

**RESOLUTION 08-11-2017**

**DIGEST**

Probate Custody and Control of Financial Accounts After Death of Ward

Amends Probate Code section 1600 to clarify that the guardian still has authority to control financial accounts of the guardianship estate after the death of the ward.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Probate Code section 1600 to clarify that the guardian still has authority to control financial accounts of the guardianship estate after the death of the ward. This resolution should be approved in principle because the resolution adds additional clarity regarding the authority of a guardian after the death of the ward.

This resolution would add a reference in Probate Code section 1600 to other existing Probate Code sections, namely sections 2467 and 2631, which gives the guardian the authority and duty of custody and control of the guardianship estate after the death of the ward. This resolution would assist in dispelling any confusion by a financial institution regarding the authority of a guardian after the death of the ward pending final discharge of the guardian by a Probate Court.

The author asserts that the resolution is needed because banks have frozen accounts of the guardianship estate upon hearing that the ward has died based on an interpretation of Probate Code section 1600, subdivision (b), which suggests that the guardianship estate is terminated by the death of the ward. The result is that the guardian may be prevented from paying the debts of the ward including funeral expenses. This resolution would clarify this code section to explicitly allow the guardian to pay the expenses.

This resolution is related to Resolution 08-10-2017.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 1600 to read as follows:

- 1 § 1600
- 2 (a) A guardianship of the person or estate or both terminates when the ward attains
- 3 majority unless, pursuant to Section 1510.1, the ward requests the extension of, or consents to
- 4 the extension of, the guardianship of the person until the ward attains 21 years of age.
- 5 (b) A guardianship of the person terminates upon the death of the ward, the adoption of
- 6 the ward, or upon the emancipation of the ward under Section 7002 of the Family Code.

7           (c) A guardianship of the estate terminates upon the death of the ward, subject to Sections  
8 2467 and 2631, and except as otherwise provided by statute.

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

**PROPONENT:** Sacramento County Bar Association

### **STATEMENT OF REASONS**

The Problem: Similar to the language in Probate Code section 1860, subdivision (a), regarding conservatorships of the estate, financial institutions could interpret the language in Probate Code section 1600 to mean that because the guardianship has terminated by the death of the ward, the guardian no longer has authority to access the accounts of the ward. The financial institutions may freeze accounts at the death of the ward, as they have upon the deaths of conservatees, and not allow access to pay debts of the ward, including funeral and burial expenses.

The Solution: The provision should be amended by adding language clarifying that the guardian's authority to access accounts does not terminate at the ward's death by adding an indication that the guardian 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 guardian until delivery to the personal representative, and Probate Code section 2631, regarding guardian's power to contract and to pay reasonable expenses after the death of the ward.

### **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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**RESPONSIBLE FLOOR DELEGATE:** Susan C. Hill

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

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### **TEXCOM - SUPPORT**

TEXCOM agrees with Proponents that a literal reading of Probate Code section 1600 has led financial institutions to often freeze guardianship accounts until a personal representative has been appointed. This can leave the guardian with no way to pay the debts of the ward, 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 Guardianship 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.**