

RESOLUTION 08-10-2017

DIGEST

Conservatorships: Custody and Control of Financial Accounts After Death of Conservatee
Amends Probate Code section 1860 to clarify that the conservator still has authority to control financial accounts after the death of the conservatee.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Probate Code section 1860 to clarify that the conservator still has authority to control financial accounts of the conservatorship estate after the death of the conservatee. This resolution should be approved in principle because the resolution adds additional clarity regarding the authority a conservator has after the death of the conservatee.

The resolution would add a reference in Probate Code section 1860 to other existing Probate Code sections, namely sections 2467 and 2631, which gives the conservator the authority and duty of custody and control of the conservatorship estate after the death of the conservatee. This resolution would assist in dispelling any confusion by a financial institution regarding the authority of a conservator after the death of the conservatee pending final discharge of the conservator by a Probate Court.

The author asserts that the resolution is needed because banks have frozen accounts of the conservatorship estate upon hearing that the conservatee has died, based on a reading of Probate Code section 1860, subdivision (a), which suggests that the conservatorship estate is terminated by the death of the conservatee. The result is that the conservator is prevented from paying the debts of the conservatee including funeral expenses.

This resolution is related to Resolution 08-11-2017.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 1860 to read as follows:

- 1 § 1860
- 2 (a) A conservatorship continues until terminated by the death of the conservatee or by
- 3 order of the court, subject to Sections 2467 and 2631, and except as otherwise provided by
- 4 statute.
- 5 (b) If a conservatorship is established for the person of a married minor, the
- 6 conservatorship does not terminate if the marriage is dissolved or is adjudged a nullity.
- 7 (c) This section does not apply to limited conservatorships.

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

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: Financial institutions have interpreted the language in Probate Code section 1860, subdivision (a), to mean that because the conservatorship has terminated, the conservator no longer has authority to access the accounts of the conservatee. The financial institutions have frozen accounts, and will not allow access to pay debts of the conservatee, including funeral and burial expenses.

The Solution: The provision should be amended by adding language clarifying that the conservator's authority to access accounts does not terminate at the conservatee's death by adding an indication that the conservator of the estate continues to have authority. Two primary codes of reference are Probate Code section 2467, regarding the custody and control of the estate by the conservator until delivery to the personal representative, and Probate Code section 2631, regarding conservator's power to contract and to pay reasonable expenses after the death of the conservatee.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

TEXCOM - SUPPORT

TEXCOM agrees with Proponents that a literal reading of Probate Code section 1860 has led financial institutions to often freeze accounts of conservatees until a personal representative has been appointed. This can leave the conservator with no way to pay the debts of the conservatee, including funeral and burial expenses. This Resolution should clarify the continuing authority and obligation of the Conservator of the Estate under other provisions of the Probate Code to pay last expenses, maintain custody and control, and to preserve the assets prior to delivery to the personal representative, or as ordered by the Court.

TEXCOM offers the technical comment that a clearer and more express statement in the affirmative that a Conservatorship of the estate does not terminate upon death, but continues pursuant to the cited sections, should be considered.

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.