are  
4 satisfied:  
5 (1) The estate at the beginning and end of the accounting period for which an account is  
6 otherwise required consisted of property, exclusive of the residence of the ward or conservatee,  
7 of a total net value of less than ~~thirty fifteen~~ thousand dollars (\$30,000) (~~\$15,000~~).  
8 (2) The income of the estate for each month of the accounting period, exclusive of public  
9 benefit payments, was less than two thousand dollars (\$2,000).  
10 (3) All income of the estate during the accounting period, if not retained, was spent for  
11 the benefit of the ward or conservatee.

12 (b) Notwithstanding that the court has made an order under subdivision (a), the ward or  
13 conservatee or any interested person may petition the court for an order requiring the guardian or  
14 conservator to present an account as otherwise required by this chapter or the court on its own  
15 motion may make that an order. An order under this subdivision may be made ex parte or on  
16 such notice of hearing as the court in its discretion requires.

17 (c) For any accounting period during which all of the conditions of subdivision (a) are not  
18 satisfied, the guardian or conservator shall present the account as otherwise required by this  
19 chapter.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County.

### **STATEMENT OF REASONS**

The Problem: Accountings required in a guardianship or conservatorship matter are highly technical and require strict compliance with the Probate Code. This strict compliance generally requires the retention of counsel or other professionals at great cost to small estates.

The Solution: This Resolution increases the minimum amount an estate can contain to obtain a waiver of accounting as a matter of right. This increase comports with the prior increases by the Legislature. In 1998, the amount was \$7,500 (*see* Stats.1998, c. 103 (S.B. 1487), section 7) and was increased 100% nine years later in 2007 to the current amount of \$15,000 (*see* Stats.2007, c. 553 (A.B 1727), section 23). An increase is necessary as the cost of an accounting can be a substantial percentage of an estate with less than \$30,000.

### **IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

### **CURRENT OR PRIOR RELATED LEGISLATION:**

Not known.

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## **COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS**

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### **TEXCOM - TECHNICAL COMMENTS ONLY**

While taking no position on this resolution, TEXCOM notes that in the “Statement of Reasons” the authors of the resolution claim that the proposed changed “increases the minimum amount an estate can contain to obtain a waiver of accounting as a matter of right.” (Emphasis added.)

However, as proposed, the waiver would not be as a matter of right as there is no proposal to amend Probate Code section 2628, subdivision (a).

**This position is only that of the TRUSTS and ESTATES SECTION of the State Bar of California. This position has not been adopted by the State Bar's Board of Trustees, and is not to be construed as representing the position of the State Bar of California.**

**Membership in the TRUSTS and ESTATES SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.**